

Government of National Capital Territory of Delhi

Health & Family Welfare Department

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No: F.3(2)/PPP Cell/HFW/2012/Part file/Vol. II/518

Date: 21.06.2013

Addendum to Request for Proposal for Development of Dialysis centres Across GNCTD Hospitals in Delhi on PPP basis

This is with reference to the RFP issued for Development of Dialysis centres Across GNCTD Hospitals in Delhi on PPP basis on 23rd May, 2013 and the pre-bid meeting held with the prospective bidders on 3rd June 2013 at 3.00 PM.

In pursuant to the above, addendum to RFP for Development of Dialysis centres across GNCTD Hospitals in Delhi on PPP basis was issued on 14th June, 2013 and the Bidders' Conference was held with the prospective bidders on 18th June, 2013 at 3.30 PM.

In view of the changes in the Bid Submission and Bids Evaluation process, please find enclosed a Revised Request for Proposal document dated 21 June 2013. This Revised Request for Proposal supercedes the RFP issued on 23rd May, 2013. It is clarified that the Concession agreement and the Schedules thereto, issued on 23rd May, 2013 are to be treated as part of this Revised Request for Proposal document.

Further, in accordance with the provisions under Clause no. 2.8 and 2.9 (and sub-Clauses therein) of the Revised RFP, please find further Addendum enclosed at Annexure 1 attached to this letter. This Addendum is issued in response to the Queries / Suggestions made during the Bidders Conference on 18th June and is in addition to the Addendum issued on 14th June, 2013.

The Bid Due Date (last date for receiving bids) is revised by the Authority to **28th June, 2013 (Friday) upto 5.00 P.M** in accordance with the provisions under Clause no. 2.12.2 and the bids are to be submitted as per Clause 2.12.1

**Enclosed
Addendum in Annexure 1
Revised RFP**

**SD/-
Spl. Secretary (H&FW)**

Annexure 1 – Addendum

S No	Document – Clause	Query raised in Bidder Conference	Amendments to the Concession Agreement / Schedule
1)	DCA – Article 3.1.2.(c) and 7A.d	As per various Clauses, the ownership / title to the project facilities and equipments would vest with the Concessioneing Authority at all time even during the concession period. If the ownership is not with the concessionaire, the concessionaire will not be able to claim depreciation on the assets. It is requested to amend these clauses.	<p>Article 3.1.2.(c) has been amended as below:</p> <p><i>Any installation of Haemo Dialysis Equipment made by the Concessionaire within the specified Project facilities in respect of the Project shall be owned and operated by the Concessionaire for the duration of the Concession or Tenure of the Concessoinaire. During such period the Concessionaire shall not in any manner move / replace / sale / transfer / pledge / hypothecate / create lien on / encumber whatsoever any such property without prior written permission of the Concessioneing Authority.</i></p> <p>Article 7A.d has been amended as below:</p> <p><i>The Parties understand that the ownership of the Project Facility shall at all times vest in the Concessioneing Authority / Hospitals and shall not under any circumstance whatsoever pass over or be deemed to pass over to the Concessionaire or Persons or any other Third Party claiming by, under or through the Concessionaire. The ownership in respect of the Equipments / Project assets shall vest with Concessionaire during the tenure of concession and during such period the Concessionaire shall not be allowed to move / replace / sale / transfer / pledge / hypothecate / create lien on / encumber whatsoever the Equipments / Project Assets without prior written permission of the Concessioneing Authority .</i></p>
2)	<p>Schedule to CA – Schedule 8.1.2.</p> <p><i>k) In built heparin pump (20ml, 10ml, 5ml)</i></p>		<p>Schedule 8.1.2 has been amended as below:</p> <p><i>k) In built heparin pump (50ml / 30ml / 20ml / 10ml / 5ml)</i></p>

Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis

Revised REQUEST FOR PROPOSAL

Dated 21 / 06 / 2013

**DEVELOPMENT OF DIALYSIS CENTRES ACROSS GNCTD
HOSPITALS IN DELHI
ON PPP BASIS**

**Department of Health & Family Welfare,
Government of National Capital Territory of Delhi**

Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis

SECTION I: REQUEST FOR PROPOSAL

Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis

DISCLAIMER

The information contained in this Revised Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP 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 Bidder may require. This RFP 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 RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Project Information Memorandum and/or Site Details, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The 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 RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of this RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

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

The 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 RFP.

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

Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis

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

Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis

GLOSSARY

Authority	As defined in Clause 1.1.2
Associate	As defined in Clause 2.1.14
Bank Guarantee	As defined in Clause 2.17
Bid(s)	As defined in Clause 1.2.2
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.8
Bid Due Date	As defined in Clause 1.1.8
Bidding Process	As defined in Clause 1.2
Bid Security	As defined in Clause 1.2.4
Bid Stage	As defined in Clause 1.2
Concession	As defined in Clause 1.1.6
Concession Agreement	As defined in Clause 1.1.3
Concessionaire	As defined in Clause 1.1.6
Conflict of Interest	As defined in Clause 2.1.14
Damages	As defined in Clause 2.1.14
Demand Draft	As defined in Clause 2.20.2
Estimated Project Cost	As defined in Clause 1.1.4
Feasibility Report/ Project Information Memorandum	As defined in Clause 1.2.3
Government	Government of NCT of Delhi
Highest Bidder	As defined in Clause 1.2.8
NOA	As defined in Clause 3.3.6
Member	Member of a Consortium
PPP	Public Private Partnership
Discount/ Premium	As defined in Clause 1.2.8
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
RFQ	As defined in Clause 2.1.2
Selected Bidder	As defined in Clause 3.3

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the RFQ, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

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**Health & Family Welfare Department,
Govt. of NCT of Delhi**

1. INTRODUCTION

1.1 Background

- 1.1.1 The Government of National Capital Territory (NCT) of Delhi owns/ operates/ manages several hospitals, healthcare organizations, health and other institutions in Delhi. The Government proposes to develop Haemo-Dialysis facilities in selected hospitals under its control in order to provide access to high quality and affordable Haemo-Dialysis services to the residents of Delhi and patients from adjoining areas.
- 1.1.2 The Department of Health & Family Welfare, Government of National Capital Territory of Delhi (the “**Authority**”) has decided to undertake development and operation/ maintenance of these Haemo - Dialysis facilities/ centres (the “**Project**”) on Public-Private Partnership (the “**PPP**”) model. The Project(s) comprises of setting up of Haemo-Dialysis facilities/ centres (Primarily Maintenance HD) at various hospitals within the Delhi region, as has been identified in 2 (two) Clusters – brief description in terms of the included hospitals and Project Facility requirements has been provided in the Schedules to Concession Agreement – by the Authority for which concession would be granted to the selected Bidder/s for Development-Operation – Maintenance -Transfer back of the Haemo-Dialysis facilities. Estimated Project Cost of each Cluster is INR. 5 Crores (Rupees Five Crores). Pursuant to this intention, the Authority has already carried out the stage 1 for the bidding i.e. the RFQ process wherein 9 (Nine) out of 11 (Eleven) eligible applicants were qualified for the bidding stage. The authority intends to select the most competitive bidder for the Haemo Dialysis centres.
- 1.1.3 The process for selection of the bidder has been detailed in Clause 3.3. For each cluster, the selected Bidder¹, undertakes to incorporate a SPV prior to execution of the concession agreement which (the “**Concessionaire**”) shall be responsible for designing, procurement of equipment and other items, installation/ setting up, commissioning and the operation and maintenance of the Project Facility and finally transfer/ handback under and in accordance with the provisions of a concession agreement (the “**Concession Agreement**”) to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto. It is pertinent to mention here that separate Concession Agreement(s) shall be signed for both Cluster 1 and Cluster 2.
- 1.1.4 The scope of work, for each Cluster, will broadly include developing Heamo-Dialysis centres entailing designing, procurement of equipment and other items, installation, commissioning and the operation and maintenance of such facilities thereof and finally transfer of facilities on as is basis at the end of the tenure of the Concession

¹ Composition of the applicants/ eligible bidders has been elaborately discussed and clearly specified in the RFQ. Only qualified applicants out of such eligible pool have been referred as bidder for purpose of RFP.

Period.

- 1.1.5 The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in Clause 1.1.2 above. The assessment/ calculations/ due-diligence of actual costs and revenue streams, however, will have to be made by the Bidders.
- 1.1.6 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.7 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.8 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

1.2 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(s). The first stage (the “**Qualification Stage**”) of the process involved pre-qualification of interested parties/ applicants/ Consortia in accordance with the provisions of the RFQ. At the end of the Qualification Stage, the Authority short-listed Applicants who are eligible for participation in this second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals.
- 1.2.2 In the Bid Stage, the aforesaid short-listed Applicants, (the “**Bidders**”, which expression shall, unless repugnant to the context, include the Members of the Consortium) are being called upon to submit their financial offers (the “**Bids**” or “Financial Bid”) in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of **not less than** 180 days from the date specified in Clause 1.3 for submission of bids (the “**Bid Due Date**”).
- 1.2.3 The Bidding Documents include the Revised Request for Proposal, draft Concession Agreement and Schedules to the Concession Agreement, for the Project(s). Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this revised RFP Document, will be deemed to form part of the Bidding Documents. Bidder is required to pay a non-refundable Bid Document Fee of **Rs.**

25,000 (Rs. Twenty Five Thousand only) in the form of Demand Draft in favour of Director Health Services, GNCTD payable at Delhi by the bid due date. The Bid shall be liable to be rejected if it is not accompanied by the Bid Document Fee.

- 1.2.4** For each Cluster, a Bidder is required to deposit, along with its Bid, a bid security of **Rs. 10,00,000 only (Rupees Ten lakhs only)** (the “**Bid Security**”) , refundable no later than 30 (Thirty) days from the issue of NOA to the selected bidder, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee from a scheduled bank and as per the format in Appendix II, to the Authority, 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, exclusive of a claim period of 45 (forty five) days after the expiry of the validity of the Bid Security, 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. Note: The Bid Security of Rs 10 Lakhs (Rupees Ten Lakhs only) shall be submitted separately **for each Cluster**.
- 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** Bids are invited for the Project on the basis of highest discount percentage or lowest premium percentage on the Indicated pricing² for award of the Concession. The concession period is pre-determined, as indicated in the Concession Agreement. The highest discount percentage/ lowest premium percentage shall constitute the sole criteria for evaluation of Bids. Subject to Clause 2.16, the Project will be awarded to the Bidder quoting the highest discount percentage or the lowest premium percentage on Indicated pricing.
- Note: In this document the Indicating Pricing refers to the Schedule 13 to the Concession Agreement i.e. Tariff Schedule for Procedures
- 1.2.7** In this RFP, the term “**Highest Bidder**” (for a particular Cluster) shall mean the Bidder who is offering the highest discount percentage or quoting the lowest premium percentage on the **indicated pricing**.
- 1.2.8** The Highest Bidder shall be the “**Selected Bidder**” as per the selection process detailed in Clause 3.3. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder is not selected or is rejected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from

² For e.g. if the bids are like Discount of (3.50%, 7.90%, 11.56%, 19.00 %, 1.0 %) and premium of (4.30 %, 8.30 %, and 12.90 %), then the preferred bid would be discount of 19% and the decreasing order of preference would be discount of (19.00 % > 11.56 % > 7.90 % > 3.50 % > 1.00%) > premium (4.30% > 8.30% > 12.90%).

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

the remaining Bidders or annul the Bidding Process. In the event, the Selected Bidder withdraws on its own, there shall be re-tendering of the Cluster(s).

- 1.2.9 The Concessionaire shall be entitled to levy and charge a pre-determined tariff (Indicated pricing adjusted by the bid value i.e. either discounted by the discount percentage or increased by the premium percentage as quoted by the Highest Bidder, as the case may be) from users of the Project. The same has been prescribed in detail in the **Concession Agreement and Schedules to the Concession Agreement**. For avoidance of doubt, it is clarified that the User Fee shall be the prescribed tariff for services arrived after uniformly applying the highest discount percentage or the lowest premium percentage, as the case maybe, to the indicated pricing in the Schedules.
- 1.2.10 Further and other details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.11 Any queries or request for additional information concerning this RFP shall be submitted in writing or e-mail to the officer designated in Clause 2.11.5 below. A copy of the same shall be submitted to the Authority with a copy to the Transaction Advisors in writing or by e-mail to the person as mentioned below: -

ATTN. OF:

Secretary

Health & Family Welfare Department,

Govt. of NCT of Delhi,

9th Level, A-Wing,

Delhi Secretariat, I. P. Estate, New Delhi.

Phone No: (011) 23392017/31

E-Mail Address: pshealth@nic.in

AND

Vaibhav Goel

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- 1.2.12 The envelopes/ communication shall clearly bear the following identification/ title:

“Queries/ Request for Additional Information: RFP for Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis”.

1.3 Schedule of Bidding Process

1.3.1 The Authority shall endeavour to adhere to the following schedule:

Event Description	Date
1. Last date for receiving queries	31/05/2013 17:30
2. Pre-Bid meeting	03/06/2013 15:00
3. Authority response to queries latest by	14/06/2013 19:00
4. Bidder's Conference	18/06/2013 15:30
5. Bid Due Date	28/06/2013 17:00
6. Opening of Financial Bids	To be intimated (The intimation will also be made available at website of the Authority i.e. http://health.delhigovt.nic.in)
7. Notice of Award (NOA)	Within 30 days of Bid Due Date
8. Validity of Bids	180 days of Bid Due Date
9. Signing of Concession Agreement	Within 30 days of award of NOA

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for any of the cluster. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium. However the Bidder shall have the right to submit the Bid for both the Clusters.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Request for Qualification document for the Project (the “RFQ”) shall have the meaning assigned thereto in the RFQ.
- 2.1.3 Any information regarding the site(s) and the Project is being provided only as preliminary information by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project including thorough due- diligence before submitting their Bids.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Bid should be furnished in the format at APPENDIX I: Letter Comprising the Bid, clearly indicating the bid amount i.e. Financial Bid in both figures and words, and signed by the Bidder’s authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Financial Bid shall consist of a **highest discount percentage or lowest premium percentage on the Indicated pricing**, to be quoted by the Bidder. The percentage will be offered by the Concessionaire to the Authority as per the terms and conditions of this RFP and the provisions of the Concession Agreement.
- 2.1.7 For each Cluster, the Bidder shall deposit a Bid Security of **Rs. 10,00,000 only (Rupees Ten Lakhs Only)**, in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix-II.
- 2.1.8 The validity period of the Bid Security shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, exclusive of a claim period of 45 (forty five) days after the expiry of the validity of the Bid Security, and may be extended as may be mutually agreed between the Authority and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the date of Issue of NOA to the selected bidder except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. Further, the Bid Security of the next highest bidder, shall be retained till the signing of the Concession Agreement and shall be released at the earliest post signing of the

Concession Agreement and in any case shall be returned within 30 (thirty) days of the signing of the Concession Agreement with the Selected Bidder. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee demand draft in favour of the respective Bidder(s) or the demand draft furnished by the bidder, if not en-cashed, would be returned. Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

- 2.1.9 The Bidder should submit a Power of Attorney as per the format at APPENDIX III: Power of Attorney for signing of Bid, authorising the signatory of the Bid to commit the Bidder.
- 2.1.10 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at APPENDIX IV: Power of Attorney for Lead Member of Consortium.
- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.14 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this

disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 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 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

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

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with

respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.1.15 A Bidder 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, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the NOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the NOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the NOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the NOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFQ for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.1.16 This RFP is not transferable.

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

It is clearly specified that the primary responsibility for the performance of obligations under the Concession Agreement and Schedules to the Concession Agreement shall be of the Selected Bidder.

2.2 Change in composition of the Consortium

2.2.1 Where the Bidder is a Consortium, change in composition of the 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 substitute is at least equal, in terms of Technical Capacity and/or Financial Capacity, as per the proposed role of the member (technical capacity in case the outgoing member is a dialysis operator), to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing 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 Bidder/ Consortium bidding for this Project.

2.2.2 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. The Bidder must submit its application for change in composition of the Consortium no later than 15 (fifteen) days prior to the Bid Due Date.

- 2.2.3 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-IV, prior to the Bid Due Date.

2.3 Change in Ownership

- 2.3.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, at all times during the tenure of the concession agreement, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire/ SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3 shall apply only when the Bidder is a Consortium. Further, the Bidder acknowledges that it shall hold a minimum of 75% of the Equity of the SPV at all times during the tenure of the concession agreement. In case of a consortium, the consortium members shall jointly hold equity share capital representing not less than 75% of the subscribed and paid-up equity of the Concessionaire/ SPV. The Bidder further acknowledges and agrees that a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder
- 2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the NOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, may be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any

other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. However, authority may continue the project after seeking appropriate comfort in terms of undertaking(s)/ guarantee(s) as deemed appropriate from the new owners/ controllers as well as the original bidder in the interest of the Project.

- 2.3.3 In case, such change in control occurs during the tenure of the concession agreement, the Bidder/ Consortium/ SPV shall inform the Authority at the earliest possible time and in any case before 15 working days after such change has happened. The Authority, at its sole discretion, may ask for additional comforts in terms of undertaking(s)/ guarantee(s) as deemed appropriate from the new owners/ controllers as well as the original bidder in the interest of the Project. In case, the new management/ owner(s) or original bidder is/ are unable to furnish such undertaking(s)/ guarantee(s) within the stipulated time, the Authority may deem it as breach of agreement and may pursue accordingly.

2.4 Cost of Bidding

- 2.4.1 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The 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

- 2.5.1 Bidders are encouraged to submit their respective Bids after visiting the site(s) and ascertaining for themselves the site conditions, location, surroundings, catchment area and catchment population and its demographics, nearby government healthcare facilities, other institutions, private healthcare facilities, presence of other haemo-dialysis centres, demand for services from various category of patients, morbidity and mortality profile of the catchment and any other matter considered relevant by them. Detailed list of site(s) along with respective address is appended in the Schedules to Concession Agreement.

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

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters relevant to the Project;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters

referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;

- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) Agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6 Verification and Disqualification

2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ, the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.6.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) At any time, a material misrepresentation is made or uncovered, or
- (b) The Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

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

- (i) Proceed to evaluate the Bids in accordance with Clause 3.3
- (ii) Take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.6.3 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 Authority, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the NOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the NOA 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 RFP, be liable to

be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise. In Such a case, if the discovery is made before the signing of the Concession Agreement, the Authority retains the right to call/ invite the next highest bidder to match the Highest Bidder and may re-issue the NOA to the next highest bidder. If the next highest bidder refuses to match the Bid of the highest bidder or such discovery regarding material misrepresentation happens after signing of the Concession Agreement but before substantial development of Project Facility during the Development Period (as defined in Concession Agreement), the Authority reserves the right to terminate the agreement/ withdraw the LOA, as the case may be, forfeit the Bid Security or Performance security or both of the highest bidder as persisting on such date and may initiate rebid of the project. In case, any such discovery happens during tenure of such Concession, the Authority reserves the right to terminate the agreement and proceed ahead as per the provisions of terminations in case of Concessionaire Event of Default

B. DOCUMENTS

2.7 Contents of the RFP

- 2.7.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

Appendices

- I. Letter comprising the Bid
- II Bank Guarantee for Bid Security
- III Power of Attorney for signing of Bid
- IV Power of Attorney for Lead Member of Consortium
- V: List of Bid-Specific Clauses

- 2.7.2 The Draft Concession Agreement, Schedules to Draft Concession Agreement “Schedules” and any other information provided by the Authority as part of the Bid

Documents shall be deemed to be part of this RFP.

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the revised RFP may notify the Authority and the Transaction Advisors in writing or by e-mail in accordance with Clause 1.2.11. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 7 (Seven) days prior to the Bid Due Date. The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications. The responses will be sent by e-mail or hosted on the website of the Authority. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders in writing or during pre-bid conference. 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.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the revised RFP by the issuance of Addenda. It is further clarified that the configuration and the responsibilities, terms and condition of the project may be changed later by the authority if deemed necessary and shall be incorporated in the modified concession agreement by issuance of Addenda/ Addendum and the applicants shall honour the same.
- 2.9.2 Any Addenda/Addendum issued hereunder will be in writing and shall be sent to all the Bidders qualified in RFQ stage.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addenda/Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.10 Format and Signing of Bid

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

- 2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.10.2 The Bid and its copy (Refer clause 2.1.1) shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents (company brochures etc.), only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.11 Sealing and Marking of Bids

- 2.11.1 The Bidder can submit Bids for either one or both the Clusters as defined under Schedule 1.1 of the Concession agreement. The Bidder shall however submit the Bids separately for each Cluster in the format specified at Appendix-I, and seal it in separate envelopes and mark the envelopes as **“Financial Bid - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP for CLUSTER No. 1”** and / or **“Financial Bid - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP for CLUSTER No. 2”**, as the case may be.

- 2.11.2 The documents accompanying the Bid shall be placed in separate envelopes as under:

A. “Part (A) – Formal Submissions” – This shall include following documents:

- (a) Bid Security in the format at APPENDEX II or as Demand Draft as per Clause 1.2.4 for each cluster separately.
- (b) Power of Attorney for signing of Bid in the format at APPENDIX III: Power of Attorney for signing of Bid;
- (c) If applicable, the Power of Attorney for Lead Member of Consortium in the format at APPENDIX IV: Power of Attorney for Lead Member of Consortium;
- (d) A copy of the Bidding documents as defined in Clause 1.2.3 of RFP with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (b) hereinabove; and
- (e) Bid Document Fee as specified in Clause 1.2.3, if it is not submitted before the bid due date.

B. “Part (B) – Technical Submissions” – This shall include following documents:

- (a) Undertaking on a non judicial stamp paper of Rs. 100 /- (one hundred) duly signed by the person(s) executing* the Power of Attorney for signing of Bid referred to in sub-clause (b) of Clause 2.11.2.A., declaring that
 - i. I/ We have examined the Application made by us and all of the pre-qualification conditions have been met by the Applicant / Bidder as on the Application due date and the Applicant / Bidder has not made material misrepresentation or has given any materially incorrect or false information with respect to the pre-qualification criteria namely ,
 - ii. I / We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - iii. 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 (FRAUD AND CORRUPT PRACTICES) of the RFP document, in respect of request for proposal issued by the Authority; and
- iv. The undertakings / submissions given by us along with the Application in response to the RFQ for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them; and
 - v. I / We certify acknowledge and undertake that I / We or our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity & I / We or our Consortium continues to meet(s) the Net Worth criteria and meet(s) the Technical Capacity requirements as specified in the RFQ document; and
 - vi. I / We certify that in the last three years, we / any of the Consortium Members or our / their Associates have not failed to perform on any contract relating to provisioning of Dialysis services;
- (b) Technical specifications along with supporting literature / product catalogues and all other information for the following equipments – Haemodialysis Machines, Reverse Osmosis Unit (RO Unit), Dialyzer Reprocessor Machine and Needle Guided Ultrasound Scanner for Vascular Access - being offered for the Haemodialysis centers should be provided in the format mentioned below. It is clarified that the equipments offered must meet the minimum Equipment Specifications for these equipments as given in Schedule 8 - Indicative Equipment Specifications of the Concession Agreement.

Format for submission of Technical Specifications

S. No.	Specifications as per the Schedule 8 to the Concession Agreement	Specifications of the equipment(s) offered by the bidder	Compliance to Specifications as per the Schedule 8 (in Yes/No)

- 2.11.3 The documents as specified under **Part (A) - Formal Submissions & Part (B) – Technical Submissions** as specified in Clause 2.11.2 above, except for the Bid Security and Bid Document Fee, shall be bound together in hard cover/ spiral bound and the pages shall be numbered serially Each page thereof shall be initialed in blue ink by the authorized signatory of the Bidder and with seal of the Bidding entity (sole or of the lead member in case of consortium). These shall be submitted in Original along with one Copy duly signed by the authorized signatory and with seal as under.

The Originals along with the Bid Security (for each cluster) and Bid Document Fee shall be submitted in an envelope marked as “Original Part (A) - Formal Submissions & Part (B) – Technical Submissions - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP”

The Copy shall be placed in a separate envelope and marked “Copy Part (A) - Formal Submissions & Part (B) – Technical Submissions - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP”

- 2.11.4 The three / four envelopes, as the case may be, specified in Clauses 2.11.1, 2.11.2 and

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

2.11.3 shall be placed in an outer envelope, which shall clearly bear the following identification:

“Proposal for Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis” and shall clearly indicate the name and address of the Bidder.

In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

For the avoidance of any doubt the outer envelope shall contain the following sealed envelopes:

1. “Financial Bid - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP for CLUSTER No. 1” ;
2. “Financial Bid - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP for CLUSTER No. 2”;
3. “Original Part (A) - Formal Submissions & Part (B) – Technical Submissions - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP”
4. “Copy Part (A) - Formal Submissions & Part (B) – Technical Submissions - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP”

2.11.5 Each of the envelopes shall be addressed to:

Secretary (Health & Family Welfare)
ATTN. OF: OSD (H&FW)
ADDRESS: Health & Family Welfare Department,
Govt. of NCT of Delhi,
Room No. A – 910
9th Level, A-Wing,
Delhi Secretariat, I. P. Estate, New Delhi.
PHONE NO: (011) 23392017/31
E-MAIL ADDRESS: pshealth@nic.in

2.11.6 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 Bid submitted and consequent losses, if any, suffered by the Bidder.

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

2.12 Bid Due Date

2.12.1 Bids should be submitted before 1700 hours IST on the Bid Due Date i.e. 28 / 06 /2013 at the address provided in Clause 2.11.5 and shall be dropped in the Drop Box/ Tender Box in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person or his assignee or any suitable officer deputed for the purpose.

- 2.12.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum/ Addenda in accordance with Clause 2.9 uniformly for all Bidders. No queries, whatsoever the nature be, shall be entertained in this regard.

2.13 Late Bids

Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.14 Contents of the Bid

- 2.14.1 The Bid shall be furnished in the format at APPENDIX I: Letter Comprising the Bid and shall consist of a **Financial Bid**, to be quoted by the Bidder. For the Financial Bid, the Bidder shall specify the percentage discount or premium, (rounded off to 2 decimal places), as the case maybe, offered by him, on the indicated pricing for the entire duration of the Concession Period to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.
- 2.14.2 Generally, the Project will be awarded to the Highest Bidder.
- 2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.14.4 The proposed Concession Agreement, Schedules to the Concession Agreement, any Addendum/ Addenda issued to the revised RFP or the Concession Agreement shall be deemed to be part of the Bid.

2.15 Modifications/ Substitution/ Withdrawal of Bids

- 2.15.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.15.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.15.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.16 Rejection of Bids

- 2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or

annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

2.17 Validity of Bids

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

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising 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 the Bid, 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 or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

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

D. BID SECURITY

2.20 Bid Security

- 2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. One thousand crore), in favour of the Authority in the format at Appendix-II (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, exclusive of a claim period of 45 (forty five) days post expiry of the Validity of the Bid Security, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act,

1934.

- 2.20.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the **Director Health Services, GNCTD** and payable at Delhi (the “**Demand Draft**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.20.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.20.4 Save and except as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible within 30 days of signing of Concession Agreement with the selected bidder or when the Bidding process is cancelled by the Authority or in the event of retender pursuant to Clause 3.3. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee demand draft in favour of the respective Bidder(s) or the demand draft furnished by the bidder, if not encashed, would be returned. Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.20.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority shall in no case, adjust the amount of Bid Security in the amount of Performance Security or against a portion of the Performance Security, to be provided by the Selected Bidder/ Consortium/ Concessionaire in accordance with the provisions of the Concession Agreement.
- 2.20.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.20.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:
- (a) If a Bidder submits a Conditional/non-responsive Bid;
 - (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - (c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
 - (d) In the case of Selected Bidder, if it fails within the specified time limit -

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

- (i) to sign and return the duplicate copy of NOA;
- (ii) incorporate the SPV;
- (iii) to sign the Concession Agreement; or
- (iv) to furnish the Performance Security within the period prescribed thereof in the Concession Agreement;
- (e) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority shall open the Proposals at **1730** hours on the **Bid Due Date**, at the place specified in **Clause 2.11.5** and in the presence of the Bidders who choose to attend.
- 3.1.2 The Authority will evaluate the Bids in accordance with the provisions **set out** in this Section.
- 3.1.3 To facilitate evaluation of Bids, the Authority may, in its sole discretion, seek clarifications in writing from any Bidder regarding its Bid, in the nature of historical, legal or factual information, but not a nature that has any implication of altering the terms or validity of offer.
- 3.1.4 Notwithstanding anything to the contrary contained in this RFP, as part of evaluation of Bids, the Authority shall determine whether each Bid is overall responsive to the requirements of this RFP including Concession Agreement and Schedules thereto.
- 3.1.5 Bid shall be considered responsive only if it meets the minimum criteria specified under Clause 3.2 i.e. Test of Responsiveness
- 3.1.6 The Financial Bids of only those Bidders whose Bids are adjudged as responsive in terms of Clause 3.2 shall be opened for price evaluation as per the procedure specified in Clause 3.3.

3.2 Criteria for responsiveness

- 3.2.1 The Authority shall determine whether each Bid is responsive to the requirements of this RFP including Concession Agreement and Schedules thereto, in terms of the following criteria:
 - (i) First the **“Part (A) – Formal Submissions”** will be evaluated. A Bid shall be considered responsive to “Part (A) - formal submissions” if following criteria are satisfied,
 - (a) Bid is received by the Bid Due date i.e. 28 /06/2013 and at address specified in clause 2.11.5;
 - (b) Bid is accompanied by the Bid Security in the format at APPENDIX II or as Demand Draft as per Clause 1.2.4 for each Cluster separately, and is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;
 - (c) it contains all material information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
 - (d) it does not contain any condition or qualification; and
 - (e) it is not non-responsive in terms hereof.

The Bid will be summarily rejected if it is not accompanied by valid Bid Security (ies) &, Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10

- (ii) **“Part (B) – Technical Submissions”** of a Bidder shall be taken up for evaluation for responsiveness to “Part (B) – Technical Submissions” i.e. Technical responsiveness only after the contents of the **“Part (A) - Formal Submissions”** are found to be responsive as

above. Authority reserves the right to reject the Bid of a Bidder without evaluating the “Part (B) – Technical Submissions” and without opening Financial Bid if, in its opinion, the contents of “Part (A) - Formal Submissions” are not substantially responsive to the requirements of this RFP.

(iii) **“Part (B) – Technical Submissions”** of all the Bidders who are responsive for the “Part (A) - Formal Submissions” shall be evaluated and their Bids would be considered to qualify the Technical responsiveness only if following criteria are met i.e.

- (a) it contains the Undertaking as per sub-clause (a) of clause 2.11.2.B.
- (b) the technical specifications of the equipments - Haemodialysis Machines, Reverse Osmosis Unit (RO Unit), Dialyser Reprocessor Machine and Needle Guided Ultrasound Scanner for Vascular Access have been submitted as per sub-clause (b) of clause 2.11.2.B
- (c) the technical specifications of the equipments submitted as per sub-clause (b) of clause 2.11.2.B are compliant to minimum specifications prescribed under Schedule 8 “Indicative Equipment and Consumable Specifications” of the Concessions Agreement.

(iv) For the purpose of evaluation of Technical Responsiveness to **“Part (B) – Technical Submissions”**, Technical evaluation committee constituted by the Authority will assess the Quoted Equipment on the basis of documents submitted and / or a demonstration at an installation site using the offered technology. Authority may request the Bidder(s) to make a presentation on the Technical Specification of the offered Equipments. Authority reserves the right to call for presentations from any / all of the Bidders. Technical evaluation committee would have the right to seek any clarifications where necessary before or during the technical presentation.

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

3.2.3 The evaluation of the Financial Bid submitted vide Clause 2.11.1 would be taken up only after the contents of the “Part (B) – Technical Submissions” submitted vide Clause 2.11.2 are found to be Technically Responsive.

3.2.4 The Financial Bids of the Bidders whose Bid is adjudged Technically Responsive in terms of sub-clause (iii) of Clause 3.2.1 would be opened in the presence of the Bidders’ representatives who choose to attend. The time and date of opening of Financial Bids shall be informed to the Bidders in advance.

3.2.5 The Financial Bids for both the clusters would be opened simultaneously and the quotes i.e. Discount / Premium percentage on the Indicated pricing (in percentage rounded off to 2 decimal places) offered to the Authority, would be recorded for both the Clusters separately in the order from highest to lowest as per Clause 1.2.6, along

with the name of the Bidder. The Financial Bids would be evaluated and Bidder(s) would be selected as per the process defined hereunder.

3.3 Selection of Bidder

- 3.3.1 Notwithstanding anything in this RFP, a bidder will not be awarded more than one cluster
- 3.3.2 In the event that the **Highest Bidders** (as defined in Clause 1.2.7) in both the Clusters are different, then those Bidders would be declared as the Selected Bidder(s) (the **"Selected Bidder"**) for the respective Cluster.
- 3.3.3 (a) In the event that the Highest Bidder is same in both Cluster 1 and Cluster 2 but Bids quoted by the Highest Bidder are different for both the Clusters, then the Highest Bidder would be the Selected Bidder for the Cluster in which percentage discount being offered by him is numerically higher between the two Clusters*. For the remaining Cluster the Bidder would be selected as per Clause 3.3.4 defined below.
- 3.3.3 (b) In the event that the Highest Bidder is same in both Cluster 1 and Cluster 2 and the Bids quoted by the Highest Bidder are also same for both the Clusters, then there will be draw of lots to allocate the Cluster for which the Highest Bidder would be the **Selected Bidder**. For the remaining Cluster the bidder would be selected as per Clause 3.3.4 defined below.
- 3.3.4 After the selection of the Bidder for one Cluster as per Clause 3.3.3 (a) and (b), for the remaining Cluster the Authority shall invite the Second Highest Bidder of that remaining Cluster to match the Financial Bid of the aforesaid Highest Bidder for that remaining Cluster. In case the Second Highest Bidder agrees to match the Bid / Financial Bid of the Highest Bidder for that Cluster, then the Second Highest Bidder would be the Selected Bidder for that cluster. In case the Second Highest Bidder does not agree to match the Bid, then there will be retendering for that Cluster, and Bid Security of such Highest Bidder shall also be refunded along with those of other bidders.
- 3.3.5 In the event that there are two or more Highest Bidders quoting the same Financial Bid [discount percentage or premium percentage on the Indicated pricing] (the **"Tie Bidders"**) for any given Cluster, the Authority shall first break the Tie between these Bidders for that given Cluster. The Authority shall identify the Highest Bidder and Second Highest Bidder for that Cluster by draw of lots., which shall be conducted in the presence of the Bidders who choose to attend the Financial Bid opening. This would be applicable for each Cluster separately. After the identification of Highest Bidder and Second Highest Bidder for each Cluster, the Bidder would be selected as per the Clause 3.3.2, 3.3.3 and 3.3.4 defined above.
- 3.3.6 After selection, for each Cluster, a Notice of Award (the **"NOA"**) shall be issued, in

duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the NOA, sign and return the duplicate copy of the NOA in acknowledgement thereof. In the event the duplicate copy of the NOA duly signed by the Selected Bidder is not received by the stipulated date, **the Authority** may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the NOA.

- 3.3.7 After acknowledgement of the NOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to incorporate a SPV to execute the Concession Agreement within the period prescribed in **Clause** 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

Note: Separate Concession Agreement shall be signed for each Cluster.

* or the lowest premium percentage between the two Clusters as the case may be.

3.4 Contacts during Bid Evaluation

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

4. FRAUD AND CORRUPT PRACTICES

- 4.1** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the NOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the NOA or the Concession Agreement, the Authority may reject a Bid, withdraw the NOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2** Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the NOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, 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, or after the issue of the NOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, 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 practices, as the case may be.
- 4.3** For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (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 NOA 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 Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.1.15 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the NOA 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 NOA or the Concession 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 Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only those persons who have purchased the RFP document shall be allowed to participate in the Pre-Bid Conferences. A maximum of 3 (Three) representatives of each Bidder shall be allowed to participate on in the pre-bid conference.
- 5.2 The Bidders shall attend the said conference on the date and venue at their own cost. Details of the proposed/suggested variations/deviations/additions from the bid specifications/conditions, if any, should be clearly indicated while sending queries before the pre-bid conference.
- 5.3 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process. After the pre-bid conference, no further suggestions for deviations/variations/additions will be entertained.
- 5.4 The written clarifications/corrigendum in response to the written queries, if any, shall be e-mailed to all the eligible bidders or hosted on the website of the Department of Health & Family Welfare i.e. <http://.health.delhigovt.nic.in>. The decision of the Authority in this regard will be final.
- 5.5 The pre-bid meeting shall be held on 03/06/2013, at 3:00 P.M. at the below mentioned venue:-

Conference Hall No. 3,
2nd Level, Delhi Secretariat,
I. P. Estate,
New Delhi-02

It is further suggested that the interested participants may confirm venue from, room no A – 910, 9th level, Delhi Secretariat, by visiting or calling at +91-11-23392031, on the same day, 15-20 minutes in advance to the scheduled time.

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 Bidder in order to receive clarification or further information;
 - (c) Retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases 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 with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 The Bidding Documents and RFQ are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) The Bidding Documents (comprising the RFP, Draft Concession Agreement, Schedules to the Concession Agreement etc.);
 - (b) Any Addenda/ Addendum issued to the Bidding documents (comprising the RFP, Draft Concession Agreement, Schedules to the Concession Agreement etc.)
 - (c) The RFQ.
- i.e. the Bidding Documents at (a) above shall prevail over the RFQ at (c) above.

APPENDIX I: Letter Comprising the Bid

(Refer Clause 2.1.5 and 2.14)

Dated:

To,
The Secretary
Health & Family Welfare Department,
Govt. of NCT of Delhi,
9th Level, A-Wing,
Delhi Secretariat, I. P. Estate, New Delhi.
(011) 23392017/31
pshealth@nic.in

Sub: **Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis for CLUSTER - ____**

Dear Sir,

1. With reference to your Revised RFP document dated[§], I/we, having examined the Bidding document and understood their contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the Development, Operation and Maintenance of Haemo-Dialysis Centres across institutions in Delhi on PPP Basis 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 Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid 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 authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

[§] All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

[£] If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP 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 RFP 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 Section 4 of the RFP, 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; and
 - (e) the undertakings given by us along with the Application in response to the RFQ for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
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 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/ 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 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 not disqualified in terms of the additional criterion specified by the Department of Disinvestment in their OM No. 6/4/ 2001-DD-II dated July 13, 2001.
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 guidelines referred to above, we shall intimate the Authority of the same immediately.

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

16. I/ We acknowledge and undertake that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, at all times during the tenure of the concession agreement, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership. I/We further agree and acknowledge that I/We shall hold a minimum of 75% of the Equity of the SPV at all times during the tenure of the concession agreement. In case of a consortium, the consortium members shall jointly hold equity share capital representing not less than 75% of the subscribed and paid-up equity of the Concessionaire/ SPV.
17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Notice of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall incorporate a company under the Indian Companies Act, 1956, as a SPV for signing and execution of the Concession Agreement.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/ us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the project site and condition/ situation thereof, as per Clause 2.5 of this RFP. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/ We offer a Bid Security of **Rs.10,00,000 only (Rupees Ten Lakhs only)** to the Authority in accordance with the RFP Document.
23. The Bid Security in the form of a Demand Draft/ Bank Guarantee/ Fixed Deposit Return (FDR) (strike out whichever is not applicable) is attached.
24. Bid Document Fee of Rs. 25,000 (Rupees Twenty Five Thousand only) in the form of Demand Draft dated _____ and No. _____ has been submitted on date _____ / is enclosed with the

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

- bid in the envelope marked as “Original Part (A) - Formal Submissions & Part (B) – Technical Submissions - Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP”
25. The documents accompanying the Bid, as specified in Clause 2.11 of the revised RFP, have been submitted in a separate envelope specified in Clause 2.11.
 26. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
 27. The Discount/ Premium on the Indicated Pricing (rounded off to 2 decimal places) has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and revenue streams and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
 28. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
 29. {We, the Consortium Members 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.}
 30. I/ We shall keep this offer valid for at least 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP. Further, we shall be willing to extend the offer/ submit fresh offer in case of delay in assessment or subsequent bidding as per clause 3.3
 31. I/ We hereby submit our Financial Bid and offer/ Quote a***** (in figure and words) Percentage discount/ Premium on the indicated pricing, for the entire duration of the concession, for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the Revised RFP document.

Yours faithfully,

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

Place: Name and seal of the Bidder/ Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

APPENDIX II: Bank Guarantee for Bid Security

(Refer Clauses 2.1.7 and 2.17)

B.G. No.

Dated:

1. In consideration of you, Health & Family Welfare Department, Government of National Capital Territory Of Delhi, having its office at 9th Level, A-Wing, Delhi Secretariat, I. P. Estate, New Delhi, (hereinafter referred to as the "Authority", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the **Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis** (hereinafter referred to as "the Project") pursuant to the Revised RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the Revised RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the Revised RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of **Rs. 10,00,000 only (Rupees Ten Lakhs only)** (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding **Rs. 10, 00,000 only (Rupees Ten Lakhs only)**.
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date exclusive of a claim period of 45 (forty five) days in

addition to the Validity of the Bid Security or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Notice of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

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11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. Rs. 10,00,000 only (Rupees Ten Lakhs only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX III: Power of Attorney for signing of Bid

(Refer Clause 2.1.9)

Know all men by these presents, We, (name of the firm and address of the registered office) and (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 bid for the **Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis** proposed or being developed by the Health & Family Welfare Department, Government of National Capital Territory of Delhi, (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession 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 and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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)

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

Accepted

.....

(Signature, Name, Designation 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 Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *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 Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX IV: Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.10)

Whereas the Health & Family Welfare Department, Government of National Capital Territory of Delhi (the "Authority") has invited bids from pre-qualified and short-listed parties for the **Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis** (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 Proposal and other connected documents in respect of the Project, and

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s., having our registered office at, and M/s., having our registered office at, (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s., having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney") and hereby irrevocably authorise the Attorney (with power to sub delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Notice of Award, participate in bidders' and other conferences, respond to queries, submit information/ documents, incorporate SPV, 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 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 Concession 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 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....

Request for Proposal for Development of Dialysis Centres in Delhi on PPP Basis

For
(Signature, Name & Title)

For
(Signature, Name & Title)

For
(Signature, Name & Title)

.....

(Executants)

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

Witnesses:

1.

2.

.....

(Notarised)

Accepted

.....

(Signature, Name, Designation 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 Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

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 Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.