

Request for Qualification (RFQ)

for

**Setting up of New Mini Tool
Room at Baddi under Public
Private Partnership (PPP) Mode**

**Office of Development Commissioner (MSME)
Ministry of Micro, Small & Medium Enterprises,
Government of India**

GLOSSARY

Agreement	As defined in Clause 1.1.9
Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.12
Associate	As defined in Clause 2.2.9
Authority	As defined in Clause 1.1.6
Bids	As defined in Clause 1.2.3
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.8
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
BOO	Build, Own and Operate
BOT	Build, Operate and Transfer
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
Estimated Project Cost	As defined in Clause 1.1.11
Government	Government of India
Grant	As defined in Clause 1.2.8
Jt. Bidding Agreement	As defined in Clause 2.2.6 (g)
Lead Member	As defined in Clause 2.2.6 (c)
LoA	Letter of Award
Member	Member of a Consortium
Minimum Eligibility Criteria	As defined in Clause 2.2.2
Net Worth	As defined in Clause 2.2.4(ii)
PPP	Public Private Partnership
Project	As defined in Clause 1.1.6
Project Company	As defined in Clause 1.1.9
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
Scheme	As defined in clause 1.1.6
SPV	As defined in Clause 2.2.6

The words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires, have the meaning ascribed thereto herein.

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DISCLAIMER

The information contained in this Request for Qualification document (the “**RFQ**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Authority or any of their employees or advisors, 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 Authority to the prospective Applicants 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 Authority 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 Authority, its employees or advisors 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 depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this 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 Authority 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 Authority 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 Authority is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Project Company, as the case may be, for the Project and the Authority 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 Authority 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 Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

**Government of India
Ministry of Micro Small & Medium Enterprises**

**“SETTING UP OF NEW MINI TOOL ROOM AT BADDI, HIMACHAL
PRADESH UNDER PUBLIC PRIVATE PARTNERSHIP (PPP) MODE”**

1. INTRODUCTION

1.1 Background

- 1.1.1 Manufacturing has been recognized as the main engine for growth of the economy. In order to achieve a GDP growth of 9% (nine percent), the manufacturing sector has to grow at the rate of 12% (twelve percent). The Micro, Small and Medium Enterprises Sector, comprising of 114 lakh units has been a significant contributor to the manufacturing by accounting for nearly 40% (forty percent) of total industrial production.
- 1.1.2 To achieve a sustained rate of growth, the manufacturing sector needs to build and maintain competitiveness needed to face the challenges posed by globalisation.
- 1.1.3 Tooling has been recognized as the backbone of the manufacturing sector and enhancement of tooling facilities will give a fillip to the sector especially the Micro, Small and Medium Enterprises Sector which lacks the capacity to set up these facilities in-house.
- 1.1.4 With this view, Government of India has established 10 (ten) state of the art “Tool Room & Training Centres”. The Government had also assisted State Governments to set up Mini Tool Rooms on a cost-sharing basis. These Tool Rooms are highly proficient in ‘tool’ & ‘die’ making technologies and promote precision as well as quality in the development and manufacture of sophisticated tools, moulds and the like.
- 1.1.5 However the facilities are not enough to cope up with the ever increasing demand for tooling as well as skilled manpower; hence National Manufacturing Competitiveness Programme, suggested by National Manufacturing Competitiveness Council aims to extend support to the private sector to set up New Mini Tool Rooms, which is expected to result in improved competitiveness of the sector.

1.1.6 It is in this context that the Ministry of Micro Small & Medium Enterprises (the “**Authority**”) has launched the scheme “Setting up of New Mini Tool Rooms (MTRs) under Public Private Partnership (PPP) Mode”¹ (the “**Scheme**”) to achieve the following objectives:

- (a) To improve the competitiveness of the MSMEs engaged in manufacturing activity by creating capacities in the private sector for designing and manufacturing quality tools
- (b) To bridge the gap between the demand and supply of trained manpower in the industry.
- (c) To encourage research and development, and the optimization of cost and quality of delivery, leading to enhanced competitiveness of the manufacturing sector.

As part of this endeavour, the Authority has undertaken setting up of a New Mini Tool Room in Baddi, Himachal Pradesh through Public Private Partnership (PPP) on Build, Own and Operate (BOO) basis (the “**Project**”). Brief particulars of the Project are as follows:

S. No.	Location of the New Mini Tool Room	Indicative Project Cost ² (In Rs. cr.)
1.	Baddi, Himachal Pradesh	10.30

1.1.7 As per the Guidelines for the implementation of the Scheme, financial assistance upto 40% (forty percent) of Total Project Cost (subject to a cap of Rs. 9 Crores) will be available to the project company for implementation of the Project.

1.1.8 The Authority intends to pre-qualify and short-list suitable Applicants (the “**Bidders**”) who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

1.1.9 The selected Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate itself as such prior to execution of the Agreement (the “**Project Company**”), shall be responsible for acquiring land,

¹ For further details of the scheme, interested bidders can download the copy of the guidelines for implementation of the scheme from the website www.dcmsme.gov.in/schemes/mtr_Guidelines.pdf

² Project cost for the purpose of the Scheme will mean the cost of land; civil works; plant & machinery; and preliminary and preoperative expenses. However the aggregate cost of land and civil works shall not exceed 25% of the Project cost. The indicative project cost mentioned is based on the provisions of the Scheme.

designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of Agreement (the “**Agreement**”) to be entered into between the Project Company and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.10 The scope of work will broadly include acquisition of land, design & construction/rehabilitation of building, procurement of equipment & machinery and the operation and maintenance thereof. The selected Bidder will be responsible for providing the following facilities to industry, particularly Micro, Small & Medium Enterprises (MSMEs) located in and around Baddi, Himachal Pradesh.

- (a) Tool Room facilities
- (b) Tool Room related training facilities

1.1.11 Indicative capital costs of the Project (the “**Estimated Project Cost**”) will be revised and specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.12 The Authority 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 Authority 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**”).

1.1.13 **Project Brief**

Baddi, Himachal Pradesh is the fledgling industrial hub of Himachal Pradesh surrounded by the industrial areas of Nalagarh, Parwanoo and Barotiwala. Industrial areas surrounding Baddi house a huge number of pharmaceutical, plastics, food processing, electronics, chemicals, textiles, packaging, miscellaneous engineering units. The area is scattered in approximately 400 sq kms and constitute of the industrial estates – DIC Baddi, EPIPP Baddi, Industrial areas in Thana, Katha (Dharampur), Barotiwala, Nalagarh and Parwanoo, which house more than 10,530 large / medium scale units and more than 967 micro, small and medium enterprises. Riding on the incentives provided by the Government, labour market flexibility, availability of raw materials and natural resources, the industrial areas have seen huge investments by key industry players in the region.

Over the past few years the regions around Baddi have emerged as large manufacturing hubs and have been able to attract significant investment. The manufacturing facilities such as TVS Motors and Su-Kam Power Systems are located within this region. Therefore, the demand for both quality tooling and trained manpower is huge. Currently there are no facility in the region that is focussed on catering to the tooling and manpower requirements of the small-scale ancillary units.

As per conservative estimates, the existing market for tooling in the Baddi region is in excess of Rs.12.00 crores per annum and for training that the proposed facility can cater to is in excess of Rs. 2.83 crores per annum.

In view of good demand for tooling, technical services and trained manpower, the proposed New Mini Tool Room at Baddi, Himachal Pradesh will not only assist the MSME units in the Baddi region, but is also a viable business proposition especially with a financial assistance available in the form of Viability Gap Funding to private parties interested in setting up the Project.

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a two-stage process (collectively referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The first stage (the "**Qualification Stage**") of the process involves qualification (the "**Qualification**") of interested parties (the "**Applicants**") who make an Application in accordance with the provisions of this RFQ. At the end of this stage, the Authority expects to announce a list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the "**Bid Stage**") comprising Request for Proposal (the "**Request for Proposals**" or "**RFP**").

Government of India has issued guidelines (see Appendix-IV) 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 Authority 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 the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the Authority shall be invited to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to visit the location and familiarise themselves with the Sector.
- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the "**Bids**") in respect of the Project, in accordance with the RFP and other documents to be provided by the Authority, pursuant to the RFP (collectively the "**Bidding Documents**"). The Bidding Documents for the Project will be provided to every Bidder on payment of an amount as specified in the RFP. The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days from the date specified in Clause 1.3 for 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 of Rs. 10,30,000 (Rupees Ten lakh thirty thousand only) (the "**Bid Security**"), refundable not later than 180 days from the Bid Due Date except in the case of the lowest Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority³ and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 The selected Bidder shall be the lowest Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the lowest Bidder in case such lowest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the lowest Bidder, the Authority may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, as the case may be.

³ The format for the bank guarantee will be provided as part of the RFP document.

- 1.2.6 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 Project including implementation thereof.
- 1.2.7 As part of the Bidding Documents, the Authority will provide for the Project a draft Agreement and project report/ feasibility report prepared by the Authority/ its consultants and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids will be invited for the Project on the basis of the lowest financial grant (the "**Grant**") required by a Bidder for implementing the Project. The Agreement Period shall be pre-determined and will be indicated in the draft Agreement forming part of the Bidding Documents. The Grant amount shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the lowest Grant. In this RFQ, the term "lowest bidder" shall mean the Bidder who is seeking the lowest Grant in absolute amount.
- 1.2.9 The Project Company shall be entitled to levy and charge user fee from users of the Project.
- 1.2.10 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.
- 1.2.11 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFQ for Setting up of New Mini Tool Room at Baddi, Himachal Pradesh on Public Private Partnership (PPP) Mode".

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Event Description		Date
<u>Qualification Stage</u>		
1.	Last date for receiving queries	17-06-2011
2.	Pre-Application Conference	will be notified on the Authority's website 10 days prior to the conference
3.	Authority response to queries latest by	01-07-2011
4.	Application Due Date	14-07-2011
5.	Announcement of short-list	Within 45 days of Application Due Date

<u>Bid Stage</u>		Estimated Date
1.	Sale of Bid Documents	Will be specified in RFP
2.	Last date for receiving queries	
3.	Pre-Bid meeting - 1	
4.	Authority response to queries latest by	
5.	Pre-Bid meeting - 2	
6.	Bid Due Date(s)	
7.	Opening of Bids	On Bid Due Date
8.	Letter of Award (LoA)	Within 60 days of Bid Due Date
9.	Validity of Bids	120 days of Bid Due Date
10.	Signing of Agreement	Within 45 days of award of LoA

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

2.1.1 The Authority wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for the Bidding Stage.

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

2.2 Eligibility of Applicants

2.2.1 (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 Consortium. 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 in the form of 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 that affects the Bidding Process, if:

(i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than five percent 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, as the case may be, is less than five per cent of the paid up and

subscribed share capital thereof; provided further that this disqualification shall not apply to a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
- (iii) such Applicant receives or has received any direct or indirect subsidy from any other Applicant, its Member or Associate or has provided any such subsidy to any other Applicant; or
- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (v) such Applicant has a relationship with another Applicant, 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. (It is especially clarified that this includes a case where a member of the Executive / Governing Committee of an Industry association applying for the Project, has a relationship with another Applicant or is an Applicant himself); or
- (vi) such Applicant has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

(d) An Applicant shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder/ Applicant for a period of one month after 'Commencement of Commercial Operation of the proposed Project' in any manner for matters related to or incidental to the Project.

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall have to fulfill a set of Minimum Eligibility Criteria (the "**Minimum Eligibility Criteria**"). The following bidders shall be deemed to have fulfilled the Minimum Eligibility Criteria⁴:

- (i) Applicants having:
 - a. Technical Capability

⁴ It is specifically clarified that the aforesaid criteria is the minimum eligibility criteria and if required, additional evaluation criteria evidencing capability to execute the project may be introduced at the RFP stage.

Continuous experience for the last 3 (three) financial years, in the successful operation of:

- i. Tool Room or an Engineering Manufacturing Facility; **or**
- ii. Training Facility providing certificate, diploma, graduate or post-graduate courses in Mechanical, Production or Manufacturing or related streams of Engineering.

In case of a Consortium, atleast one member, who has an equity share of at least 26% in such Consortium, should demonstrate the above technical capability.

b. Financial Capability

- i. Annual turnover/gross receipts of at least Rs.1 (One) Crore in any one of the last 3 (three) financial years (i.e. 2007-08, 2008-09 & 2009-10) from activities mentioned in 2.2.2 (i)(a); **and**
- ii. Net-worth of Rs. 2.60 crores (Rupees two crore and sixty lakh only) at the close of preceding financial year.

In case of a Consortium, the Aggregate financial parameters (Revenue & Net Worth) of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for determining whether the Consortium meets the Minimum Eligibility Criteria.

OR

- (ii) Industry Associations representing Micro, Small & Medium Enterprises from the Manufacturing Sector, with atleast 50 (fifty) registered (MSME) members can also apply. Such associations shall however have to fulfil the minimum net-worth criteria as mentioned in Clause 2.2.2 (i) (b) (ii) of this RFQ.

Also, such an applicant shall undertake, at the time of submission of application, to enter into an Operations & Management Contract (the "O&M Contract") for operating the Tool Room during the Agreement Period, with an entity that fulfils the minimum criteria for Technical Capability. Further, such O&M Contract has to be signed and submitted before the signing of the Agreement between the Authority and the Project Company. The O&M Contract is to be signed between the Project Company formed by the successful bidder and the entity selected by the Project Company/Bidder to operate and manage the Tool Room.

OR

- (iii) Government of Himachal Pradesh jointly with either an industry association or a private entity can submit its RFQ directly for the Project without meeting the minimum eligibility criteria for Financial Capability, provided that the Government of Himachal Pradesh undertakes to hold a minimum equity stake of

26% in the proposed SPV. However, the applying consortium has to fulfil the minimum eligibility criteria for Technical Capability at the time of submission of RFQ.

For the purpose of this RFQ, Engineering manufacturing facilities shall be deemed to include facilities used for the manufacture of automobiles, auto components, engineering machinery, tools, jigs & fixtures and other engineering goods.

2.2.3 Not Used

2.2.4 The Applicants shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- (i) Certificate(s) from its statutory auditors[§] stating the fulfillment of the Minimum Eligibility Criteria as specified in Clause 2.2.2 above; and
- (ii) Certificate(s) from its statutory auditors 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 conforms to the provisions of this Clause 2.2.4 (ii). 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.
- (iii) Organisational profile and services provided by the organisation as per format included in Appendix I (Annex-I).

2.2.5 The Applicant should submit a notarised Power of Attorney, on non-judicial stamp paper, as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant.

2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Agreement and implement the Project. In case the Applicant is a Consortium, it should comply with the following additional requirements:

- (a) Number of members in a consortium should be limited to 4 (four);
- (b) The Application should contain the information required for each member of the Consortium;

[§] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i).

- (c) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share of at least 26% in the Consortium. The nomination(s) shall be supported by a notarised Power of Attorney, as per the format at Appendix-III on non-judicial stamp paper, 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 parties to a Consortium shall form an appropriate SPV to execute the Project if awarded to the Consortium; and
- (g) Members of the Consortium shall enter into a binding Joint Bidding Agreement (the “**Jt. Bidding Agreement**”) for the purpose of making the Application and submitting Bid in the event of being short-listed. The Jt. Bidding Agreement 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 Agreement and subsequently carry out all the responsibilities as Project Company in terms of the Agreement, in case the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities of each member at each stage;
 - (iii) commit the minimum equity stake to be held by each member; and
 - (iv) include a statement to the effect that all members of the Consortium shall, till the occurrence of the Appointed Date under the Agreement, be liable jointly and severally for all obligations of the Project Company in relation to the Project.

- 2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by them, 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.
- 2.2.8 An Applicant/ Consortium Member should, in the last three years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract nor have had any contract terminated for breach by such Applicant/ Consortium Member.
- 2.2.9 In assessing the fulfilment of Minimum Eligibility Criteria by the Applicant/Consortium Members as per Clause 2.2.2, the experience 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, whether by operation of law or by contract or otherwise.

- 2.2.10 The following conditions shall be adhered to while submitting an Application:
- (i) 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;
 - (ii) 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/ or constitution is identical to that at pre-qualification;

- (iii) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (iv) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 Not Used

2.2.12 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 three years preceding its latest financial year.

2.3 Change in composition of the Consortium

2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.

2.3.2 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Authority during the Bid Stage, only where:

- (a) the Lead Member continues to be the Lead Member of the Consortium;
- (b) the modified Consortium shall continue to meet the Minimum Eligibility Criteria for Applicants; and
- (c) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.

2.3.3 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing.

2.3.4 The modified/ reconstituted Consortium shall be required to submit a revised Jt. Bidding Agreement before the Bid Due Date.

2.4 Number of Applications and costs thereof

- 2.4.1 An Applicant is eligible to submit only 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 either the Qualification Stage or the Bid Stage. The Authority 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, tooling and training demand, location, land availability, surroundings, climate, availability of power, water and other utilities, handling and storage of materials, 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 Authority;
 - (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority 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 Authority shall not be liable for any omission, mistake or error on the part of the Applicant 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 Authority.

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

2.7.1 Notwithstanding anything contained in this RFQ, the Authority 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 thereof.

2.7.2 The Authority 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 Authority, the supplemental information sought by the Authority for evaluation of the Application.

Such misrepresentation/ improper response shall lead to the disqualification of the Applicant/Bidder. If the Applicant/Bidder is a Consortium, then the entire Consortium shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- (i) invite the remaining Bidders to 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 Authority, 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 Agreement or after its execution and during the period of subsistence thereof, including the Project thereby awarded by the Authority, 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 Project Company either by issue of the LOA or entering into of the Agreement, and if the Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant.

2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ. Failure of the Authority to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

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. Guidelines of the Department of Disinvestment
- V. Joint Bidding Agreement

2.9 Clarifications

2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.11. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be sent by fax or e-mail. The Authority will forward all the queries and its responses thereto, to all participants of the Pre-application Conference through electronic mail, without identifying the source of queries. The same will also be uploaded on the website of the Authority.

2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Authority 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 Authority to respond to any question or to provide any clarification.

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

2.10 Amendment of RFQ

2.10.1 At any time prior to the deadline for submission of Application, the Authority 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 Interested Parties are advised to regularly check for updates on the website <http://dcmsme.gov.in> for any Addenda issued by the Authority.

2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Application Due Date.⁵

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 appropriate translations of the pertinent passages in the English language. 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. Translations, if any, shall be accompanied by certification from a qualified translator.

⁵ While extending the Application Due Date, the Authority would have due regard for the time required by bidders to address such amendment.

2.12 Format and signing of Application

- 2.12.1 The Applicant shall provide all the information sought under this RFQ. The Authority 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 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 2 (two) copies of the Application, alongwith Documents, marked "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.
- 2.12.3 The Application and its copies shall be typed or written in indelible ink and signed by the authorised 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 initialled. All the alterations, omissions, additions or any other amendments made to the Application shall be initialled by the person(s) signing the Application. The Application shall contain page numbers and shall be hard bound.

2.13 Sealing and Marking of Applications

- 2.13.1 The Applicant shall submit the Application in the format specified at Appendix-I, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant shall seal the original and each copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPIES". The envelopes shall then be sealed in an outer envelope.
- 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 notarised and as per the format at Appendix-II on non-judicial stamp paper;

- (iii) if applicable, the Power of Attorney for Lead Member of Consortium notarised and as per the format at Appendix-III on non-judicial stamp paper;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium;
- (v) copy of⁶:
 - (a) Memorandum and Articles of Association, if the Applicant/ Consortium Member is registered as a Company,
 - (b) Partnership Deed in case the Applicant/Consortium Member is a Partnership Firm,
 - (c) Memorandum of Association and Rules and Regulations if the Applicant/Consortium Member is registered as a Society
 - (d) Trust Deed if the Applicant/Consortium Member is registered as a Trust
- (vi) copies of Applicant's/ each Consortium Member's duly audited balance sheet and profit and loss account for the preceding three years.

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: Setting up of New Mini Tool Room at Baddi, Himachal Pradesh under Public Private Partnership (PPP) Mode”

and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3 Each of the envelopes shall be addressed to:

DESIGNATION: Director (Tool Room)
ADDRESS: Room No. 723A,
Office of Development Commissioner (MSME),
Ministry of Micro Small & Medium Enterprises,
7th Floor, A-Wing, Nirman Bhavan, Maulana Azad Road,
New Delhi – 110 108
FAX NO: 011-23061068

⁶ Sole Proprietorship firms need not submit any of these documents

2.13.4 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application submitted.

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 before 1600 hours IST on the Application Due Date, 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.

2.14.2 The Authority 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 Authority 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

2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.

2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

- 2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

- 2.17.1 The Authority shall open the Applications at 1630 hours IST on the Application 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 in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Authority 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 Authority. 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 anyway be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if any Project is subsequently awarded to it under the Bidding Process on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any Application without assigning any reasons.

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 Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority 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 Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority.

2.19 Tests of responsiveness

2.19.1 Prior to evaluation of Applications, the Authority 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 thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed, hard bound and marked as stipulated in Clause 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5 and Clause 2.2.6 (c);
- (e) it contains all the information (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

2.19.2 The Authority 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 Authority in respect of such Application.

2.20 Clarifications

- (i) To facilitate evaluation of Applications, the Authority 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 Authority for this purpose. Any request for clarification(s) and all clarification(s) shall be in writing.
- (ii) If an Applicant does not provide clarifications sought under Sub-Clause (i) above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority 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 Authority.

E. QUALIFICATION AND BIDDING

2.21 Short-listing and notification

After the evaluation of Applications, the Authority 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 Authority would notify the other Applicants that they have not been short-listed. The Authority 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. The Authority may also ask Bidders to submit a Technical Proposal outlining their Business Plan for the Project and seeking additional relevant information. Financial Bids of only those Bidders whose Technical Proposals are adjudged suitable by the Authority will be opened and taken up for consideration by the Authority.

Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project(s). The Applicants are therefore advised to visit the site(s) and familiarise themselves with the Project(s) by the time of submission of the Application. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Authority.

2.23 Proprietary data

All documents and other information supplied by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. 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 Authority will not return any Application or any information provided along therewith.

2.24 Correspondence with the Applicant

The Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

3.1.1 Only those Applicants who meet the Minimum 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.

3.1.2 The Applicant's competence and capability is proposed to be established through the fulfilment of the Minimum Eligibility Criteria specified in Clause 2.2.2 and any additional evaluation parameter described in the Bid Documents.

3.2 Not Used

3.3 Details of Experience

3.3.1 The Applicant should furnish the details of Eligible Experience for the past 3 (three) years preceding the Application Due date.

3.3.2 The Applicants must provide the necessary information relating to fulfilment of Minimum Eligibility Criteria as per format at Annex-II of Appendix-I.

3.3.3 Not Used

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 could not make it available, the Applicant shall give an undertaking to the same effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for two years preceding the year for which the Audited Annual Report is not being provided.

3.4.3 The Applicant must establish a minimum Net Worth as specified in Clause 2.2.2 (B), and provide details as per format at Annex-II of Appendix-I.

3.5 Short-listing of Applicants

The credentials of eligible Applicants shall be measured in terms of their meeting the Minimum Eligibility Criteria. In case of a Consortium, the Aggregate financial parameters (Revenue & Net Worth) of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for determining whether the Consortium meets the Minimum Eligibility Criteria as per clause 2.2.2 of this RFQ Document.

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 Authority shall 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 Authority under Clause 4.1 hereinabove, if an Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (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 Authority 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 Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at

any time has been or is a legal, financial or technical adviser of the Authority 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 Authority 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.
- 5.2 During the course of Pre-Application Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications on those queries received prior to the date specified in Clause 1.3 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 Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, 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 Authority 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 Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

APPENDIX I

Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To,

The Additional Secretary &
Development Commissioner,
Ministry of Micro, Small &
Medium Enterprises (MSME),
Nirman Bhawan, 7th Floor,
Maulana Azad Road,
New Delhi – 110 108

Sub: Application for pre-qualification for Setting up of New Mini Tool Room
at Baddi, Himachal Pradesh on Public Private Partnership (PPP) Mode

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. All information provided in the Application and in Annexes I to III is true and correct 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 Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated 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 Authority.
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in 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 Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 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 (ies) 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, are/ is 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 have not been convicted by a Court of Law or indicted or adverse

orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/ Managers/ employees.
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. A copy of the aforesaid guidelines form part of the RFQ at Appendix-IV thereof.
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 Authority 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 Appendix 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 itself as such prior to execution of the Agreement.

18. I/ We, hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority 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.
19. I/ We agree and undertake to abide by all the terms and conditions of the RFQ document.
20. I/We undertake to hire qualified and trained personnel for operation and maintenance of the project in conformity with the provisions of the Agreement.
21. I/ We certify that in terms of the RFQ, my/our Networth is Rs.
(Rs. in words).

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

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

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 headquarters and its branch office(s) in India:
 - (cd) Date of incorporation and/ or commencement of business:

2. Detailed organisational profile of the Entity including services rendered, 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 Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Employer:
 - (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. Information:
 - (a) In case of a Consortium, the information above (1-4) should be provided for all the Members of the Consortium.
 - (b) In case of a Consortium, a copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.

- (c) In case of a Consortium, information regarding role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)}	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a) & (c)}
1.			
2.			
3.			
4.			

- (d) The following information shall also be provided for every Bidder (in case of single entity bidder)/ each Member of the Consortium (in case of consortium):

Name of Applicant/ member of Consortium:

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% 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) 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

Eligibility of the Applicant*(Refer to Clauses 2.2.2), 2.2.4 (ii) and 3.4 of the RFQ)***(In Rs. crore^{\$\$})**

Applicant type ^{\$}	Gross revenues			Net Worth [€]
	Year 1	Year 2	Year 3	Year 1
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 Capability or of an Associate specified in Clause 2.2.9.

^{\$\$} For conversion of other currencies into rupees, see note below Annex-II of Appendix-I.

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 and its 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).
 - (e) clearly indicate the line of business the applicant is engaged in.
2. Gross Revenue shall mean Income received for goods and services over the accounting period
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 three months of the close of the latest financial year, refer to Clause 2.2.12.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (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 specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ document.

Statement of Legal Capacity

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

Ref. Date:

To,
The Additional Secretary & Development Commissioner,
Ministry of Micro, Small & Medium Enterprises (MSME),
Nirman Bhawan, 7th Floor, Maulana Azad Road,
New Delhi – 110 108

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.....

**Please strike out whichever is not applicable.*

APPENDIX II

Power of Attorney for signing of Application

(To be notarized and executed on non-judicial Stamp paper of appropriate value)

(Refer Clause 2.2.5)

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 Setting up of New Mini Tool Room at Baddi, Himachal Pradesh on Public Private Partnership (PPP) Mode (the “Project”) proposed or being developed by the Ministry of Micro Small & Medium Enterprises (the “Authority”) 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 Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project[s] and/ or upon award thereof to us and/or till the entering into of the Agreement with the Authority.

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

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

For

.....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

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

Power of Attorney for Lead Member of Consortium

(To be notarised and executed on non-judicial Stamp paper of appropriate value)

(Refer Clause 2.13.2)

Whereas the Ministry of Micro Small & Medium Enterprises (“the Authority”) has invited applications from interested parties for the Setting up of New Mini Tool Room at Baddi, Himachal Pradesh on Public Private Partnership (PPP) Mode (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 authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the 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[s] for the Project, including

Appendix III

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 bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, 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 Agreement is entered into with the Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF2.....

For
(Signature)
.....
(Name & Designation)

For
(Signature)
.....
(Name & Designation)

For
(Signature)
.....
(Name & Designation)

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 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

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 authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court

Appendix IV

Page-2

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 authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India