

Department of Micro, Small & Medium
Enterprises & Textiles
Government of West Bengal

TEXPRO Bengal

Development of Apparel Wholesale Hub at Sector V,
Salt Lake under PPP Mode

Request for Proposal

May, 2016

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Glossary

Associate	As defined in clause 1.4.2.3
Bank guarantee	As defined in clause 2.4.1.1
Bid(s)	As defined in clause 1.5.1.2
Bidders	As defined in clause 1.5.1.1
Bidding Documents	As defined in clause 1.5.1.2
Bid Due Date	As defined in clause 1.6
Bidding Process	As defined in clause 1.5.1.1
Bid Security	As defined in clause 1.5.1.4
Concession	As defined in clause 1.3
Concession Agreement	As defined in clause 1.3
Concession Period	Period of 99 years
Concessionaire	As defined in clause 1.3
Conflict of Interest	As defined in clause 2.1.1.13
Damages	As defined in clause 2.1.1.13
Demand Draft	As defined in clause 1.5.1.4
Financial Year	From April 1st to March 31st
Highest Bidder	As defined in clause 1.5.1.14
LOA	As defined in clause 1.5.1.10
Member	Member of a Consortium
Annual Lease Rent	As defined in clause 1.5.1.11
Project	As defined in clause 1.1
Project Site	As defined in Clause 1.2
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposal	As defined in the Disclaimer
Scope of Work	As defined in Appendix VII
Selected Bidder	As defined in clause 3.1.4.2
SPV (Special Purpose Vehicle)	As defined in the Clause 1.4

Disclaimer

The information contained in this Request for Proposal document (the "RFP") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Department of Micro, Small & Medium Enterprises & Textiles ("the Department") or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Department to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their proposal pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Department in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Department, or their employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents (including the Financial Bid), may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Department accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

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

The Department also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Department may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Department is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Department reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Department or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Department 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.

In particular, the Department shall not be responsible / liable for any latent or evident defect or character of the site or its title or any other related aspect including but not limited to the following:

- a) Soil testing/investigations;
- b) Availability of ground water;
- c) Availability and / or provisions for utilities such as electricity, water supply, etc.;
- d) Site drainage;
- e) Site approach;
- f) All statutory permissions from various authorities including approvals from town planning or other authorities as per the Central Government / Government of West Bengal / Municipal/ Panchayat Acts/ Rules/ Guidelines/ Norms;
- g) All applicable rent, rates, duties, cess and taxes, if any;
- h) All applicable statutory laws and provisions;
- i) Technical and financial feasibility of the Project.

1. Introduction

1.1 Background

The Department of Micro, Small & Medium Enterprises & Textiles, Government of West Bengal (“the Department”) has initiated the TEXPRO Bengal project with the objective of establishing West Bengal as a leading destination of globally competitive value added textiles and doubling the share of the state in the total national output from the current 5.2% to 10% by 2022-23. TEXPRO Bengal envisages to bring in investments of around Rs. 30,000 Crores in the State and generate over 6 lakh employment opportunities. The project aims to promote and facilitate manufacturing and marketing of textile and apparel through creation of best-in-class infrastructure facilities, encompassing development of Textile parks/ hubs across the textile value chain under the PPP mode at strategic locations in the State.

Under the aegis of TEXPRO Bengal, the Department proposes to set up an Apparel Wholesale Hub at Salt Lake in North 24 Parganas district in the State, with facilities for marketing / selling apparels. Spread over an area of around 3.78 acres, the Apparel Wholesale Hub is proposed to be developed on a Public Private Partnership (PPP) model in order to bring in the expertise of private sector for project financing, development and operation.

In this respect, the Department invites technical and financial proposals from established private partners who have experience and / or expertise in developing Textile Parks/ Marketing Hubs or similar industrial infrastructure.

1.2 Location

1. The proposed site is spread over an area of around 3.78 acres in Sector V, Salt Lake with 12 meter wide approach road
2. The site is at a distance of 7 Kms from Bidhan Nagar Railway Station; 15 Kms from Netaji Subhash Chandra Bose International Airport; 19 Kms from Kolkata Port
3. The proposed park is located in close proximity to Kolkata, a major production and trading hub for readymade garments, estimated to be worth INR 26,000 Cr.¹
4. The site is also located in proximity to Paridhan Park in Belegghata and proposed Garment Park in Rajarhat (EIGMEF) ensuring access to finished textile products/ apparels for traders / wholesalers

1.3 Context of the Bidding Process

1. The Department has decided to implement the Project on Design, Build, Finance, Operate and Transfer (DBFOT) basis under PPP model by involving private enterprises.
2. The Selected Bidder, which would be a company governed under the Companies Act, 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 (the “Concessionaire”), shall be responsible for the Project under and in accordance with the provisions of a concession agreement (the “Concession Agreement”) to be entered into between the Selected Bidder and the Department in the form provided by the Department as part of the Bidding Documents pursuant hereto. The Concession Period will be 99 years.
3. The Scope of Work for the Project shall be as specified in Appendix VII of this RFP and as per the provisions stated in the Concession Agreement.
4. The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire for implementing the Project, including the scope of the Concessionaire’s services and obligations (the “Concession”)
5. The estimated cost of the Project, (the “Estimated Project Cost”) is Rs. 1,500,000,000/- (Rupees One Hundred and Fifty Crores only). The assessment of actual costs, however, will have to be made by the Bidders.

¹ Source: Discussions with Industry Associations

6. The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Department's right to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Department.
7. The Department 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 Department pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Department (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 1.6 for submission of Bids (the "Bid Due Date").

1.4 Implementation of Project

For the implementation of the Project, the Selected Bidder (single entity/consortium) shall form a Special Purpose Vehicle Company (SPV) under the Companies Act 2013 or under the Limited Liability Partnership Act 2008. The selected bidder shall complete all the financial and legal requirements regarding formation of the SPV. The SPV shall be responsible for the development, operations and maintenance of the entire Apparel Wholesale Hub as per the terms and conditions of the Concession Agreement.

1.4.1 Qualification Criteria

1.4.1.1 Eligibility - Financial Capacity

The eligibility for the bidders will be based on Net Worth, with the requirement to have a minimum Net Worth (the Financial Capacity) of Rs. 1,500,000,000 (Rupees One Hundred and Fifty Crores only) during the last 3 financial years.

In case of a consortium, the aggregate net worth of the members should meet the above-mentioned criterion. Also the lead member of the Consortium should meet at least 51% of the net worth criterion. Further, in case of a consortium bid, the net worth of only those members of the consortium shall be considered who propose to take at least 10% of the equity stake in the SPV to be formed by the Consortium.

Proposals of only those bidders who meet the above net worth criteria will be considered for evaluation of the Technical and Financial Proposal.

1.4.1.2 Technical Capacity

The Bidder should have the following Technical Capacity (Development Experience and Operations & Maintenance Experience):

Particulars	Marks
Development Experience	
Development of one infrastructure project (including technology parks, industrial parks) within the last five years with a minimum investment of Rs. 75 crores	40
Development of a textile hub/ marketing hub within the last five years with a minimum investment of Rs. 75 crores	20
Operations and Maintenance Experience	
Operation and maintenance of one infrastructure project (including technology parks, industrial parks) for a period of at least one year within the last five years	25
Operation and maintenance of a marketing hub for textile for a period of at least one year within the last five years	15
Total marks	100

1.4.2 Bidder/Applicant

The Bidder/Applicant, maybe a single entity or a Consortium of members.

1.4.2.1 Definition of Consortium –

- a) Number of members in a consortium shall not exceed 4 (Four);
- b) The Application should contain the information required for each member of the Consortium;
- c) Members of the Consortium shall nominate one member as the lead member (the “Lead Member”),
- d) Members of the Consortium shall enter into formal understanding / MoU and shall clearly indicate their roles and responsibilities
- e) An individual Applicant cannot at the same time be member of a Consortium applying for this RFP. Further, a member of a particular Consortium cannot be member of any other Consortium applying for this RFP; if an applicant submits or participates in more than one proposal, all such proposals shall be disqualified
- f) Members of the Consortium if selected can exit from SPV only with the written permission of the Department. The draft concession agreement shared with the Bidders along with this RFP Document contains the necessary provisions in detail.
- g) The Lead Member shall for a period of 7 years from the date of commercial operation of the entire Project (Development of all Project components completed and operational) hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV.
- h) The Technical Capacity criteria shall be considered for the Consortium members who propose to have an equity share of at least 26% in the SPV to be formed by the Consortium
- i) Each Member whose experience will be evaluated for the purpose of Technical Capacity evaluation under this RFP, shall for a period of 5 years from the date of commercial operation of the entire Project (Development of all Project components completed and operational), hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV.
- j) Members of the Consortium shall be jointly and severally responsible for the implementation of the project

- 1.4.2.2** Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the Bid Due Date (As defined in Clause 1.6), would not be eligible to submit an Application/Bid, either individually or as member of a Consortium. While evaluating the Technical Capacity of the Bidder/ Consortium Members, the Technical Capacity of their respective Associates would also be eligible hereunder.
- 1.4.2.3** For purposes of this RFP, Associate (the “Associate”) means, in relation to the Bidder/ Consortium member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium member (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law. The Bidder shall submit the details of the shareholding structure describing the relationship with the Associate as per the definition. This submission shall be certified by the Bidder’s Statutory Auditor.
- 1.4.2.4** An Applicant including any Consortium Member or Associate should, in the last 3 (three) financial years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant, Consortium Member or Associate.
- 1.4.2.5** If the project for which experience is claimed by a Bidder was / is being executed by a special purpose vehicle, for the purpose of qualification of project under technical experience, the Bidder must hold at least 26% of the equity in the special purpose vehicle executing the project on the Bid Due Date as specified herein. In such cases, the Bidder or relevant Consortium Member shall have to provide a certificate confirming the above. The certificate should be as on date which is within 15 (fifteen) days prior to the Bid Due Date. Such certificate shall be certified by the Statutory Auditor of the Bidder / relevant member of the Consortium.
- 1.4.2.6** 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 an Applicant, it shall ignore such financial year for the purpose of its Application and furnish all its information and certification with reference to the appropriate period, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

1.5 Details of the Bidding Process

- 1.5.1.1** The Department intends to follow a SINGLE STAGE (“Bid Process”) bidding process for selection of the Bidder (“the Bidder”) for the Project comprising a **Technical Qualification Stage (Technical Proposal) and a Financial Proposal**. The Bidders would be required to meet the minimum financial capability criteria for evaluation of the Technical and Financial proposals as set out in this RFP.
- 1.5.1.2** Bidders will be required to submit their technical and financial offers (the “Bids”) in respect of the Project, in accordance with the RFP and other documents (Bidding Documents). The Bid submitted shall be valid for a period of not less than 180 days from the date specified in Clause 1.6 for submission of bids (the “Bid Due Date”). The bid may be submitted online.
- 1.5.1.3** The Department, through its consultant, has prepared a form of Concession Agreement to be signed by the Selected Bidder and the same has been made a part of the Bidding Documents. The aforesaid document along with its schedule and annexure and any addenda issued subsequent to this RFP Document shall be deemed to form part of the Bidding Documents.
- 1.5.1.4** A Bidder is required to deposit, along with its Bid, a bid security of Rs. 15,000,000/- (Rupees One Crore and Fifty Lakhs only) (the "Bid Security"), refundable not later than 180 (One Hundred and Eighty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security (as defined in the Concession agreement) in terms of these Bidding Documents. The Bidders will have an option to provide Bid Security in the form of a demand draft (payable at Kolkata) or a bank guarantee acceptable to the Department, in the name of “Department of Micro, Small & Medium Enterprises & Textiles” issued by a Scheduled Bank payable in Kolkata. The validity period of the bank guarantee, shall not be less than 180 (One Hundred and Eighty) days from the Bid Due Date, with a claim period of 60 (Sixty) days, and may be extended as may be mutually agreed between the Department and the Bidder from time to time. In case the Bid Security is provided in the form of a demand draft, the Department shall encash such demand draft and the same shall be returned by way of account payee cheque. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.5.1.5** 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 proposals for award of the Concession including implementation of the Project.
- 1.5.1.6** Upon grant of Concession in favour of the Selected Bidder, the Selected Bidder would be entitled to issue sub-lease of proposed built-up spaces or plots of land forming a part of the Project Site to third parties after execution of the Lease Deed and would be entitled to obtain financial facilities in respect of the Project from Scheduled Banks/ Financial Institutions by creating charge/ mortgage in favour of such Scheduled Banks/ Financial Institutions over its concession without however in any manner creating or foisting any liability on the Department. However, the Selected Bidder would be entitled to issue letters of allotment to intending sub-leases or licensees upon the execution of the Concession Agreement prior to execution of the Lease Deed. Allottees must be on arm’s length basis and no allotments should be made to affiliates and/or subsidiaries. Land will be given on lease to the SPV by the Department.
- 1.5.1.7** In consideration of the Department providing designated plot of land on concession for the Project, the Selected Bidder is required to provide developed space to the Department. Towards this, the Bidder shall quote the percentage of developed space to be shared as specified in this RFP.

- 1.5.1.8** The Selected Bidder is also required to pay **Annual Lease Rent** to the Department each year till the end of Concession Period, after the execution of the Lease Deed. From execution of the Concession Agreement till execution of the Lease Deed, the Selected Bidder shall make payment of an **Occupational Charge** in respect of the Land.
- 1.5.1.9** **Space sharing as a % of the total built-up area to be provided to the Department is to be quoted by the bidder.**
The total built-up area will be based on permissible FAR in the area. In the event, the permissible FAR increases, post signing of the concession agreement/ execution of the lease deed, the Space sharing percentage quoted by the Bidder shall hold. The Selected Bidder/ Concessionaire cannot alter the Space sharing percentage quoted.
- 1.5.1.10** The Department shall have the first right to select the section of the developed space in the proposed Wholesale hub (based on the approved DPR) to be handed-over by the Selected Bidder. The Selected Bidder will hand over the developed space to the Department as per the agreed timelines for development of the proposed project components.
The Department shall handover the project site within 180 days of the execution of the Concession Agreement in the manner provided in the Concession Agreement along with the signing of the lease deed.
- 1.5.1.11** **Occupational Charge shall be calculated as follows:**
Occupational Charge (per month or part thereof as applicable) = annual lease rent/ 12 to be paid to the Department in such account as may be specified by the Department
Annual Lease Rent shall be calculated as follows:
Annual Lease Rent = Rs. 5 per square meter of the built-up area to be retained by the Selected Bidder to be paid to the Department in such account as may be specified by the Department
The Selected Bidder shall pay to the Department the Occupational Charge within 15 (Fifteen) days of each month from the day of execution of the Concession Agreement, till the execution of the Lease Deed.
The Selected Bidder shall pay to the Department after the execution of Lease Deed the Annual Lease Rent within 15 (Fifteen) days of the first month of each Concession Year (As defined in the Concession Agreement). However, the first Annual Lease Rent shall be paid within 15 days of execution of Lease Deed and shall be calculated from the date of execution of Lease Deed to the end of Concession Year on pro rata basis. For example, if Concession Agreement is executed on 1st April 2016, and Lease Deed is executed on 1st September 2016, then the first Annual Lease Rent shall be paid latest by 15th September 2016 and shall be calculated from 1st September 2016 to 31st March 2017 on pro rata basis, second Annual Lease Rent shall be paid latest by 15th April 2017, third Annual Lease Rent shall be paid latest by 15th April 2018 and so on till the end of the Concession Period.
- 1.5.1.12** The Financial Proposals will be given score on a scale of 100 with the proposal with highest Space sharing percentage quote being awarded maximum financial score of 100 and the other proposals being given score proportionately.
- 1.5.1.13** The bids will be evaluated based on (a) Technical proposal (as detailed in clause 1.4.1) and (b) Financial Proposal (as detailed in clause 1.5.1.12). The weights given to the Technical and Financial Proposals are 70% and 30% respectively. The Project shall be awarded to the bidder securing the highest combined technical and financial score. In this RFP, the term "Highest Bidder" shall mean the Bidder who scores the highest combined technical and financial score in the evaluation.
The Department is not bound to select the highest Bidder for the Project and reserves the right to reject all or any of the Bidders or Bids (including the highest Bidder) without assigning any reason whatsoever.

- 1.5.1.14** The Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited if such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders are selected, the Department may, in its discretion, annul the Bidding Process.
- 1.5.1.15** Further and other details of the process to be followed at the Bid Process and the terms thereof are spelt out in this RFP.
- 1.5.1.16** Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.3.2.7 below. The envelopes / communication shall clearly bear the following identification / title:
“Queries / Request for Additional Information: RFP for the Development of Apparel Wholesale Hub at Sector V, Salt Lake”.
- 1.5.1.17** The Department shall at any point of time call for additional information which they may require for evaluation of the Bid. The Bidder shall provide such information in a timely manner during which the Department may take decision based on the information provided.

1.6 Schedule of Bidding Process

The Department shall endeavor to adhere to the following schedule:

S No.	Event Description	Date
1	Issue of RFP	12/05/2016
2	Last date for receiving queries	17/05/2016
3	Pre-Bid meeting	19/05/2016
4	The Department's response to queries latest by	23/05/2016
5	Bid Due Date	31/05/2016
6	Opening of Technical Proposal	01/06/2016
7	Opening of Financial Proposal	To be communicated by the Department separately to the shortlisted Bidders (T ₁)
8	Issue of Letter of Award (LOA)	T ₁ + 10 days (T ₂)
9	Furnishing of Performance Security by the Selected Bidder	T ₂ + 15 days
10	Incorporation of SPV	T ₂ + 30 days (T ₃)
11	Signing of Concession Agreement	T ₂ + 45 days

2. Instruction to Bidders

2.1 General

2.1.1 General terms of Bidding

- 2.1.1.1** No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.1.1.2** The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Bidding Documents shall confer any right on the Bidders, and neither the Department nor their officers / employees / staffs shall have any liability whatsoever in relation to or arising out of any or all contents of the Bidding Documents.
- 2.1.1.3** Notwithstanding anything to the contrary contained in this RFP, 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.
- 2.1.1.4** The Financial Bid should be furnished in the format at Appendix-VI, clearly indicating the share percentage in both figures and words and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the share indicated in words shall be taken into account.
- 2.1.1.5** The Bidder shall deposit a Bid Security of Rs. 15,000,000/- (Rs. One Crore and Fifty Lakhs Only) in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee issued by a Scheduled Bank acceptable to the Department, as per format at Appendix-II. The Bid Security shall be payable / enforceable in Kolkata.
- 2.1.1.6** The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, with a claim period of 60 (sixty) days, and may be extended to such period as instructed by the Department. In case the Bid Security is provided in the form of a demand draft, the Department shall encash the Bid Security submitted by way of demand draft. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be returned in case of a Demand Draft and returned duly cancelled in case of a Bank Guarantee, no later than 180 (One Hundred and Eighty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. In case of demand draft, the Department shall refund the bid security amount by way of account payee cheque without any interest.
- 2.1.1.7** The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorizing the signatory of the Bid to represent the Bidder in the Bid Process.
- 2.1.1.8** In case the Bidder is a Consortium, the Members hereof should furnish a Power of Attorney in favor of the Lead Member in the format at Appendix-IV.
- 2.1.1.9** In case of Consortium, the Bidder shall furnish a Joint Bidding Agreement in the format at Appendix-V
- 2.1.1.10** Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.1.11** The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

- 2.1.1.12** The documents including this RFP and all attached documents, provided by the Department are and shall remain or would become the property of the Department and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.1.12 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Department will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.1.13** A Bidder shall not have a conflict of interest (the “Conflict of Interest”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Department shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Department and not by way of penalty for, inter alia, the time, cost and effort of the Department, including consideration of such Bidder’s proposal (the “Damages”), without prejudice to any other right or remedy that may be available to the Department under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- I. the Bidder, its Member (in case of the Consortium) or Associate (or any constituent thereof) and any other Bidder, its Member (in case of the Consortium) 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 (in case of the Consortium) or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member (in case of the Consortium) or Associate, as the case may be in the other Bidder, its Member (in case of the Consortium) or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 72 of the Companies Act, 2013. For the purposes of this Clause 2.1.1.13, indirect shareholding held through one or more intermediate persons shall be computed as follows:
 - a) 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
 - b) subject always to sub-clause (a) 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 (b) 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

- 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 Department in the preparation of any documents, design or technical specifications of the Project

Explanation

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.1.13, shall include each Member of such Consortium.

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

2.1.1.14 Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Department in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement or (iii) execution of the Lease Deed. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Department, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Department may have there under or otherwise, the LOA or the Concession Agreement or the Lease Deed, as the case may be, shall be liable to be terminated without the Department being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of EOI for the Project. 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.

2.1.1.15 This RFP is not transferable.

2.1.1.16 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.1.2 Change in Ownership

2.1.2.1 By submitting the Proposal/Bid, the Bidder acknowledges and agrees that, if selected, the Lead Member shall for a period of 7 years from the date of commercial operation of the entire Project (Development of all Project Components completed and operational) hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV. Further, each Member whose experience will be evaluated for the purpose of Technical Capacity evaluation under this RFP, shall for a period of 5 years from the date of commercial operation of the entire Project (Development of all Project Components completed and operational), hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV. Further, members of the Consortium if selected can exit from SPV only with the written permission of the Department. The Bidder further acknowledges and agrees that the aforesaid obligation shall be minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such there under. For the avoidance of doubt, the provisions of this Clause 2.1.2.1 shall apply only when the Bidder is a Consortium.

2.1.2.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and / or Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Department forthwith along with all relevant particulars about the same and the Department may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Closure of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Department being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Department shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Department under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.1.3 Cost of Bidding

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

2.1.4 Site visit and verification of information

2.1.4.1 Bidders are encouraged to submit their respective Bids after visiting the Project Site and ascertaining for themselves the site conditions, baseline of assets, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

- 2.1.4.2** It shall be deemed that by submitting a Bid, the Bidder has:
- a) made a complete and careful examination of the Bidding Documents;
 - b) received all relevant information requested from the Department;
 - c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Department relating to any of the matters referred to in Clause 2.1.4.1 above;
 - d) satisfied itself about all matters, things and information including matters referred to in Clause 2.1.4.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
 - e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.1.4.1 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 Department, or a ground for termination of the Concession Agreement by the Concessionaire;
 - f) acknowledged that it does not have a Conflict of Interest; and
 - g) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.1.4.3** The Department shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Department.

2.1.5 Verification and Disqualification

- 2.1.5.1** The Department reserves the right to verify all statements, information and documents submitted by the Bidder in response to the Bidding Documents and the Bidder shall, when so required by the Department, 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 Department shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Department there under.
- 2.1.5.2** The Department reserves the right to reject any Bid and appropriate the Bid Security if:
- a) at any time, a material misrepresentation is made or uncovered, or
 - b) the Bidder does not provide, within the time specified by the Department, the supplemental information sought by the Department for evaluation of the Bid.
 - c) the Bidder has been disqualified/restricted from Bidding by any of the Departments/Agencies of Government of India or the Government of any state in India.
- 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. If such disqualification / rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified / rejected, then the Department reserves the right to
- a) invite the remaining Bidders to submit their Bids in accordance with Clause 3.1.4.3
 - b) take any such measure as may be deemed fit in the sole discretion of the Department, including annulment of the Bidding Process.

- 2.1.5.3** In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Department, 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 Concessionaire either by issue of the LOA or entering into the Concession Agreement or execution of the lease Deed, and if the Selected Bidder has already been issued the LOA or has entered into the Concession Agreement or has been granted lease, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Department to the Selected Bidder or the Concessionaire, as the case may be, without the Department being liable in any manner whatsoever to the Selected Bidder or Concessionaire. In such an event, the Department shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Department under the Bidding Documents and/ or the Concession Agreement, or otherwise.

2.2 Documents

2.2.1 Contents of the RFP

- 2.2.1.1** This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.2.3

Invitation for Bids

- 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

Appendices

- Letter comprising the Bid
- Bank Guarantee for Bid Security
- Power of Attorney for signing of Bid
- Power of Attorney for Lead Member of Consortium
- Joint Bidding Agreement
- Financial Proposal Format
- Scope of Work

- 2.2.1.2** The form of Concession Agreement provided by the Department as part of the Bid Documents shall be deemed to be part of this RFP.

2.2.2 Clarifications

- 2.2.2.1** Bidders requiring any clarification on the RFP may notify the Department in writing or by fax and e-mail in accordance with Clause 1.5.1.16. They should send their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.6. The Department shall endeavor to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Department will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

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

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

2.2.3 Amendment of RFP

2.2.3.1 At any time prior to the Bid Due Date, the Department may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda/ Corrigenda.

2.2.3.2 Any Addendum/ Corrigendum issued hereunder will be in writing and shall be sent to all the Bidders.

2.2.3.3 In order to afford the Bidders a reasonable time for taking an Addendum/ Corrigendum into account, or for any other reason, the Department may, in its sole discretion, extend the Bid Due Date.

2.3 Preparation and Submission of Application

2.3.1 Format and signing of Bids

2.3.1.1 The Bidder shall provide all the information sought under this RFP. The Department will evaluate only those Bids that are received in the required formats and are complete in all respects.

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

2.3.2 Sealing and marking of Bids

2.3.2.1 The Bidder shall submit the Technical and Financial Proposals in separate envelopes. The first envelop should be marked as **Technical Proposal - Original (ENVELOPE 1)** and shall contain the following:

- a) Information as sought in Clause 1.4.1
- b) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents.
- c) Bid Security in the format at Appendix-II or demand draft;
- d) Power of Attorney for signing of Bid in the format at Appendix-III;
- e) If applicable, the Power of Attorney for Lead Member of Consortium in the format at Appendix-IV; and
- f) If applicable, Joint Bidding Agreement in the format specified at Appendix-V
- g) A copy of the Concession Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (d) hereinabove

2.3.2.2 The second envelop should be marked as "Financial Proposal (Envelope 2)" and shall contain the Financial Bid in the format specified at Appendix-VI.

- 2.3.2.3** The Bidder shall prepare one original set of the Technical Proposal (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked as "ORIGINAL". In addition, the Bidder shall submit 1 (one) copy of the Technical Proposal, marked as "COPY" in a separate envelope (Envelope 3). Financial Proposal is to be submitted only in ORIGINAL.
- 2.3.2.4** All pages in the Proposal and its copies shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each such page in indelible ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the authorized signatory of the Bidder. The Bid shall contain page numbers and shall be stitched and hard bound.
- 2.3.2.5** The three envelopes (TECHNICAL ORIGINAL, TECHNICAL COPY, FINANCIAL) specified in Clauses 2.3.2.1, 2.3.2.2 and 2.3.2.3 shall be placed in an outer envelope, which shall be sealed and marked as:
"Proposal for the Development of Apparel Wholesale Hub at Sector V, Salt Lake" and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes
- 2.3.2.6** Each of the inner Envelopes should additionally be marked as per their content (**Envelope 1 – Technical Proposal – Original, Envelope 2 – Financial Proposal, Envelope 3 – Technical Proposal Copy**)
- 2.3.2.7** Each of the envelopes shall be addressed to:
ATTN. OF: Joint Secretary,
ADDRESS: Department of Micro, Small & Medium Enterprises & Textiles
Hemanta Bhavan, 4th Floor, 12 B.B.D. Bag (East), Kolkata - 700001
PHONE NO. 033 – 22627157
FAX NO. 033 -22141602
E-MAIL msme@wb.gov.in or wbseps@gmail.com
- 2.3.2.8** If the envelopes are not sealed and marked as instructed above, the Department assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.
- 2.3.2.9** Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.
- 2.3.3 Bid Due Date**
- 2.3.3.1** Bids should be submitted before 1300 hours IST on the Bid Due Date at the address provided in Clause 2.3.2.7 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.3.2.7.
- 2.3.3.2** The Department may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.2.3 uniformly for all Bidders.
- 2.3.4 Late Bids**
- 2.3.4.1** Bids received by the Department after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.3.5 Modifications / substitution / withdrawal of Bids

- 2.3.5.1** The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Department prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.3.5.2** The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.3.2, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.3.5.3** Any alteration / modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought by the Department, shall be disregarded.

2.3.6 Rejection of Bids

- 2.3.6.1** Notwithstanding anything contained in this RFP, the Department 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 the Department rejects or annuls all the Bids, it may, in its discretion, issue a fresh RFP and invite all eligible Bidders to submit fresh Bids there under.
- 2.3.6.2** The Department reserves the right not to proceed with the Bidding Process or to modify the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.3.7 Validity of Bids

- 2.3.7.1** The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the Bidders and the Department.

2.3.8 Confidentiality

- 2.3.8.1** 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 Bidding Process or is not a retained professional advisor advising the Department in relation to or matters arising out of, or concerning the Bidding Process. The Department will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Department may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Department or as may be required by law or in connection with any legal process.

2.3.9 Correspondence with the Bidder

- 2.3.9.1** Save and except as provided in this RFP, the Department shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

2.4 Bid Security

2.4.1 Bid Security

- 2.4.1.1** The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 1.5.1.4 hereinabove in the form of a bank guarantee issued by a Scheduled Bank, in favour of the Department in the format at Appendix-II (the "Bank Guarantee") and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, with a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Department and the Bidder from time to time. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

- 2.4.1.2** Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the “Department of Micro, Small & Medium Enterprises & Textiles” payable at Kolkata (the “Demand Draft”), which shall be encashed. The Department shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.4.1.3** Any Bid not accompanied by the Bid Security shall be summarily rejected by the Department as non-responsive.
- 2.4.1.4** The Bid Security of unsuccessful Bidders will be returned by the Department, without any interest, as promptly as on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Department, and in any case within 180 (One Hundred Eighty) days from the Bid Due Date. Where Bid Security has been paid by demand draft, the refund thereof shall be in the form of an account payee cheque in favour of the unsuccessful Bidder(s).
- 2.4.1.5** The Selected Bidder’s Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security within 15 days from the issue of LOA. The Department may, at the Selected Bidder’s option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.4.1.6** The Department shall be entitled to forfeit and appropriate the Bid Security as liquidated damages inter alia in any of the events specified in Clause 2.4.1.7 herein below and pursuant to other provisions of this RFP providing for a forfeiture of Bid Security. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Department will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.4.1.7** The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Department under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:
- a) If a Bidder submits a non-responsive Bid;
 - b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Department;
 - d) In the case of Selected Bidder, if it fails within the specified time limit –
 1. to sign and return the duplicate copy of LOA; or
 2. to incorporate the SPV; or
 3. to sign the Concession Agreement; or
 4. to furnish the Performance Security; or
 - e) In case the Selected Bidder having furnished the Performance Security commits any breach prior to signing the Concession Agreement
 - f) If the Bidder is otherwise in breach of the terms of the Bidding Documents.

3. Evaluation of Bids

3.1.1 Opening and Evaluation of Applications

- 3.1.1.1 The Department shall first open the envelop marked “Envelope 1 – Technical Proposal” at 1400 hours on the date scheduled for opening of Technical Proposal, as specified in Clause 1.6, at the place specified in Clause 2.3.2.7 and in the presence of the Bidders who choose to attend.
- 3.1.1.2 The Department will examine and evaluate the Technical Proposal in accordance with the provisions set out in this Clause 3.
- 3.1.1.3 To facilitate evaluation of Bids, The Department may, at its sole discretion, seek clarifications or additional information in support of the Bids submitted and Technical or Financial Capacity declarations made therein. Such clarifications shall be sought in writing from any Bidder regarding its Bid and such Bidder shall provide its response within the time period specified by the Department in this regard.
- 3.1.1.4 Upon evaluating the Technical Proposal, the bidders who are qualified will be announced and their Financial Proposal shall be opened on a date to be decided and communicated by the Department to all the qualified Bidders.
The stage-wise evaluation process is further described in the following sections.

3.1.2 Step 1: Test of responsiveness

- 3.1.2.1 Prior to evaluation of Bids, The Department shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:
- it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.3.3.2 **Error! Reference source not found.**;
 - it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.3.1 and 2.3.2;
 - it is accompanied by the Bid Security as specified in Clause 2.1.1.5;
 - it is received as per the formats specified from Appendix-I to Appendix-V;
 - it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.1.7 and 2.1.1.8, as the case may be;
 - it is accompanied by the Joint Bidding Agreement as specified in the Clause 2.1.1.9
 - it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (and if formats have been specified, then in those formats);
 - it does not contain any condition or qualification; and
 - it is not non-responsive or inconsistent in terms of the Bidding Documents.
- 3.1.2.2 The Department reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Department in respect of such Bid.

The Bids of “Responsive” Bidders shall be evaluated in the following steps:

3.1.3 Step 2: Evaluation of Technical Proposal

- 3.1.3.1 The Bidders would be evaluated on their Technical and Financial Capacity as defined in Clause 1.4.1 of this RFP Document. While evaluating the Technical Capacity of the Bidder/ Consortium Members, the Technical Capacity of their respective Associates would also be eligible.
- 3.1.3.2 The Financial Proposal of the Bidders not found to meet the Financial Capacity Criteria would be returned unopened.

3.1.4 Step 3: Evaluation of Financial Proposal and Selection of Bidder

- 3.1.4.1** Evaluation of the Financial Proposals would be undertaken only for those Bidders who are found to qualify as per the conditions specified in the Clause 3.1.3
- 3.1.4.2** Subject to the provisions of Clause 2.3.6.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.1.2.1 and is qualified in terms of Clause 1.4.1.1 (meeting the Financial Capacity criteria) and who secures the highest combined technical and financial score as per the terms of clause 1.5.1.13 shall be declared as the selected bidder (the "Selected Bidder"). In the event that the Department rejects or annuls all the Bids, it may, in its discretion, issue a fresh RFP and invite all eligible Bidders to submit fresh Bids there under.
- 3.1.4.3** Generally the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and the second highest bidder may be invited in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other bidders are selected, the Department may, in its discretion, annul the Bidding Process.
- 3.1.4.4** After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Department to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Department may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and may invite fresh bids for the Project.
- 3.1.4.5** Until a Concession Agreement is executed, the LOA shall constitute a notification of commencement of Works, subject only to the furnishing of a Performance Security in accordance with the provisions of this RFP, whereupon the Contract shall come into force.
- 3.1.4.6** After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall by itself or cause the Concessionaire to complete the following within the period prescribed in Clause 1.6.
- a) sign and return a duplicate copy of LOA to the Department,
 - b) Incorporate the SPV
 - c) submit the Performance Security,
 - d) execute the Concession Agreement with the Department, and
 - e) any other condition as may be prescribed under the LOA.

The Selected Bidder and members of the Selected Bidder, if the Selected Bidder is a consortium shall be required to be confirming parties to the Concession Agreement responsible for due performance of all terms and conditions of the Concessionaire contained herein or in the Concession Agreement.

- 3.1.4.7** The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.1.5 Contact during Bid Evaluation

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

4. Fraud and Corrupt Practices

The Bidders and their respective officers, employees, agents and advisors 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, in the LOA, the Concession Agreement or the Lease Deed the Department may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder 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, the Department shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, as liquidated damages, without prejudice to any other right or remedy that may be available to the Department under the Bidding Documents and/or the Concession Agreement or otherwise.

Without prejudice to the rights of the Department under Clause mentioned hereinabove and the rights and remedies which the Department may have under the LOA or the Concession Agreement, or otherwise, if a Bidder or Concessionaire, as the case may be, is found by the Department 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 Concessionaire shall not be eligible to participate in any tender or RFP issued by the Department during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Department 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.

For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:

- a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence directly or indirectly the actions of any person connected with the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Department who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Department, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) acting contrary to applicable anti-bribery or anti-corruption laws;
- b) **“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;
- c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Department with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. Pre-Bid Conference

Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. Only duly authorized representatives of the Bidders shall be allowed to participate in the Pre-Bid conference. A maximum of 3 (three) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

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

6. Miscellaneous

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

The Department, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:

- a) suspend, withdraw 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 the Department by, on behalf of, and/or in relation to any Bidder;
- 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

It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Department, its employees, agents and advisors, 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 waive any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

7. Appendices

7.1 Appendix I - Letter Comprising the Application

Letter Comprising the Bid

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

Dated:

To,
The Joint Secretary,
Department of Micro, Small & Medium Enterprises & Textiles
Hemanta Bhavan, 4th Floor,
12 B.B.D. Bag (East),
Kolkata - 700001

Sub: Application for Development of Apparel Wholesale Hub at Sector V, Salt Lake under PPP mode

Dear Sir,

With reference to your RFP dated², I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

1. I/We acknowledge that the Department will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid Project and I/we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
2. The Bid is being submitted and submissions in this letter are being made for the express purpose of our selection as Concessionaire for the aforesaid Project.
3. I/We shall make available to the Department any additional information it may find necessary or require to supplement or authenticate the submissions.
4. I/We acknowledge the right of the Department to reject our Bid without assigning any reason or otherwise and hereby waive my/our right to challenge the same on any account whatsoever.
5. I/We certify that in the last 3 (three) years preceding to Bid Due Date, I/we/any of the Consortium Members³ or our/their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. I/We declare that:
 - a) I/We have examined and have no reservations to the RFP, including any addendum issued by the Department;
 - b) I/We do not have any Conflict of Interest in accordance with Clauses 2.1.1.13 and 2.1.1.14 of the RFP;
 - 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 Section 4 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Department or any other public sector enterprise or any Government, Central or State;

² All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder

³ If the Bidder is not a Consortium, the provisions applicable to Consortiums may be omitted

- d) I/We hereby certify that I/we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, 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
7. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Bidders, in accordance with Clause 2.3.6 of the RFP.
 8. I/We believe that I/we/our Consortium satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.
 9. I/We declare that I/we/any Member of the Consortium am/are not a member of a/any other Consortium applying for the Project.
 10. I/We certify that in regard to matters other than security and integrity of the country, I/we or any Member of the Consortium have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 11. I/We further certify that in regard to matters relating to security and integrity of the country, I/we/any of the Consortium Members or our/their Associates have not been charge-sheeted by any Government Instrumentality or convicted by a court of law.
 12. I/We further certify that no investigation by a regulatory authority is pending either against me/us/any Consortium Member or against our chief executive officer or any of my/our directors/managers/employees.
 13. 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 provisions of this RFP, I/we shall intimate the Department of the same immediately.
 14. I/ We acknowledge and undertake that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity of any of its Consortium Members who propose to hold equity share capital of at least 26% (twenty six per cent) in the SPV to be formed by the Consortium; and Financial Capacity of the Consortium. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
 15. 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 RFP, I/We shall inform the Department forthwith along with all relevant particulars and the Department may, in its sole discretion, disqualify our Consortium or withdraw the LOA, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Closure of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Department being liable to us in any manner whatsoever.
 16. I/We understand that the Selected Bidder shall incorporate an SPV under the Companies Act 2013 or Limited Liability Partnership Act 2008 prior to execution of the Concession Agreement.
 17. I/We hereby irrevocably waive any right, which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Department in connection with the selection of Bidders or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
 18. I/We agree and undertake to abide by all the terms and conditions of the RFP.
 19. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
 20. I/We agree and undertake to be jointly and severally liable for all our obligations under the Concession Agreement as per the provisions set out therein.
 21. I/ We hereby submit our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Yours faithfully,

Date: (Signature of the Authorized Signatory)

Place: (Name and designation of the Authorized Signatory)

Name and seal of the Applicant/ Lead Firm

7.1.1 ANNEX I - Details of Applicant

Details of Applicant

1.
 - a) Name:
 - b) Country of incorporation:
 - c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - d) Date of incorporation and/ or commencement of business:

2. Brief description of the Applicant including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Applicant:
 - a) Name:
 - b) Designation:
 - c) Company:
 - d) Address:
 - e) Telephone Number:
 - f) E-Mail Address:
 - g) Fax Number:

4. Particulars of the Authorized Signatory of the Applicant:
 - a) Name:
 - b) Designation:
 - c) Address:
 - d) Phone Number:
 - e) Fax Number:

5. In case of a Consortium:
 - a) The information above (1-4) should be provided for all the members of the Consortium.
 - b) A copy of the Joint Bidding Agreement as per the format specified in Appendix IV should be attached to the Application.
 - c) Information regarding role of each member should be provided as per table below:

Sl. No.	Name of Member	Role	Proposed percentage of equity in the SPV to be formed by the Consortium
1			
2			
3			
4			

6. The following information shall also be provided for the Applicant and each of the Members of its Consortium (where applicable):

Name of Applicant/ Member of Consortium:

Sl. No.	Criteria	Yes	No
1	Has the Applicant/ constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (PPP or otherwise)?		
2	If the answer to 1 is yes, does the bar subsist as on the date of Application		

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

7.1.2 ANNEX II –Technical Capacity of the Applicant

Development Experience of the Applicant

Applicant Type*	Name & Location of Project	Role of Applicant/ Consortium Member/ Associate	Year of Commissioning	Size of the Project (Acres or Sq. m built up space)	Investment (Rs Crore)	List of Proofs Attached**
Single Entity Applicant						
Consortium Member 1						
Consortium Member 2						
Consortium Member 3						

Operation and Maintenance Experience of the Applicant

Applicant Type*	Name & Location of Project	Size of the Project (Acres or Sq. m built up space)	Operation Period for Applicant	List of Proofs Attached***
Single Entity Applicant				
Consortium Member 1				
Consortium Member 2				
Consortium Member 3				

* Including experience of Associates

** Copy of the Development Agreement executed with the Client, Copy of the Letter of Award, Certificate by the Statutory Auditor of the Bidder / Relevant Member of the Consortium in line with Clause 1.4.2.5

*** Copy of the Operation and Maintenance Agreement executed with the Client, Copy of the Letter of Award

7.1.3 ANNEX III – Financial Capacity of the Applicant

**Financial Capacity of the Applicant
(In Rs Crores)**

Applicant Type	Net Worth (Rs. Crores) as on	Net Worth (Rs. Crores) as on	Net Worth (Rs. Crores) as on
Single Entity Applicant / Consortium Aggregate Net Worth (please provide break-up of net worth of individual members)			

7.1.3.1 Instructions

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
 - I. Reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials.
 - II. Be audited by a statutory auditor
 - III. Be complete, including all notes to the financial statements; and
 - IV. Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted.
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)

7.1.4 ANNEX IV – Statement of Legal Capacity

Statement of Legal Capacity

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

Ref. Date:
To,

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFP document. We have agreed that (Insert member's name) will act as the Lead Member of our Consortium.*

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....

**Please strike out whichever is not applicable.*

7.2 Appendix II: Bank Guarantee for Bid Security

(Refer Clause 2.1.1.5 and 2.4.1 of the RFP)

B.G. No.

Dated:

1. In consideration of you, Department of Micro, Small & Medium Enterprises & Textiles, having its office at Hemanta Bhavan, 4th Floor, 12 B.B.D. Bag (East), Kolkata - 700001, (hereinafter referred to as “the Department”, which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956/ Companies Act, 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act, 2008) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Development of Apparel Wholesale Hub at Sector V, Salt Lake, (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the form of concession agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.1.5 read with Clause 2.1.1.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Department an amount of Rs. _____/- (_____ only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Department stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally and irrevocably undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Department is disputed by the Bidder or not, merely on the first demand from the Department stating that the amount claimed is due to the Department by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. _____/- (_____ only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date (as defined in the RFP) with a claim period of 60 (sixty) days or for such extended period as required by the Bidding Documents, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Department shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents, and the decision of the Department that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Department and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Department shall be entitled to treat the Bank as the principal debtor. The Department shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the bids or the bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Department, and the Bank shall not be released from its liability under these presents by any exercise by the Department of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Department or any indulgence by the Department to the said Bidder or by any change in the constitution of the Department or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Department to proceed against the said Bidder before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Department may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Department in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. _____/- (_____ only). The Bank on demand shall be liable to pay the said amount or any part thereof only if the Department serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory)
(Official Seal)

7.3 Appendix III: Power of Attorney for signing of Bid

(Refer Clause 2.1.1.7 of the RFP)

Power of Attorney for signing of Bid

Know all men by these presents, We, (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 us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the " Development of Apparel Wholesale Hub at Sector V, Salt Lake " (the "Project") proposed or being developed by the Department of Micro, Small & Medium Enterprises & Textiles ("the Department") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Department, representing us in all matters before the Department, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Department in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Department.

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

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

For

(Signature)

(Name, Title and Address)

Witnesses:

(Notarised)

1.

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a 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. Power of Attorney should be executed upon payment of stamp duty of appropriate value, as applicable in the State, where such Power of Attorney has been executed.

7.4 Appendix IV: Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.1.8 of the RFP)

Power of Attorney for Lead Member of Consortium

Whereas the Department of Micro, Small & Medium Enterprises & Textiles has invited bids from pre-qualified and short-listed parties for the Development of Apparel Wholesale Hub at Sector V, Salt Lake

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

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, 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") and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders' and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Department, and/ or any other Government Department or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Department.

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

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

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

(Executants)

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

Witnesses:

1.

2.

Notes:

1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a 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. Power of Attorney should be executed upon payment of stamp duty of appropriate value, as applicable in the State, where such Power of Attorney has been executed.

7.5 Appendix V – Joint Bidding Agreement

Joint Bidding Agreement

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {..... Limited, a company governed under the Companies Act, 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act, 2008} 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 governed under the Companies Act, 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act, 2008} 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 governed under the Companies Act, 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 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)}

AND

4. {..... Limited, a company governed under the Companies Act, 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 and having its registered office at (hereinafter referred to as the “Fourth Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

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

WHEREAS

1. The Department of Micro, Small & Medium Enterprises & Textiles represented by its Joint Secretary and having its principal office at Hemanta Bhavan, 4th Floor, 12 B.B.D. Bag (East), Kolkata - 700001, (hereinafter referred to as the “Department” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications/Bids (the Bids”) by its Request for Proposal No. dated (the “RFP”) for short listing of bidders for Development of Apparel Wholesale Hub at Sector V, Salt Lake (the “Project”) through public private partnership.
2. 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

3. It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the 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

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "SPV") under the Companies Act, 2013 or the Limited Liability Partnership Act, 2008 for entering into a Concession Agreement with the Department 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:

4.1 Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the appointed date under the concession agreement when all the obligations of the SPV shall become effective;

4.2 Party of the Second Part shall be {the Technical Member of the Consortium ;}

4.3 {Party of the Third Part shall be the Financial Member of the Consortium; and}

4.4 {Party of the Fourth Part and thereof shall be the Operation and Maintenance Member/ Other Member of the Consortium or stated otherwise}

5. Shareholding in the SPV

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

{First Party:}

{Second Party :}

{Third Party :}

{Fourth Party :}

6. Representation of the Parties

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

6.1 Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

6.2 The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favor 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:

- a) Require any consent or approval not already obtained;
- b) Violate any applicable law presently in effect and having applicability to it;
- c) Violate the memorandum and articles of association, byelaws or other applicable organizational documents thereof;
- d) Violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- e) 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;

6.3 This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

6.4 There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

7. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Closure of the Project is/ are achieved under and in accordance with the Concession agreement, in case the Project is/ are awarded to the Consortium. However, in case the Consortium is either not shortlisted for the Project or does not get selected for award of the Project, the Agreement will stand terminated.

8. Miscellaneous

1. This Joint Bidding Agreement shall be governed by laws of {India}.
2. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Department

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
LEAD MEMBER by:

(Signature)

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

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

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

SEALED AND DELIVERED
For and on behalf of
FOURTH PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

Notes:

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

7.6 Appendix VI: Format of Financial Proposal

(Refer Clauses 2.1.1.4, 2.3.2 of the RFP)

Dated:

To,
The Joint Secretary,
Department of Micro, Small & Medium Enterprises & Textiles
Hemanta Bhavan, 4th Floor,
12 B.B.D. Bag (East),
Kolkata - 700001

Sub: Financial Proposal for Development of Apparel Wholesale Hub at Sector V, Salt Lake under PPP mode

Dear Sir,
Having gone through this RFP document and having fully understood the Scope of Work for the Project as set out by the Department in the RFP, we are pleased to submit our Bid for the Project:

Space sharing Percentage

____% of the total built-up area (*in words of the total built-up area*)

The above percentage has been quoted based on standard permissible FAR in the area. In the event, the permissible FAR increases, post signing of the concession agreement/ execution of the lease deed, the Space sharing percentage quoted above shall hold.

We have reviewed all the terms and conditions of the Request for Proposal including the Concession Agreement and would 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 Document.

Yours faithfully,

Date: (Signature of the authorized signatory)

Place: (Name and designation of the authorized signatory)

(Name and seal of the Bidder/Lead Member of the Consortium)

7.7 Appendix VII: Scope of Work

The Scope of Work shall mean and include the following facilities to be developed in the Apparel Wholesale Hub at Sector V, Salt Lake under the PPP mode. The same is not an exhaustive list and is to be described in detail in the Detailed Project Report (as defined in the Concession Agreement) prepared by the Selected Bidder and to be approved by the Department.

Total land area of the Project Site is about 3.78 acres.

Proposed project components to be developed in the Apparel Wholesale Hub at Sector V, Salt lake include:

1. Core Facilities
 - a) Block(s) comprising units for the wholesalers/ traders
2. Common Facility Building comprising:
 - a) Display Center
 - b) Conference Hall
 - c) Bank with ATM
 - d) Administrative Office
 - e) Canteen with kitchen
 - f) Electrical Rooms on each floor
3. Common Facilities
 - a) IR Plant
 - b) Parking space for vehicles
4. Common Infrastructure
 - a) Internal roads along with paved area
 - b) Electrical Sub-station along with transformers
 - c) Bore Well and Pump
 - d) Storm Water Drainage System
5. Other Amenities
 - a) Land development with landscaping
 - b) Boundary wall for the entire Project Site
 - c) Gates and Guard Rooms
 - d) Firefighting arrangement for entire park and buildings
 - e) Underground Water Reservoirs
 - f) Common Toilet Block

The Selected Bidder shall have to undertake land development of entire 3.78 acres.

Timelines for the development of proposed components

The Construction works should be completed within 2 years from the Construction Commencement Date (as defined in the Concession Agreement). The Selected Bidder will also have to provide the proposed timelines for development of the Project Components i.e. Project Milestones, within the overall period of 2 years which shall then be finalised in consultation with the Department by the Selected Bidder. In the event of failure to achieve the Scheduled Commercial Operations Date (as defined in the Concession agreement) or the mutually agreed Project Milestones, the Department would levy damages of Rs. 2,00,000 (Rupees Two Lakhs) per month or part thereof, ("Liquidated Damages") starting from the date following the Scheduled Commercial Operations Date or the date immediately following the date by which the Project

Component(s) was/were supposed to have been completed, till the actual completion of the Project Facilities/Project Components, as the case may be.

Liquidated Damages shall not be imposed, if the delay occurs due to any reason beyond the control of the Selected Bidder such as Force Majeure Event, or for any delay in development of components which are to be developed by the Department.

Notwithstanding anything contained in this document, the Department shall have the right to take back the land constituting the Project Site in the event of failure of the Selected Bidder to complete construction of the Project within the timelines finalized.

Liquidated Damages Claim Letter shall be issued by the Department after every three months from the day on which the delay occurs or such earlier time frame as the Department may decide, till the period the component is developed/ Project Facility is made operational by the Selected Bidder. The Selected Bidder after completing the required work shall inform the Department that the Project Component has been developed/ made operational. The Department or its Authorized Representative shall either after inspection of the work by itself and satisfying itself that the work has been completed or on the basis of the report of the Project Management Consultant (as defined in the Concession Agreement) that the work has been completed, issue a Liquidated Damages Completion Letter, which shall also mention the unpaid balance Liquidated Damages to be paid for the period in which the work is completed. In case of a delay in completion of the Project Facility, the date of issue of the Readiness Certificate (as defined in the Concession Agreement) shall be the date for issue of the Liquidated Damages Completion Letter. The Liquidated Damages Completion Letter shall also mention the unpaid balance Liquidated Damages to be paid for the period in which the Project Facility is completed.

The Selected Bidder shall have to pay the Liquidated Damages within a period of 60 days from issuance of Liquidated Damages Claim Letter or the Liquidated Damages Completion Letter. In case, the Liquidated Damages is not paid within 60 days from issuance of Liquidated Damages Claim Letter or the Liquidated Damages Completion Letter, the Department shall have the right to terminate the contract as per the provisions stated in the Concession Agreement.