

REQUEST FOR QUALIFICATION

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

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

GLOSSARY

| | |
|-------------------------------------|---------------------------------|
| Applicant(s) | As defined in Clause 1.2.1 |
| Application | As defined in the Disclaimer |
| Application Due Date | As defined in Clause 1.1.5 |
| Associate | As defined in Clause 2.2.8 |
| Authority | As defined in Clause 1.1.1 |
| Bids | As defined in Clause 1.2.3 |
| Bid Security | As defined in Clause 1.2.4 |
| Bidders | As defined in Clause 1.1.1 |
| Bidding Documents | As defined in Clause 1.2.3 |
| Bidding Process | As defined in Clause 1.2.1 |
| Bid Stage | As defined in Clause 1.2.1 |
| Coercive practice | As defined in Clause 4.3 (c) |
| Concessionaire | As defined in Clause 1.1.2 |
| Concession Agreement | As defined in Clause 1.1.2 |
| Conflict of Interest | As defined in Clause 2.2.1(c) |
| Consortium | As defined in Clause 2.2.1(a) |
| Corrupt practice | As defined in Clause 4.3 (a) |
| Development | As defined in Clause 1.1.2 |
| Estimated Project Cost | As defined in Clause 1.1.4 |
| Financial Capacity | As defined in Clause 2.2.2 (B) |
| Fraudulent practice | As defined in Clause 4.3 (b) |
| Jt. Bidding Agreement | As defined in Clause 2.2.5 (g) |
| Lead Member | As defined in Clause 2.2.5 (d) |
| LOA | Letter of Award |
| Member | Member of a Consortium |
| Net Worth | As defined in Clause 2.2.3 (ii) |
| PPP | Public Private Partnership |
| Project | As defined in Clause 1.1.1 |
| Qualification | As defined in Clause 1.2.1 |
| Qualification Stage | As defined in Clause 1.2.1 |
| Re. or Rs. or INR | Indian Rupee |
| Restrictive practice | As defined in Clause 4.3 (e) |
| RFP or Request for Proposals | As defined in Clause 1.2.1 |
| RFQ | As defined in the Disclaimer |
| SPV | As defined in Clause 2.2.5 |
| Subject Person | As defined in Clause 2.2.1 (c) |
| Technical Capacity | As defined in Clause 2.2.2 (A) |
| Undesirable practice | As defined in Clause 4.3 (d) |

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.

Contents

| | |
|--|----|
| DISCLAIMER | 5 |
| 1. INTRODUCTION..... | 7 |
| 1.1 Background..... | 7 |
| 1.2 Brief description of Bidding Process | 8 |
| 1.3 Schedule of the Application/ Bidding Process | 10 |
| 1.4 Sale of RFQ..... | 10 |
| 2. INSTRUCTIONS TO APPLICANTS..... | 11 |
| 2.1 Scope of Application | 11 |
| 2.2 Eligibility of Applicants..... | 11 |
| 2.3 Change in composition of the Consortium | 17 |
| 2.4 Number of Applications and costs thereof..... | 18 |
| 2.5 Site visit and verification of information | 18 |
| 2.6 Acknowledgement by Applicant..... | 19 |
| 2.7 Right to accept or reject any or all Applications/ Bids | 19 |
| 2.8 Contents of the RFQ | 20 |
| 2.9 Clarifications | 20 |
| 2.10 Amendment of RFQ | 21 |
| 2.11 Language..... | 21 |
| 2.12 Format and signing of Application..... | 22 |
| 2.13 Sealing and Marking of Applications | 22 |
| 2.14 Application Due Date..... | 24 |
| 2.15 Late Applications | 24 |
| 2.16 Modifications/ substitution/ withdrawal of Applications | 24 |
| 2.17 Opening and Evaluation of Applications | 24 |
| 2.18 Confidentiality | 25 |
| 2.19 Tests of responsiveness | 26 |

| | | |
|------|--|----|
| 2.20 | Clarifications (including additional information requirement) | 27 |
| 2.21 | Short-listing and notification | 27 |
| 2.22 | Submission of Bids | 27 |
| 2.23 | Proprietary data | 27 |
| 2.24 | Correspondence with the Applicant | 28 |
| 3. | CRITERIA FOR EVALUATION | 29 |
| 4. | FRAUD AND CORRUPT PRACTICES | 30 |
| 5. | PRE-APPLICATION CONFERENCE | 32 |
| 6. | MISCELLANEOUS | 33 |
| | APPENDIX I - Letter Comprising the Application for Pre-Qualification | 34 |
| | ANNEX-I - Details of Applicant | 37 |
| | ANNEX-II - Technical Capacity of the Applicant | 39 |
| | ANNEX-III - Financial Capacity of the Applicant | 40 |
| | ANNEX-IV - Statement of Legal Capacity | 41 |
| | ANNEX -V- Guidelines of the Department of Disinvestment | 42 |
| | APPENDIX II - Power of Attorney for signing of Application | 44 |
| | APPENDIX III - Power of Attorney for Lead Member of Consortium | 46 |
| | APPENDIX IV - Joint Bidding Agreement | 49 |
| | APPENDIX V - Project Information Memorandum (Indicative only) | 55 |
| | APPENDIX VI - Project Appreciation Note | 60 |

DISCLAIMER

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

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

Information provided in this RFQ to the Applicant(s) is on a wide range of matters, some of which 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 RFQ or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

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

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

RFQ.

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

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

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

1. INTRODUCTION

1.1 Background

- 1.1.1 The Department of Health and Family Welfare under the Government of NCT of Delhi proposes to provide dialysis facilities at few of its hospitals. The key objective is to provide access to high quality Haemo-Dialysis under PPP mode at low pricing to the entire populace of Delhi while providing free of charge services to poor and other identified patients.

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 dialysis facilities (the “**Project**”) on Public-Private Partnership (the “**PPP**”) model. The Project comprises of setting up of Haemo-Dialysis facilities at the hospitals identified by the Authority for which concession would be granted to the selected Bidder for Development-transfer back of the Haemo-Dialysis facilities. Brief description of the particulars of the hospitals and project facility requirements are provided in the Project Information Memorandum in Appendix V.

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

- 1.1.2 The selected Bidder (the “**Concessionaire**”) shall be responsible for Development (Where “**Development**” means financing, design, build, equip, operate, maintain and manage dialysis centres in hospitals identified by the Department of Health & Family Welfare (DoHFW), Authority) and transfer of these dialysis centres under and in accordance with the provisions of a concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents to be issued to the short-listed Applicants in the Bid Stage.
- 1.1.3 The scope of work will broadly include developing dialysis centres entailing financing, designing, building, equipping, operating, maintaining and managing such facilities thereof.
- 1.1.4 The assessment of Project costs will have to be made by the Bidders.
- 1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with

such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”).

1.2 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 Bidders for award of the identified Haemo-Dialysis centres envisaged under the Project. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). At the end of this stage, the Authority expects to announce a short-list of all suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).
- 1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the Authority shall be invited to submit their Bids for the Project. The Applicants are advised to visit the sites and familiarise themselves with the Project. The Application shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of application (the “**Application Due Date**”).
- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the “**Bids**”) for the Project in accordance with the RFP and other documents to be provided by the Authority (collectively the “**Bidding Documents**”). An appropriate procedure shall be prescribed by the Authority for bidding and evaluation of the bids.
- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security, the amount of which shall be specified at the Bid stage (the “**Bid Security**”), refundable not later than bid validity period from the Bid Due Date, except in the case of the rank 1 & rank 2 bidders whose Bid Security shall be retained till the selected Bidder 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 acceptable to the Authority and in such event, the validity period of the bank guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be rejected if it is not accompanied by the Bid Security.
- 1.2.5 Applicants and 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 Applications / Bids for award of the Project.

- 1.2.6 As part of the Bidding Documents, the Authority will provide a draft Concession Agreement and other information relevant to the Project available with it.
- 1.2.7 Bids will be invited in the second stage as per the conditions which shall be specified in the Bidding documents. The concession period shall be pre-determined, and will be indicated in the draft Concession Agreement forming part of the Bidding Documents.
- 1.2.8 The Concessionaire shall be entitled to levy and charge a pre-determined user fee, as per the provisions of the same described in the Bidding Documents during the Bid Stage.
- 1.2.9 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.
- 1.2.10 Any queries or request for additional information/ queries concerning this RFQ shall be submitted in writing via post and/or e-mail to the Authority with a copy to the Transaction Advisors as specified 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; osdpsh@gmail.com

AND

Vaibhav Goel

Feedback Infra Private Limited

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15th Floor, Tower 9B,

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Board : +91 124 416 9100 Extn.219

Direct : +91 124 4629219

Email : vaibhav.goel@feedbackinfra.com

The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information:

**RFQ for Development, Operation and Maintenance of Dialysis Centres in
government hospitals in Delhi on PPP Basis"**

1.3 Schedule of the Application/ Bidding Process

The Authority will endeavour to adhere to the following schedule¹:

| | Event Description | Time | Date |
|----|---|-------------|----------------------------|
| 1. | Last date for receiving queries | 5 p.m. | 6 th Jan, 2014 |
| 2. | Pre-Application Conference | 3 p.m. | 7 th Jan, 2014 |
| 3. | Authority response to queries latest by | 5 p.m. | 14 th Jan, 2014 |
| 4. | Application Due Date | 3 p.m. | 21 st Jan, 2014 |

1.4 Sale of RFQ

The RFQ shall be available for sale from the office of the Authority as mentioned in clause 1.2.10, at a cost of **Rs. 10,000** payable by means of DD (Demand Draft) in the name of “**Director Health Services, GNCTD**”, payable at New Delhi.

Alternatively, the RFQ can be downloaded from the website of Department of Health & Family Welfare i.e. <http://health.delhigovt.nic.in>

A DD (Demand Draft) for Rs. 10,000 in the name of “**Director Health Services, GNCTD**”, payable at New Delhi shall accompany the downloaded Application as per the procedure outlined in Clause 2.13.

¹ If any of above dates become public holiday then addendum would be issued on Department's website <http://health.delhigovt.nic.in> for revised dates

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

- 2.1.1 The Authority seeks to receive Applications for Qualification in order to short-list experienced and capable Applicants for the Bid Stage.
- 2.1.2 Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

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

(a) The Applicant for pre-qualification may be a single entity or a combination of maximum of 2 (Two) entities (the “**Consortium**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.

(b) An Applicant may be

- i. a single business entity under the Companies Act 1956 or an incorporated entity under equivalent acts of the parent country (in case of foreign entities)
or
- ii. an organization registered under the Societies Registration Act 1860 or any relevant Act of a State or Union Territory in India
or
- iii. a Public Trust registered under the Indian Trusts Act 1882 or any other equivalent act of a state or union territory in India
or
- iv. a Charitable Company registered under Section 25 of the Companies Act, 1956
or
- v. a partnership firm under the Indian Partnership Act 1932
or
- vi. any combination of (i),(ii),(iii),(iv) or (v) with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.5 below.

- (c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (a) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (b) subject always to sub-clause (a) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (b) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
 - (ii) a constituent of such Applicant is also a constituent of another Applicant; or
 - (iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
 - (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (v) such Applicant, or any Associate thereof has a relationship with another

Applicant, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or

- (vi) such Applicant, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

(d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFQ. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation:

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

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following conditions of eligibility:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant, during the last 2 years prior to the Application Due Date should have:

Category 1 (Dialysis Operators, Hospitals, Hospital Chains)

- (i) Operated & managed dialysis facilities, having at least 20 Haemo-dialysis machines. Only those centres/units having more than 10 Haemo-Dialysis machines / beds at least at one location shall be considered for arriving at eligibility of 20 machines.
- (ii) The above experience could be demonstrated by a single entity or the lead member (i.e. technical member) of the Consortium. (There can be Maximum of Two (2) members in Consortium)
- (iii) The facility should have been operational Haemo-dialysis facility for at least 2 years prior to the submission date/ Application Due Date.

Category 2 (Equipment Manufacturers or their Indian Subsidiary)

- (i) Should be a manufacturer of Haemo-dialysis machines and should have installed at least 100 Haemo-dialysis machines in India during the last 2 years prior to the Application Due Date.
- (ii) Further such entity should be able to demonstrate presence in installing and servicing dialysis equipments in India during the last 2 years prior to the submission date/ Application Due Date
- (iii) The above experience could be demonstrated by a single entity or the lead member (i.e. technical member fulfilling technical criteria) of the Consortium. (There can be Maximum of Two (2) members in Consortium)

(B) Financial Capacity:

For demonstrating Financial Capacity (the “**Financial Capacity**”):

- (i) In case of Category 1 (Dialysis Operators, Hospitals, Hospital Chains):
 - a. The Applicant shall have a minimum Net Worth of Rs. 5,00,00,000 (Rupees Five Crores only) at the close of the preceding financial year i.e. 2012-13 or as applicable.
 - b. The net-worth of the consortium shall be evaluated for eligibility purpose. (Maximum 2 members in Consortium)
- (ii) In case of Category 2 (Equipment Manufacturers or their Indian Subsidiary):
 - a. The Applicant shall have a minimum Net Worth of Rs. 5,00,00,000 (Rupees Five Crores only) at the close of the preceding financial year i.e. 2012-13 or as applicable.

2.2.2.1 In case of a Consortium, the financial capability of only those Members, having an equity share of at least 26% (twenty six percent) would be taken for consideration.

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

- (i) Certificate(s) from its statutory auditors² stating the payments received during the past 2 years in respect of the experience specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), he should further support his claim for the share in work done for that particular job/ contract by producing a certificate

² In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.3 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

from its statutory auditor or the client; and

- (ii) certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3 (ii). For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

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

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

- (a) Number of members in a consortium shall not exceed 2 (two);
- (b) subject to the provisions of clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (d) members of the Consortium shall nominate the technical member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- (e) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (f) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;

- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that the members, whose technical experience and net worth will be evaluated for the purposes of this RFQ, shall subscribe to hold 26% (twenty six percent) or more of the paid up and subscribed equity of the SPV at any time during the Concession Period.;
 - (v) members of the Consortium undertake that they shall collectively hold at least 75% (seventy five per cent) of the subscribed and paid up equity of the SPV at all times; and
 - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project in accordance with the Concession Agreement; and
- (h) except as provided under this RFQ and subsequently in the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

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

2.2.7 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, should not have been held for failure in performance on any contract, by an arbitral

or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be.

- 2.2.8 In evaluating the Financial Capacity of the Applicant/ Consortium Members under Clauses 2.2.2 and 2.2.3, the Net Worth of their respective Associates would also be eligible hereunder.

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

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

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexure is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;

- 2.2.10 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification for the immediate preceding financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.3 Change in composition of the Consortium

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

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

- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date or as defined in RFP during Bid Stage ;
- (b) the Lead Member continues to be the Lead Member of the Consortium;
- (c) the substitute is at least equal, in terms of Financial Capacity, 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
- (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.

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

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

2.4 Number of Applications and costs thereof

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

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

2.5 Site visit and verification of information

Applicants are encouraged to submit their respective Applications after visiting the site(s) and ascertaining for themselves the site conditions, location, surroundings, catchment area, catchment population, nearby government healthcare facilities, other institutions, private healthcare facilities, presence of other dialysis facilities and any other matter considered relevant by them.

2.6 Acknowledgement by Applicant

- 2.6.1 It shall be deemed that by submitting the Application, the Applicant has:
- (a) made a complete and careful examination of the RFQ;
 - (b) received all relevant information requested from the Authority;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above; and
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

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

- 2.7.1 Notwithstanding anything contained in this RFQ, the Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite fresh Bids.
- 2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:
- (a) at any time, a material misrepresentation is made or uncovered, or
 - (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Application.

If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected.

- 2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant liable to be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to

the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFQ, the Bidding Documents, the Concession Agreement or under applicable law.

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

B. DOCUMENTS

2.8 Contents of the RFQ

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

Invitation for Qualification

- | | |
|------------|----------------------------|
| Section 1. | Introduction |
| Section 2. | Instructions to Applicants |
| Section 3. | Criteria for Evaluation |
| Section 4. | Fraud & Corrupt Practices |
| Section 5. | Pre Application Conference |
| Section 6. | Miscellaneous |

Appendices

- | | |
|------|---|
| I. | Letter comprising the Application |
| II. | Power of Attorney for signing of Application |
| III. | Power of Attorney for Lead Member of Consortium |
| IV. | Joint Bidding Agreement for Consortium |
| V. | Project Information Memorandum |
| VI. | Project Appreciation Note |

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority or the Transaction Advisors in writing and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date specified for the same in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the

appropriate queries within the period specified therein. The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications. The response to the queries/clarifications would be hosted on the website of the Authority.

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

2.9.3 All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFQ. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFQ

2.10.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda. It is further clarified that the configuration and the responsibilities, terms and condition of the project may be changed by the authority and the applicants shall honour the same.

2.10.2 Any Addendum / clarifications (as per clause 2.9) thus issued will be made available and can be downloaded from the website of the Health & Family Welfare Department (<http://health.delhigovt.nic.in>)

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

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

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

2.12 Format and signing of Application

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

2.13 Sealing and Marking of Applications

- 2.13.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant shall seal the original and the copies of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope, which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.
- 2.13.2 Each envelope shall contain:
- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
 - (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
 - (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;

- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (v) copy of
 - (a) Memorandum and Articles of Association, if the Applicant is a body corporate,
 - (b) Partnership Deed, if the Applicant is partnership firm
 - (c) Memorandum of Association and Rules and Regulations, if the Applicant is a society
 - (d) Trust Deed if the Applicant/Consortium Member is registered as a trust
- (vi) copies of Applicant's duly audited balance sheet and profit & loss account for the preceding year
- (vii) Company Profile giving information about the Applicant, and
- (ix) Certificate of Incorporation, wherever applicable;
- (x) Project Appreciation Note as per Appendix – VI
- (xi) Demand Draft (DD) for Rs. 10,000 in case RFQ is downloaded from the website <http://health.delhigovt.nic.in>

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification:

Development of Dialysis Centres in Delhi government hospitals on PPP Basis”

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

- 2.13.3 Each of the envelopes shall be addressed to following address and dropped in drop box at same address

| | |
|-----------------|--|
| ATTN. OF: | Secretary |
| ADDRESS: | 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 ; osdpsh@gmail.com |

- 2.13.4 If the envelopes are not sealed and marked as instructed above, the Authority assumes no

responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

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

2.14 Application Due Date

2.14.1 Applications should be submitted before /on the Application Due Date as specified under clause 1.3, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ.

2.14.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

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

2.16 Modifications/ substitution/ withdrawal of Applications

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

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

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

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

2.17.1 The Authority or its authorised personnel shall open the Applications as specified under clause 1.3 on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.

- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Authority or its authorised personnel will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be as per the terms of the RFQ. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the same experience from evaluation of the Applicant.
- 2.17.8 In the event that an Applicant claims credit for an experience, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from evaluation of Technical Capacity. Where any information is found to be patently false or amounting to a material representation, the Authority reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

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

any legal process.

2.19 Tests of responsiveness

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

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed bound and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.4, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.5 (d);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors³ for each Eligible experience .
- (h) it contains an attested copy of the receipt for payment of Rs. 10,000 (Rupees ten thousand only) to Authority towards the cost of the RFQ document; Demand Draft (DD) in case RFQ is downloaded from the website <http://health.delhigovt.nic.in>
- (i) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.5(g);
- (j) it does not contain any condition or qualification;

2.19.2 The Authority reserves the right to reject any Application which is substantially non-responsive and no request for alteration, modification, substitution or withdrawal shall

³ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ

be entertained by the Authority in respect of such Application.

2.20 Clarifications (including additional information requirement)

2.20.1 To facilitate transparent, fair and unbiased evaluation and further to clarify / verify the claims / submissions made by the Applicants, the Authority may, at its sole discretion, seek clarifications / supplemental information / documents (historical documents existing in firms' record / public domain before application due date) from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

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

E. QUALIFICATION AND BIDDING

2.21 Short-listing and notification

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

2.22 Submission of Bids

The Bidders are required to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project.

2.23 Proprietary data

All documents and other information supplied by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants are to treat all information as strictly confidential and shall not use it for any

purpose other than for preparation and submission of their Application. The Authority will not return any Application or any information provided along therewith.

2.24 Correspondence with the Applicant

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

3. CRITERIA FOR EVALUATION

3.1. Details of Experience

- 3.1.1. The Applicant should furnish the details of Eligible Experience for the last 2 financial years immediately preceding the Application Due Date.
- 3.1.2. The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.1.3. The Applicant should furnish the required information and evidence in support of its claim of Technical Capacity.

3.2. Financial information for purposes of evaluation

- 3.2.1. The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last financial year, preceding the year in which the Application is made.
- 3.2.2. In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for the year preceding the year for which the Audited Annual Report is not being provided. Submission of such reports would be done before the application due date.
- 3.2.3. The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B) and 2.2.3 (ii), and provide details as per format at Annex-III of Appendix-I.

However, it is clarified that the shortlisted Applicants (Bidders) shall have to establish their continued eligibility (based on the thresholds defined in RFQ) at the Bid Stage (Stage II) or at any stage required by the Authority, by submitting the specified documents for the latest completed financial year and a certificate from Statutory Auditor certifying that the Bidder continues to meet the qualifying criteria as specified in RFQ clause no. 2.2.2 (B) and 2.2.3 (ii).

Suitable provisions regarding above, shall be provided in the RFP document in Bid Stage.

3.3. Short-listing of Applicants

- 3.3.1. The credentials of Applicants shall be evaluated to test their eligibility as per the terms and conditions in this RFQ.
- 3.3.2. The Applicants meeting the eligibility criteria shall be short-listed for submission of Bids.

4. FRAUD AND CORRUPT PRACTICES

- 4.1** The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the bidding process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2** Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3** For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the 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 sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. A maximum of two representatives of each Applicant shall be allowed to participate.
- 5.2 During the course of Pre-Application conference, the Applicants shall 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.

The written clarifications / corrigendum in response to the written queries, if any, shall be hosted on the website of the Department of Health & Family Welfare i.e. <http://health.delhigovt.nic.in>.

- 5.3 The pre-application meeting shall be held on 7th Jan, 2013, at 3:00 P.M. at the below mentioned venue:-
- Conference Hall,
6th Level, Delhi Secretariat,
I. P. Estate,
New Delhi-110002

It is further suggested that the interested participants may confirm venue from room no 910, 9th level, A wing, Delhi Secretariat, 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 New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX I - Letter Comprising the Application for Pre-Qualification
(Refer Clause 2.13.2)

Dated:

To,
The Principal Secretary,
Government of NCT of Delhi,
New Delhi.

Sub: Application for pre-qualification for Development, Operation and Maintenance of
Dialysis Centres across institutions in Delhi on PPP Basis

Dear Sir,

With reference to your RFQ document dated⁴, I/we, having examined the RFQ document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid Project. The Application is unconditional and unqualified.

1. I/ We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre- qualification of the Applicants, and we certify that all information provided in the Application and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
2. This statement is made for the express purpose of qualifying as a Bidder for the development, operation and maintenance of the aforesaid Project.
3. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
4. I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/ We certify that in the last three years, we/any Consortium Member or our/their Associate have not been blacklisted on any contract, by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be
6. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority.

⁴ All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant

- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.
8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy (ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ document and are/ is qualified to submit an Application.
9. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
10. 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.
11. 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.
12. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
13. [I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the

process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFQ at Annex-V of Appendix I thereof.]

14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ; we shall intimate the Authority of the same immediately.
15. The Statement of Legal Capacity as per format provided at Annex-IV in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.
16. I/ We understand that the selected Bidder shall incorporate a Company under the Indian Companies Act, 1956 prior to execution of the Concession Agreement.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
18. I/ We agree and undertake to abide by all the terms and conditions of the RFQ document.
19. I/ We certify that in terms of the RFQ, my/our Net worth is Rs. (Rs. in words).
20. I/We certify that we have paid Rs 10,000 as the cost of RFQ document vide Demand Draft no. _____.
21. [We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.]⁵

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

Yours faithfully,

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

Place: Name and seal of the Applicant/ Lead Member

⁵ Omit if the Applicant is not a Consortium;

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary

ANNEX-I - Details of Applicant

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

| Sl. No. | Name of Member | Role {Refer Clause 2.2.5(e)} | Percentage of equity in the Consortium {Refer Clauses 2.2.5(a), (d) & (g)} |
|---------|----------------|------------------------------------|--|
| 1. | | | |
| 2. | | | |

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

Name of Applicant/ member of Consortium:

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

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

ANNEX-II - Technical Capacity of the Applicant

(Refer to Clause 2.2.2(A) of the RFQ)

CATEGORY 1: Operated & managed dialysis facilities, having at least 20 Haemo-dialysis machines. Only those centres/units having more than 10 Haemo - Dialysis machines/ beds at one location shall be considered for arriving at eligibility of 20 machines. The facility should have been operational with the above mentioned modalities for at least 2 years prior to the submission date/ Application Due Date.

| S.No. | Machines owned and operated (Model & Serial No.) | Date of installation & Commissioning | Location and Address |
|--------|--|--------------------------------------|----------------------|
| | | | |
| Site 1 | | | |
| Site 2 | | | |
| Site N | | | |

Note:

- In support of the above experience, Applicant should provide certificate(s) from its statutory auditor stating the above experience.
- In addition to above, the applicant is also required to provide sale/purchase invoices or lease agreements or any valid documentary proof in case of imported equipments, installation report(s) and valid AMC/ CMC agreements (if applicable) / Warranties for the above-mentioned equipment
- The above experience could be demonstrated by a single entity or the lead member/ technical member of the Consortium. (Maximum 2 members in Consortium)

CATEGORY 2: Manufacturer of dialysis machines or their Indian subsidiary and should have installed at least 100 Haemo-Dialysis machines in India during the last 2 years prior to the submission date/ Application Due Date.

| S.No. | Number of Equipments Installed (Model & Serial No.) | Date of Installation | Location and Address |
|--------|---|----------------------|----------------------|
| Site 1 | | | |
| Site 2 | | | |
| Site N | | | |

Note:

- In support of the above particulars, Applicant should provide certificate(s) from its statutory auditor clearly stating the above information.
- In addition to above, the applicant is also required to provide sale/purchase invoice or lease agreements, installation report(s).
- The applicant is required to produce and attach evidence of its sales cum maintenance office/ centre in Delhi/ NCR or a nearby centre in North India.

ANNEX-III - Financial Capacity of the Applicant

(Refer to Clauses 2.2.2(B), 2.2.3 (ii) and 3.2 of the RFQ)

(In Rs. crore)

| S.No. | Net Worth ^{\$} | |
|-----------|-------------------------|---------|
| | 2012-13 | 2011-12 |
| Member 1 | | |
| Member 2* | | |

Note :

^{\$} The Applicant should provide details of its own Financial Capability or of an Associate specified in Clause 2.2.8.

*For consortium only

Instructions

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for financial year preceding the Application Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
3. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.5 (g) of the RFQ document.
4. The applicant shall also provide the name and address of the Bankers to the Applicant.
5. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (ii) of the RFQ document.

ANNEX-IV - Statement of Legal Capacity

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

Ref. Date:

To,
The Principal Secretary,
Government of NCT of Delhi,
New Delhi

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFQ document.

We have agreed that (insert member's name) will act as the Lead Member of our consortium.*

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

Thanking you,

Yours faithfully,
(Signature, name and designation of the authorised signatory) For
and on behalf of.....

**Please strike out whichever is not applicable.*

ANNEX -V- Guidelines of the Department of Disinvestment

(Refer Appendix I (13))

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

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

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

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

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX II - Power of Attorney for signing of Application

(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at , who is presently employed with us/ the Lead Member of our Consortium and holding the position of , as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the Project of Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis proposed or being developed by the Department of Health & Family Welfare, Government of NCT of Delhi (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the 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 lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

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

For
..... (Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

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

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

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

APPENDIX III - Power of Attorney for Lead Member of Consortium

(Refer Clause 2.2.4)

Whereas the Department of Health & Family Welfare, Government of NCT of Delhi (“the Authority”) has invited applications from interested parties for the Project of 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 Qualification document (RFQ), Request for Proposal (RFP) and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at, M/s. (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/ contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre- qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the 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 lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

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

For (Signature)

..... (Name & Title)

For (Signature)

..... (Name & Title)

Witnesses:

1.

2.

..... (Executants)

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

Notes:

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

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

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

APPENDIX IV - Joint Bidding Agreement

(Refer Clause 2.13.2)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956}⁶ and having its registered office at (hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956}⁷ and having its registered office at (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS,

- (A) DEPARTMENT OF HEALTH & FAMILY WELFARE, GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI, represented by its Principal Secretary and having its principal offices at Govt. of NCT of Delhi, 9th Level, A-Wing, Delhi Sectt, I. P. Estate, New Delhi (hereinafter referred to as the **"Authority"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the **Applications**) by its Request for Qualification No. dated(the **"RFQ"**) for pre-qualification and short-listing of bidders for

⁶ This should be modified by the Applicant according to its legal status namely a Society, Trust, Section-25 company or a partnership.

⁷ Refer to above footnote

development and operation/ maintenance of Development of Dialysis Centres across GNCTD hospitals in Delhi on PPP Basis (the “**Project**”) through public private partnership.

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

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

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

4. Role of the Parties

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

below:

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

5. Joint and Several Liability

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

6. Shareholding in the SPV

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:
First Party:
Second Party:
- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times during the Concession Period, be held by the First Part.
- 6.3 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times during the Concession Period, be held by the Second Part.
- 6.4 The Parties undertake that they shall collectively hold at least 75% (Seventy five per cent) of the subscribed and paid up equity share capital of the SPV at all times during the Concession Period.

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

7. Representation of the Parties

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

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

prevent such Party from fulfilling its obligations under this Agreement;

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

8. Termination

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

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)

(Name)

(Signature)

(Name)

(Designation)
(Address)

(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

In the presence of:

1.

2.

Notes:

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

APPENDIX V - Project Information Memorandum (Indicative only)

End Stage Renal Disease (ESRD, the complete, or almost complete failure of the kidneys to function) affects around 175 people/million⁸ population every year.

Delhi is the healthcare hub for a geographically large and populated catchment area comprising of Punjab, Haryana, UP, Bihar, J&K, MP and Rajasthan. Key healthcare institutions in the state receive a significant share of its patients from these catchment areas increasing pressure on limited health infrastructure. Given the state's current population of ~18 million and an ESRD incidence rate of 175/million, it is estimated that ~3,100 patients are diagnosed with ESRD every year. Given that typical life expectancy of patients on dialysis is 2.5 years, this means ~ 7,700 patients at any point of time need dialysis services. After taking into consideration increase in requirement due to patient inflow from outside the state for dialysis services and reduction due to patients on Peritoneal Dialysis etc, it is estimated that the state needs to provide for Haemo-dialysis for ~8,000 patients at any point of time. This would mean a requirement of over 1,200⁹ dialysis machines to meet the demand.

Delhi currently has an estimated 500-600 (appx) machines to cater to this demand. In order to bridge the gap, the Authority has already setting-up 75 Haemo-Dialysis machines at three hospitals in Delhi on PPP basis. The Authority further plans to setup minimum 75 or more Haemo-Dialysis machines on a PPP basis as under..

Identification of Hospitals and Configuration of Dialysis Centres

Minimum 75 or more (depending on requirements as per demand above) dialysis are proposed to be developed and operated through PPP. Delhi government hospitals identified for the development for dialysis services through PPP and the proposed configuration is detailed below-

Table 1: Identified hospitals and configuration

| | |
|---------------------------------------|--|
| Janakpuri Super – Specialty Hospital. | <ul style="list-style-type: none">• Location: Janakpuri (West Delhi)• Proposed Size of centre: upto 30 machines |
| Pt. Madan Mohan Malviya Hospital | <ul style="list-style-type: none">• Location: Malviya Nagar (South Delhi)• Proposed size of centre: upto 10 machines |
| Bhagwan Mahavir Hospital | <ul style="list-style-type: none">• Location: Pitampura (North West Delhi)• Proposed Size of centre: Upto 35 machines |

⁸ Estimate based on research reports, interactions with nephrologists including key opinion leaders and suppliers (best estimate in absence of a large-scale country level population based study)

⁹ At current patient treatment frequency of ~ 10 sessions/month and machine utilization levels of ~ 2.7 sessions/machine/day

Note:

1. The final list of identified hospitals and number of machines would be detailed out during the RFP stage; prior notice regarding the same would be shared with the potential private sector participants
2. Specifications of the abovementioned modalities would be described in detail in RFP document.
3. The hospitals may be grouped in clusters and bid out separately

1. Project- Salient Features

Salient features of the Project are as follows:

1.1 Objectives:

- a. To provide quality, dialysis facilities in various government hospitals services at low cost.
- b. To provide free of charge services to most vulnerable poor and identified patients, which would be reimbursed by government at pre-determined rates.
- c. To provide high quality dialysis facilities at affordable services for the rest of the population

1.2 Duration of the concession:

The tentative duration of the concession agreement will be seven years plus six months for setting up the facilities.

1.3 Scope of services under the proposed project

- a) Private partner would setup advanced haemo-dialysis facilities at the hospitals identified under the project under consideration.
- b) Private partner to provide affordable services at pre-determined rates. The exact tariff structure to be laid out in the RFP document. Entire services across the identified hospitals to be managed by the private partner concessionaire (detailed scope to be laid out in the RFP document).
- c) A 24-hour call centre/ helpline for managing and coordinating the services to be provided by the private partner (detailed scope to be laid out in the RFP document).
- d) Private partner to operate and maintain these centers as per the requirement specifications to be laid out in the RFP document.

1.4 Investment and Ownership

- a) DoHFW requires the private partner to procure the dialysis machines as per the required specifications (to be laid out in the RFP document) and RO system, emergency equipment, software, furniture, furnishings, transport vehicles etc. required for operation at the dialysis centers.
- b) DoHFW will provide appropriate space to the private partner for operation of the dialysis centers. The space can be made available at any of the institutions owned/ operated/ managed by GNCTD. DoHFW would also facilitate obtaining applicable permits/ approvals as and when required for setting up the dialysis centers
- c) The dialysis facility/ center would be designed, developed, operated and maintained by the private partner and all requirements, including refurbishing, renovation, equipment AMC/ CMC etc. would be managed by the private Partner. However, DoHFW may require private partner to adhere to the basic guidelines as detailed out in the RFP document.
- d) GNCTD management committee representative/ monitoring committee members shall be deployed at the centers from time to time to assess smooth functioning of the facility.
- e) Capital and O&M costs of the project shall be recovered through user charges to be collected from the patients who seek dialysis services. (Details to be laid out in the RFP document)
- f) Ownership of database and therefore the Intellectual property rights for the database generated shall remain with the DoHFW.
- g) DoHFW retains the right to procure at its own cost any software for its hospitals or even the dialysis center /facility and may require the private partner to integrate the software.
- h) DoHFW also retains the right to require the private partner to adhere to accreditation by any national / international agency (details to be laid out in the RFP document). GNCTD is working on a project to get all of its facilities accredited under NABH. It may require the private partners to comply and get accredited with any relevant accreditation standards by NABH or any other international agency within the first two years of commencement of operations.

1.5 Indicative roles in the project:

1.5.1 DoHFW, GNCTD

- a) Provide required land and/or built-up area for the dialysis center/ facility in the

- hospital premises of the identified hospitals, wherever possible.
- b) Provide parking space for stationing transportation vehicles, other vehicles to the extent possible.
 - c) DoHFW to approve the guidelines and standard operating procedures that would be submitted by the private partner.
 - d) Assist in provisions of basic utilities at dialysis centers like access to water, electricity and waste disposal facility. However the cost of electricity, water and waste disposal would be borne by the private players.
 - e) Lay down the user charges for various procedure categories and procedure for revision of the same (to be laid out in the RFP document and added as a section of the concession agreement)
 - f) Conduct regular monitoring and evaluation of the dialysis services based on quantifiable indicators and reports received from the private partner.
 - g) Government Nephrologist in monitoring committee will be empowered to decide on beneficiaries under BPL category for free of charge services.

1.5.2 Concessionaire (for setting up and operations of dialysis facility)

- a) Procurement of the required dialysis equipment as per the required specifications (to be laid out in the RFP document).
- b) Commission the equipment and operationalize the facility after ensuring that the same fulfill the guidelines laid down by the DoHFW and securing the approval thereof.
- c) Recruit and train the human resources required to run the dialysis services. GNCTD will assess the competence/ qualifications of the key personnel (details to be laid out in the RFP document/ concession agreement).
- d) Ensure that the equipment is maintained properly and such equipment are insured adequately and regularly (details to be laid out in the RFP document/ concession agreement).
- e) Ensure that the dialysis services are as per the standards and regulations laid down by the DoHFW/ GNCTD in addition to compliance with the service level agreements, service specifications (to be laid out in the RFP document and concession agreements)
- f) Ensure compliance with all the inspection requests by the Steering Committee / Monitoring Committee as constituted by GNCTD or any agents of the same thereof.
- g) Ensure proper monitoring of the services and submit periodic management reports as per the requirement of GNCTD of Delhi (to be laid out in the RFP document and appended in the concession agreement).
- h) Indemnify the Government against any losses, claims or damages arising out of operation of dialysis equipment at the center(s) operated by the private partner.

- i) Ensure the process of integration of the dialysis services/ centers with identified hospitals, owned and operated by GNCTD
- j) Overall maintenance of Dialysis centre would be handled by concessionaire.

1.6 Monitoring:

- a) An appropriate entity / committee would be appointed /designated by DoHFW, GNCTD, to monitor the procurement, project commissioning, eligibility under BPL category and operations during the entire tenure of the concession period.
- b) Monitoring and evaluation of the activities will be done through the Management Information System and various reporting formats developed for the purpose.
- c) The private partner will be required to send in the performance reports at a pre-determined timeline throughout the concession period as per the requirements (to be laid out in the RFP document or as appended in the concession agreement).
- d) The monitoring and evaluation of performance will be done based on predetermined quantifiable indicators. Indicators would be developed by DoHFW, GNCTD (to be laid out in the RFP document or as appended in the concession agreement).

APPENDIX VI - Project Appreciation Note

The Project Appreciation Note must cover the following:

- a. Suggestion on user charges for paying patients. Tentatively pegged in year 0 to the CGHS pricing prevalent (November 2006 for Delhi). Independent review mechanism thereafter.
- b. Assessment of Project components
 - i. Equipment requirement – comments
 - ii. Space requirement for each equipment and each centre
 - iii. RO plant requirement – capacity for each centre
 - iv. Software requirement for the centre – billing, Administration or entire ERP
- c. Projections of Project Capital Costs
 - i. Equipment costs for the equipment mentioned below
 - a. Haemo-Dialysis machine (to insert type/specification)
 - ii. Facility setup costs (all components separately)
 - a. Built-up area cost, furnishing cost
 - b. HVAC cost, electricity
 - c. Generator/ power backup costs
 - d. Any Other costs
- d. Projected operational Expenses
 - i. Manpower costs
 - ii. Consumables (separate estimate of dialyser and tubing cost)
 - iii. AMC/ CMC costs
 - iv. Repair & maintenance costs
 - v. Fuel costs
 - vi. Other costs
- e. Manpower requirement (quantum and qualification) and deployment plan, so as to be able to run up to 4 Haemo-Dialysis sessions per machine per day
 - i. Clinical Manpower and shifts
 - ii. Technician and nurse manpower and shifts
 - iii. Administrative/ support manpower and shifts
 - iv. Manpower training needs and plan
- f. Anticipation of issues and possible solutions
- g. Risks, mitigation and contingency plans
- h. Any other suggestions