



JAMMU MUNICIPAL CORPORATION

REQUEST FOR QUALIFICATION

REQ No. 03JCW of 2016-17

FOR

Processing & Disposal facilities of Municipal Solid Waste (MSW) of Jammu City, J&K.

of

JAMMU (J&K STATE)

ON

PUBLIC PRIVATE PARTNERSHIP (PPP)

UNDER

SWACHH BHARAT MISSION

COMMISSIONER

**Jammu Municipal Corporation,
Town Hall, Jammu, J&K State**

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Disclaimer

The information contained in this Request for Qualification (“**RFQ**”) document or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Jammu Municipal Corporation (JMC) or any of its employees or consultants- WAPCOS Limited, is provided to Applicant(s) on the terms and conditions set out in this RFQ and such other terms and conditions subject to which such information is provided.

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

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

The JMC, its employees, and consultant, 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 RFQ or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

The JMC, its employees, and consultant also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this RFQ.

The JMC 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 RFQ.

The issue of this RFQ does not imply that the JMC is bound to select and short-list pre qualified Applications for Bid Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the JMC reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

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

Glossary

Bidding Documents	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
DBOOT	Design, Build, Own, Operate and Transfer
Concessionaire	As defined in Clause 1.1.6
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
Eligible Projects	As defined in Clause 2.2.2A
Estimated Project Cost	As defined in Clause 1.1.3
Financial Capacity	As defined in Clause 2.2.2(B)
Government	Government of J&K
Grant	As defined in Clause 1.2.7
Bidding Agreement	As defined in Clause 2.2.5(g)
Lead Member	As defined in Clause 2.2.5 (c)
LOA	Letter of Award
Member	Member of a Consortium
PPP	Public Private Partnership
Premium	As defined in Clause 1.2.8
Project	As defined in Clause 1.1.6
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in Clause 1.2.1
RFQ	As defined in the Disclaimer
SPV	As defined in Clause 2.2.5
Technical Capacity	As defined in Clause 2.2.2 (A)
Threshold Technical Capacity	As defined in Clause 2.2.2 (B)
Tipping Fee	As defined in Clause 1.2.7
Turnover	As defined in Clause 2.2.3

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A Background Information

1.0 Introduction

1.1. Background

- 1.1.1. Jammu Municipal Corporation (“JMC”) has been in the forefront in implementing reforms aiming at improved service delivery that is qualitative, reliable, and sustainable. Solid Waste Management (SWM) is the priority area of service delivery and JMC has been making continued efforts in improving MSW management in Jammu for the past few years.
- 1.1.2. Swacchh Bharat Mission (“SBM”) program is launched under the Ministry of Urban Development, Government of India to undertake reforms and facilitate investments in the urban sector of identified cities. Jammu has been selected as one of the cities eligible for availing financial assistance under the SBM program.
- 1.1.3. JMC/HUDD J&K government prepared Detailed Project Report (DPR) for establishing Integrated Solid Waste Management System (ISWM) for Jammu by availing grant under SBM.
- 1.1.4. With the objective of developing the project under a Public Private Partnership (PPP) framework, JMC has taken a decision to appoint private developer who shall be responsible for processing and disposal of MSW and for that purpose to design, develop, finance, construct, operate and maintain the ISWM facilities.
- 1.1.5. Now with the objective of developing the project under a Public Private Partnership (PPP) framework, JMC will carry out a transparent competitive bid process for identification of the private developer (“the Concessionaire”) who in accordance with the provisions of the Concession Agreement executed between JMC and the Concessionaire, shall be responsible for processing and disposal of MSW and for that purpose to design, develop, finance, construct, operate and maintain the facilities (the “Project”) as explained in this document.

1.1.6. Brief Scope of Work

- 1.1.7.1. **Name of the Project: Processing & Disposal of Municipal Solid Waste (MSW) of Jammu City, J&K.**
- 1.1.7.2. Estimated MSW for year 2016 is 350 TPD (+- 10%)
- 1.1.7.3. **Estimated Project Cost to be taken on PPP Mode: Rs.55.00 Cr.**

1.1.7.4. The Scope of Work for the Project would broadly include:

Development, construction and operation and maintenance of the sanitary engineered landfill facility (SLF)

Development, construction, and operation & maintenance of the waste processing facility with converting to RDF as one of the main and only processes. Quantity of rejects going to SLF should not be more than 10% of waste collected.

In consultation with JMC, develop and implement a public complaint handling system operational for at least 8 (eight) hours a day.

1.1.7.5. The service area to be entrusted to the Concessionaire for carrying out the collection and transportation of SWM shall be the entire area within the municipal limits of JMC or as defined by the JMC in the Concession Agreement.

1.1.7.6. The selected Bidder (the "Concessionaire"), who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate as such prior to execution of the concession agreement shall be responsible for detailed designing, engineering, financing, procurement, construction, operation, and maintenance of the Project under the provisions of a long-term concession agreement (the "Concession Agreement") to be entered into between the Concessionaire and the JMC

1.1.7.7. The DPR for municipal solid waste ("MSW") management has been prepared by the Consultant appointed by JMC and approved by CPHEEO. The Concessionaire may however note that the DPR may not cover adequately the equipment/resources/technology to undertake efficiently and comprehensively the activities as defined in the Scope of Work covering the entire area within the municipal limits or as defined by the JMC. Therefore, at the time of Bid, the Concessionaire may as he deem fit, include such activities/equipment/manpower at its own cost to make good any shortcomings or enhance the techno-economic viability of the project.

1.1.7.8. Indicative capital cost of the Project (the "Estimated Project Cost") may be revised and revised cost will be specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders while bidding. JMC shall provide only the land (on lease), as per the Concession agreement.

1.1.7.9. The JMC shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the JMC, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the "**Application Due Date**").

1.2 Brief description of Bidding Process

1.2.1 The JMC has adopted a two-stage process (collectively referred to as the “**Bidding Process**”) for selection of the Concessionaire for award of the Project. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/ consortia who make an Application in accordance with the provisions of this RfQ (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). Prior to making an Application, the Applicant shall pay to JMC a sum of Rs. 10,000.00 (Rupees ten thousand only) which would be the non-refundable as the cost of the RFQ document.

JMC will announce a shortlist of pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising of Proposals (the “**Request for Proposals**” or “**RfP**”).

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

1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RfQ. Only those Applicants that are pre-qualified and short-listed by the JMC shall be invited to submit their Bids. The Applicants are advised to visit the site and familiarize themselves with the Project

1.2.3 In the Bid Stage, the Bidders will be called upon to submit their technical and financial offers (“**Bid**”) in accordance with the RfP and other documents to be provided by the JMC (collectively the “**Bidding Documents**”). The Bidding Documents for the Project will be provided to every pre-qualified Bidder on payment of Rs. 25,000.00 (Rupees twenty five thousand only) which would be the non-refundable. The Bid shall be valid for a period of not less than 180 days from the last date of submission of bids (the “**Bid Due Date**”).

1.2.4 In terms of the RfP, a Bidder will be required to deposit, along with its Bid, a bid security equivalent to 1% (one per cent) of the Estimated Project Cost (the “**Bid Security**”) in the form of a demand draft or a bank guarantee from a nationalized bank. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.5 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.

1.2.6 As part of the Bidding Documents, the JMC will provide a draft Concession Agreement, and other information relevant to the Project.

1.2.7 The concession period shall be pre-determined, and will be indicated in the RfP and draft Concession Agreement forming part of the Bidding Documents. Bidder may seek

lower grant than sanctioned by the SBM for the project The Bidder shall quote the Minimum Fee for the project for each year of the Concession period during O&M Phase (“**The VGF**”). **The bidder shall give** technical presentation to JMC on its approach and methodology to implement the project. Financial bid and technical presentation would be weighed as per the criteria given in the RfQ/RFP. JMC may at its own discretion choose to negotiate with the proposed Concessionaire or all prequalified bidders to arrive at the best financial offer in the interest of JMC.

1.2.8 The Concessionaire shall be entitled to levy and charge a pre-determined user fee from users of the Project.

1.2.9 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to:

COMMISSIONER

Jammu Municipal Corporation,

Town Hall, Jammu, J&K State

Phone: 0191 2542192

Fax: 0191 2547846

Email- jmcjammu@rediffmail.com

Website: www.jmc.jammu.org

1.3. Schedule of Bidding Process

Event Description	Expected Dates (subject to change by JMC)
Qualification Stage	
1. Start of Sale of RFQ Document	30 th Dec 2016
2. Last date for receiving queries	10 th Jan 2017 upto 14.00Hrs
3. Pre-RFQ meeting	16 th Jan 2017 at 14.00 Hrs
4. JMC response to queries	17 th Jan 2017 at 14.00 Hrs
5. Start date for Submission Of RFQ	18 th . Jan2017 from 10.00 Hrs.
6. Last date for submission of RfQ(Due Date)	30 th Jan 2017 upto 16.00 Hrs
7. Date of Opening of RFQ	31 th Jan 2017 at 14.00 Hrs or To be Decided by JMC
Bid Stage Estimated Date	
1. Sale of Bid Documents	To be Decided by JMC
2. Last date for receiving queries	To be Decided by JMC
3. Pre-Bid meeting – 1	To be Decided by JMC
4. JMC response to queries	To be Decided by JMC
5. Pre-Bid meeting – 2	To be Decided by JMC
6. Bid Due Date	To be Decided by JMC
7. Opening of Bids and Technical Presentation	To be Decided by JMC
8. Letter of Award (LOA)	To be Decided by JMC
9. Validity of Bids	To be Decided by JMC
10. Signing of Concession Agreement	To be Decided by JMC

2.0 INSTRUCTIONS TO APPLICANTS

2.1. Scope of Application

The JMC wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for the Bid Stage.

Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

2.2. Eligibility of Applicants

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

- a. The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.
- b. An Applicant may be a natural person, private entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
- c. An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - i. The Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5% (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 4A of the Companies Act, 1956. For the purposes of this Clause 2.2.1 (c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 35% (thirty five per cent) of the subscribed and paid up equity shareholding of such intermediary; or
 - ii. A constituent of such Applicant is also a constituent of another Applicant; or

- iii. such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
- iv. Such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- v. Such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or
- vi. Such Applicant, or any Associate thereof has participated as a consultant to the JMC in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case an Applicant is a Consortium the maximum members allowed are 3 members, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

2.2.2. To be eligible for pre-qualification and short-listing, an Applicant shall fulfill all the following conditions (A), (B) and (C) of eligibility:

(A) Technical Capacity

For demonstrating technical capacity and experience (the "**Technical Capacity**"), the **Bidder in the last three financial years** should have undertaken Public Private partnership (PPP) projects on BOT, BOLT, BOO, BOOT, DBOOT or other similar basis, ("**Eligible Projects**") with at least:

Design, construction, operation and maintenance of processing & disposal facility for a for a city generating at least 200 TPD MSW. The Process plant shall be operational for at least 2 year, and

Developed and operated waste Processing Facility (compost/RDF plant etc) of capacity 100 TPD or more. The Waste Processing Facility shall be operational for at least 2 year.

(B) Financial Capacity:

- (i) Turnover: Applicant shall, over the past 3 (three) financial years preceding the Application Due Date, has average annual turnover of more than Rs. 50.0 cr. (Rupees fifty crore) ("**Threshold Technical Capacity**") and

- (ii) Net Worth: The Applicant shall have a minimum average annual Net Worth (**the “Financial Capacity”**) of Rs. 20.0 cr. (Rupees Twenty crore) at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and financial capacity of Members will be considered.

(C) O&M Experience:

The Applicant shall, in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project, and has either by itself or through its Associate, experience of 2 (two) years or more in operation and maintenance (O&M) of landfill, Compost Processing Plant and other facilities for handling MSW projects of a city where SW generation is atleast 150 TPD.

In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience of its own or through its Associates. In the event that the Applicant does not have such experience, it should furnish an undertaking that if selected to undertake the Project, it shall for a period of at least 5 (five) years from the date of commercial operation of the Project, enter into an agreement for entrusting its operation & maintenance (O&M) obligations to an entity having the aforesaid experience, failing which the Concession Agreement shall be liable to termination.

2.2.3 The Applicants shall enclose with its application, to be submitted as per the format in Appendix-I, complete with its Annexes, the following:

- (i) Certificate(s) from its concerned client(s) in support of above work undertaken clearly stating quantities collected /transported /installed capacities of the compost plant designed, operated and maintained/installed capacities of landfill deigned, operated and maintained as the case may be, during the past 3 years in respect of the projects specified in paragraph 2.2.2above. In case a particular work/ contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in work done for that particular work/ contract by producing a certificate from its client; and
- (ii) Certificate(s) from its statutory auditors/Chartered Accountant specifying Turnover of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Turnover conforms to the provisions of this Clause 2.2.3 (ii). For the purposes of this RfQ, turnover (the **“Turnover”**) shall mean the sum of annual revenues from operations, including tipping fee and user charges collected and appropriated during the financial year. This shall not include capital grants/capital subsidies and income from sources other than projects specified under clause 2.2.2

- (ii) Certificate(s) from its statutory auditors/Chartered Accountant specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth . For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.

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

2.2.5 Where the Applicant is a single entity, it is mandatory to form an appropriate Special Purpose Vehicle (the “SPV”), incorporated under the Indian Companies Act, 1956, to execute the Concession Agreement and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 3 (three)
- (b) Subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 35% (thirty five per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- (d) The Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) An individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) The members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) Convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RfQ, which would enter into the Concession Agreement and subsequently perform all the obligations of the

Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;

- (ii) Clearly outline the proposed roles and responsibilities, if any, of each member;
- (iii) Commit the minimum equity stake to be held by each member;
- (iv) Commit that each of the members, whose experience will be evaluated for the purposes of this RfQ, shall subscribe to 35% (thirty five per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 5 (Five) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 35% (thirty five per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement
- (v) Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (h) Except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the JMC.

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

2.2.7 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial JMC 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.

2.2.8 In computing the Technical Capacity, Turnover and Net Worth of the Applicant/ Consortium Members, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

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

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (b) Information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and constitution is identical to that at pre-qualification;
- (c) In responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) In case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.10 Qualification is open only to residents/entities incorporated in India.

2.2.11 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 3 (three) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.3 Change in composition of the Consortium

Change in the composition of a Consortium will not be permitted by the JMC. Once designated, no change would be allowed in the Lead Member of the Consortium.

2.4 Number of Applications and costs thereof

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

2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid Process. The JMC will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

Applicants are encouraged to submit their respective Applications after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction,

access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.6 Acknowledgement by Applicant

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

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

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

2.7 Right to accept or reject any or all Applications/ Bids

2.7.1 Notwithstanding anything contained in this RFQ, the JMC reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the JMC rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

- (a) At any time, a material misrepresentation is made or uncovered, or
- (b) The Applicant does not provide, within the time specified by the JMC, the supplemental information sought by the JMC for evaluation of the Application. If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occur after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the JMC reserves the right to:
 - (i) Invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the RfP; or
 - (ii) Take any such measure as may be deemed fit in the sole discretion of the JMC, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the JMC, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material

misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the JMC to the Applicant, without the JMC being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the JMC may have under this RFQ, the Bidding Documents, the Concession Agreement or under applicable law.

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

B. DOCUMENTS

2.8 Contents of the RfQ

This RfQ comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Qualification

Section 1. Introduction

Section 2. Instructions to Applicants

Section 3. Criteria for Evaluation Section

4. Fraud & Corrupt Practices Section 5.

Pre Application Conference Section 6.

Miscellaneous

Appendices

I. Letter comprising the Application

II. Power of Attorney for signing of Application

III. Power of Attorney for Lead Member of Consortium

IV. Joint Bidding Agreement for Consortium

V. Guidelines of the Department of Disinvestment

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the RfQ may notify the JMC in writing or by fax and e-mail in accordance with Clause 1.2.9. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The JMC shall endeavor to respond to the queries within the period specified therein. The responses will be sent by fax and/or e-mail. The JMC will forward all the queries and its responses thereto, to all purchasers of the RfQ without identifying the source of queries.
- 2.9.2 The JMC shall endeavor to respond to the questions raised or clarifications sought by the Applicants. However, the JMC 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 JMC to respond to any question or to provide any clarification.

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

2.10 Amendment of RfQ

- 2.10.1 At any time prior to the deadline for submission of Application, the JMC may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RfQ or will be uploaded on the website: www.Jammunicipalcorporation.com
- 2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the JMC may, in its sole discretion, extend the Application Due Date.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

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

2.12 Format and signing of Application

- 2.12.1 The Applicant shall provide all the information sought under this RfQ. The JMC will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.
- 2.12.2 The Applicant shall prepare 1 (one) original set of the Application (together with originals/ copies of documents required to be submitted along therewith pursuant to this RfQ) and clearly marked "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of the Application, along with documents required to be submitted along therewith pursuant to this RFQ, marked "COPY". The Applicant shall also provide 2 (two) soft copies on Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.12.3 The Application and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall also initial each page in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations,

omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application. The Application shall contain page numbers and shall be bound together in hard cover.

2.13 Sealing and Marking of Applications

2.13.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY".

2.13.2 Each envelope shall contain:

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

Each of the envelopes shall clearly bear the following identification:

"Application for Qualification: Municipal Solid Waste (MSW) Management Project in Jammu"

and shall clearly indicate the name and address of the Applicant.

Each of the envelopes shall be addressed to:

COMMISSIONER

Jammu Municipal Corporation,

Town Hall, Jammu, J&K State

Phone: 0191 2542192

Fax: 0191 2547846

Email- jmcjammu@rediffmail.com

Website: www.jmc.jammu.org

2.13.3

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

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

2.14 Application Due Date

2.14.1 Applications should be submitted on due date as per clause 1.3, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RfQ. A receipt thereof should be obtained from the person specified in Clause 2.13.3. The JMC may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

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

2.16 Modifications/ substitution/ withdrawal of Applications

No modifications will be allowed once the RfQ is submitted

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

2.17.1 The JMC shall open the Applications at on due date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.

2.17.2 Applications for which a notice of withdrawal has been submitted shall not be opened.

2.17.3 The JMC will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.

2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the JMC. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.17.5 Any information contained in the Application shall not in any way be construed as binding on the JMC, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.

2.17.6 The JMC reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.

2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the JMC may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Applicant.

2.17.8 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the JMC as incorrect or erroneous, the JMC shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the JMC reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the JMC in relation to or matters arising out of, or concerning the Bidding Process. The JMC will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The JMC 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 JMC or as may be required by law or in connection with any legal process.

2.19 Tests of responsiveness

2.19.1 Prior to evaluation of Applications, the JMC shall determine whether each Application is responsive to the requirements of the RfQ. An Application shall be considered responsive only if:

- (a) it is received as per format at Appendix-I;
- (b) it is received by the Application Due Date including any extension
- (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.5 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (h) it contains an attested copy of the receipt for payment of Rs. 10,000 (Rupees ten thousand only) to JMC towards the cost of the RFQ document/ Demand Draft of Rs 10,000/- in favor of COMMISSIONER, Jammu Municipal Corporation, payable at Jammu in case RfQ is downloaded from website;

- (i) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.5 (g);
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

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

2.20 Clarifications

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

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the JMC may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the JMC.

E. QUALIFICATION AND BIDDING

2.21 Short-listing and notification

After the evaluation of Applications, the JMC would announce a list of short-listed pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. At the same time, the JMC would notify the other Applicants that they have not been short-listed. The JMC will not entertain any query or clarification from Applicants who fail to qualify.

2.22 Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents. Only pre-qualified Applicants shall be invited by the JMC to submit their Bids for the Project.

2.23 Proprietary data

All documents and other information supplied by the JMC or submitted by an Applicant to the JMC shall remain or become the property of the JMC. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The JMC will not return any Application or any information provided along therewith.

2.24 Correspondence with the Applicant

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

3.0 CRITERIA FOR EVALUATION

3.1. Evaluation parameters

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

3.2. Applicant's Competence

The Applicant's competence and capability for projects undertaken in last three financial years is proposed to be established by the following parameters:

S.No.	Parameter	Indicator	Marks	Max Marks
1	Experience in design, construction, operation And maintenance of Waste processing Facilities	a. No Of Projects		15
		1 project	4	
		2 projects	6	
		3 projects	8	
		4 projects	10	
		5 Projects	12	
		More than 5 Projects	15	
		b. Mechanical Segregation		10
		200/100/60/30/16mm	2	
		200mm +100 mm	4	
		200mm +100 mm + 60 mm	6	
		200mm +100 mm + 60 mm 30 mm	8	
		200mm +100 mm + 60 mm 30 mm +16 mm	10	
		c. Compost Plant		15 Max TDP will be considered
		50 TPD	2	
		100 TPD	4	
		150 TPD	6	
		200 TPD	8	
		More Than 200 TPD	10	
		d. RDF Plant		20 Max TDP will be Considered.
50 TPD	2			
100 TPD	4			
150 TPD	6			
200 TPD	8			
More Than 200 TPD	10			
2	Land Usage	(Min land requirement in the bids)/Land required in the bid *15	15	15
3.	Smartness of Solution	Technology	25	25 Based on Presentation to SLTC (SBM) by Bidder
		Efficiency		
		Easiness in O&M and achieving latest CPCB norms.		

3.2.1.1. Any bidder who achieves a score of 60 marks (threshold score) would be deemed to meet the technical experience criterion for qualification.

- 3.2.1.2. Experience for any activity relating to the Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.
- 3.2.1.3. Bidders need to have a MOU / tie-up with a company who has experience related to construction of SLF for a city which generates atleast 150 TPD Solid Waste. The MOU needs to be produced with the RFQ.
- 3.2.1.4. The bidders need to give hard copy of the presentation for “**Smartness of Solution**” at SI no 3 of Marking pattern with the RFQ. However for presenting the same before SLTC (SBM) a separate date will be communicated by JMC before finalization of score/marks. .

3.3. Details of Experience

- 3.3.1. The Applicant should furnish the details of Experience for the last 3 (three) financial years immediately preceding the Application Due Date.
- 3.3.2. The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.4 Financial information for purposes of evaluation

- 3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Application is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.

3.5 Short-listing of Applicants

- 3.5.1 The credentials of eligible Applicants shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the ‘Aggregate Experience Score’ of a particular Applicant. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 35% (thirty five per cent) in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium.
- 3.5.2 The Applicants shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed for submission of Bids.
- 3.5.3 The JMC may, in its discretion, maintain a reserve list of pre-qualified Applicants who may be invited to substitute the short-listed Applicants in the event of their withdrawal from the Bid Process or upon their failure to conform to the conditions specified herein; provided that a substituted Applicant shall be given at least 30 (thirty) days to submit its Bid.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the JMC may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the JMC under Clause 4.1 hereinabove, if an Applicant is found by the JMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the JMC during a period of 2 (two) years from the date such Applicant is found by the JMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the JMC who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the JMC, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process);, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the JMC in relation to any matter concerning the Project;
 - (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 JMC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
 - (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RfQ document shall be allowed to participate in the Pre-Application conference. Applicants who have downloaded the RfQ document from the JMC's website (www.Jammumunicipalcorporation.com) should submit a Demand Draft of Rs.10,000.00 (Rupees Ten Thousand only) towards the cost of document, through their representative attending the conference. A maximum of three representatives of each Applicant shall be allowed to participate on production of JMC letter from the Applicant.
- 5.2 During the course of Pre-Application conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the JMC. The JMC 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

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Jammu shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The JMC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) Consult with any Applicant in order to receive clarification or further information;
 - (c) Pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) Retain any information and/ or evidence submitted to the JMC by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the JMC, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

Appendices

APPENDIX-I

Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To

COMMISSIONER

Jammu Municipal Corporation,

Town Hall, Jammu, J&K State

Phone: 0191 2542192

Fax: 0191 2547846

Email- jmcjammu@rediffmail.com

Website: www.jmc.jammu.org

Sub: Application for pre-qualification for Municipal Solid Waste (MSW) Management Project in Jammu

Dear Sir:

With reference to your RfQ document dated, I/we, having examined the RfQ document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the JMC will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the [development, construction, operation and maintenance] of the aforesaid Project.
4. I/ We shall make available to the JMC any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the JMC to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a

penalty by an arbitral or judicial JMC or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public JMC nor have had any contract terminated by any public JMC for breach on our part.

7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RfQ document, including any Addendum issued by the JMC;
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) of the RfQ document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RfQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the JMC or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RfQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RfQ document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RfQ document and are/ is qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory JMC is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment

OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RfQ, we shall intimate the JMC of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RfQ document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Appendices II and III respectively of the RfQ, are also enclosed.
17. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Concession Agreement.
18. I/ We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.2.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the JMC in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. I/ We agree and undertake to abide by all the terms and conditions of the RfQ document.
21. I/ We certify that in terms of the RfQ, my/our Turnover is Rs..... (Rupees in words) and Networth is Rs. (Rupees in words) and the Aggregate Experience Score is (number in words).
22. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.

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

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

Date:

Place:

Name and seal of the Applicant/ Lead Member

ANNEX-I
Details of Applicant

1. (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the JMC:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.5 (g) should be attached to the Application.
 - (c) Information regarding the role of each Member should be provided as per table below:

S.No.	Name of Member	Role {Refer Clause 2.2.5 (d)}	Percentage of equity in the Consortium {Refer Clauses 2.2.5 (a), (c) & (g)}
1.			
2.			
3.			
4			

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

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

Name of Applicant/Member of Consortium

S. No.	Criteria	Yes	No
1.	Has the Applicant constituent of the Consortium been barred by the [Central! State] Government, or any entity controlled by it from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3,	Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% (five per cent) of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. 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):

ANNEX-II

Technical Capacity of the Applicant
(Refer to Clauses 2.2.2, 3.2 and 3.3 of the RFQ)

S.No.	Parameter	Indicator	Marks	Max Marks	
1	Experience in design, construction, operation And maintenance of Waste processing Facilities	a. No Of Projects			
		1 project	4	15	
		2 projects	6		
		3 projects	8		
		4 projects	10		
		5 Projects	12		
		More than 5 Projects	15		
		b. Mechanical Segregation			
		200/100/60/30/16mm	2	15	
		200mm +100 mm	4		
		200mm +100 mm + 60 mm	6		
		200mm +100 mm + 60 mm 30 mm	8		
		200mm +100 mm + 60 mm 30 mm +16 mm	10		
		c. Compost Plant			
		50 TPD	2	15 Max TDP will be considered	
		100 TPD	4		
		150 TPD	6		
		200 TPD	8		
		More Than 200 TPD	10		
		d. RDF Plant			
50 TPD	2	20 Max TDP will be Considered.			
100 TPD	4				
150 TPD	6				
200 TPD	8				
More Than 200 TPD	10				
2	Land Usage	(Min land requirement in the bids)/Land required in the bid *15	15	15	
3.	Smartness of Solution	Technology	25	25 Based on Presentation to SLTC (SBM) by Bidder	
		Efficiency			
		Easiness in O&M and achieving PCB norms			

ANNEX-III
Financial Capacity of the Applicant
(Refer to Clauses 2.2.2 (B), 2.2.3 (ii) and 3.4 of the RfQ)
(In Rs. crore)

Applicant Type	Member Code	Net Cash Accruals			Net Worth	Turnover
		Year 1	Year2	Year3		
Single entity Applicant						
Consortium Member 1						
Consortium Member 2						
Consortium Member 3						
Consortium Member 4						
TOTAL						

Name & address of Applicant's Bankers:

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

The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.8.

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 Application Due Date. The financial statements shall:

- (a) Reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;

- (b) Be audited by a statutory auditor;
 - (c) Be complete, including all notes to the financial statements; and
 - (d) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
 3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
 4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.11.
 5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.5 (g) of the RFQ document.
 6. The applicant shall also provide the name and address of the Bankers to the Applicant.
 7. The Applicant shall provide an Auditor's Certificate /Chartered Accountant certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (ii) of the RFQ document.

ANNEX-IV
Details of Eligible Projects
(Refer to Clauses 2.2.2 (A), 3.2 and 3.3 of the RFQ)

Applicant/Member

Item	Particulars of the Project
Title of the Project	
Nature of the project	
Entity for which the project was constructed developed	
Location	
Project cost	
Date of commencement of project/ contract	
Date of completion! commissioning	
Equity share holding(with period dating which equity was held)	
Whether credit is being taken for the eligible Experience of an Associate (Yes! No)	

Instructions:

1. Applicants are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.2.2 of the RFQ,. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.
2. A separate sheet should be filled for each Eligible Project.
3. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
4. Certificate from respective clients must be furnished as per formats below for each Eligible Project.
5. For claiming experience for Eligible Projects on PPP provide a certificate from its statutory auditor/chartered accountant in the format below:

Certificate from the Statutory Auditor/Chartered Accountants regarding PPP projects

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

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which Rs. cr. (Rupees crore) of capital expenditure was incurred during the past three financial years as per year-wise details noted below:
.....
.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 2.2.2(B)(i) of the RFQ during the past three financial years were Rs. cr. (Rupees..... crore) as per year-wise details noted below:
.....
.....

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorised signatory)

Place:

Date:

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

Certificate from Statutory Auditor/ Company Secretary regarding Associate

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

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

{ Describe the share-holding of the Applicant/ Consortium Member and the Associate. In the event the Associate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein. }

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorised signatory).

Place

Date:

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

ANNEX-V
Statement of Legal Capacity

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

Ref.
Date:

To
COMMISSIONER
Jammu Municipal Corporation,
Town Hall, Jammu, J&K State

Phone: 0191 2542192
Fax: 0191 2547846
Email- jmcjammu@rediffmail.com
Website: www.jmc.jammu.org

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 RFQ 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 RFQ. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

APPENDIX-II

Power of Attorney for Signing of Application

(To be executed on Stamp Paper of Rs.100/-)

(Refer Clause 2.2.4)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms. (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the Municipal Solid Waste (MSW) Management Project in Jammu proposed or being developed by the Jammu Municipal Corporation (JMC) (the "JMC") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the JMC, representing us in all matters before the JMC, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the JMC 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 JMC.

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

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

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

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

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

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

APPENDIX-III
Power of Attorney for Lead Member of Consortium

(To be executed on Stamp Paper of Rs. 100/-)

(Refer Clause 2.2.4)

Whereas the Jammu Municipal Corporation (“the JMC”) has invited applications from interested parties for the Municipal Solid Waste (MSW) Management Project in Jammu Project (the “Project”).

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

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at,
M/s. having our registered office at,
M/s. having our registered office at, and
M/s. having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the 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 pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the JMC, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the JMC.

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)

Witnesses:

- 1.
- 2.

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

Notes:

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

Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

APPENDIX-IV
Joint Bidding Agreement

(Refer Clause 2.13.2)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

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

WHEREAS

The Jammu Municipal Corporation (JMC) represented by its **THE COMMISSIONER**

(A) (hereinafter referred to as the “**JMC**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the “**Applications**”) by its Request for Qualification No. dated(the “**RfQ**”) for pre-qualification and short-listing of bidders for Municipal Solid Waste (MSW) Management Project in Jammu (the “**Project**”) through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RfQ document and other bid documents in respect of the Project, and

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

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

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

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

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 1956 for entering into a Concession Agreement with the JMC and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

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

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be Technical Member of the Consortium;
- {(c) Party of the Third Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ, RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

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

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that a minimum of 35% (Thirty five per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the fifth anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and networth have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the RFQ.

- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the fifth anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.
- 6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.
- 6.5 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV in terms of the Concession Agreement.]
- 6.6 The parties undertake that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and

7. Representation of the Parties

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

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

adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the JMC to the Bidder, as the case may be.

9. Miscellaneous

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

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
LEAD MEMBER by:
(Signature)
(Name)
(Designation)
(Address)

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

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

In the presence of:

1.

2

Notes:

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

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and JMC to execute this Agreement on behalf of the Consortium Member.

3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX-V

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment
Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

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

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

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

- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory JMC is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

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