

**Department of Cultural Affairs, Archives, Archaeology & Museums,  
Government of Punjab**

*Acting Through*

**Punjab Heritage and Tourism Promotion Board**

invites

Request for Proposal (RFP)

for

**Operations & Maintenance of Baba Banda Singh Bahadur  
Memorial, Chapar Chiri in Punjab on Public Private Partnership  
Mode**

**SECTION – I  
INSTRUCTIONS TO BIDDERS**

Last Updated: 14<sup>th</sup> Sept 2020

(This document is meant for exclusive purposes of submitting the proposal against this RFP document and shall not be transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued)

## DISCLAIMER

*The information contained in this Request for Proposal (RFP) document or subsequently provided to Bidders, whether verbally or in documentary form by or on behalf of Punjab Heritage and Tourism Promotion Board (PHTPB) (Acting on behalf of Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab) or any of its employees or advisors, is provided to Bidders on the terms and conditions set out in this RFP document and any other terms and conditions subject to which such information is provided.*

*The RFP contains brief information about the project for the operations & maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab on PPP mode (herein referred to as “Project”) by a private participant being the selected Bidder / Operator selected through a competitive bidding process. The purpose of this RFP is to provide the Bidder(s) with information that may be useful to them in the formulation of their bids (including Financial Bids) (the “Bids” or “Proposal”) pursuant for this RFP and for no other purpose.*

*This RFP document is not a contract and is not an offer or invitation to any other party. The purpose of this RFP document is to provide the Bidders with information to assist the formulation of their Proposal submission. This RFP document does not purport to contain all the information each Bidder may require. This RFP document may not be appropriate for all persons, and it is not possible for the Authority and their employees or advisors to consider the investment objectives, financial situation and particular needs of each Bidder. Certain Bidders may have a better knowledge of the proposed Project than others. Each recipient must conduct its own analysis of the information contained in this RFP document or to correct any inaccuracies therein that may appear in this RFP document and is advised to carry out its own investigation into the proposed Project, the legislative and regulatory regimes which applies thereto and by and all matters pertinent to the proposed Project and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any contract or arrangement relating to the proposed Project.*

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

*The possession or use of this RFP in any manner contrary to any applicable law is expressly prohibited. The Bidders shall inform themselves concerning, and shall observe, any applicable legal requirements. The information does not purport to be comprehensive or to have been independently verified. Nothing in this RFP shall be construed as legal, financial or tax advice.*

*The Authority, its employees, advisors or consultants make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any*

*assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage. Neither the information in this RFP nor any other written or oral information in relation to the Bidding Process for implementing the Project or otherwise is intended to form the basis of or the inducement for any investment activity or any decision to enter into any contract or arrangement in relation to the Project and should not be relied as such.*

*The Authority and also its advisors/ consultants/ representatives/ employees accept no liability of any nature whether resulting from negligence or otherwise, howsoever caused, arising from reliance of any Bidder upon the statements contained in this RFP.*

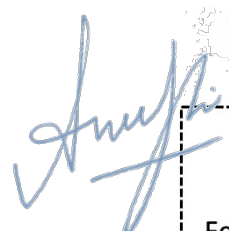
*The Authority and also its advisors may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, data, statements, assessment or assumptions contained in this RFP or change the evaluation or eligibility criteria at any time or annul the entire Bidding Process.*

*The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid including costs relating to submission and maintenance of various fees, undertakings and guarantees required pursuant to this RFP and also any cost relating to updating, modifying or re-submitting its Bid pursuant to the RFP being updated, supplemented or amended by the Authority. All such costs and expenses will be incurred and borne by the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process (hereinafter defined).*

*The Bidders are prohibited from any form of collusion or arrangement in an attempt to influence the selection and award process of the Bid. Giving or offering of any gift, bribe or inducement or any attempt to any such act on behalf of the Bidder towards any officer/employee/ advisor/ representative of the Authority or to any other person in a position to influence the decision of the Authority for showing any favour in relation to this RFP or any other contract, shall render the Bidder to such liability/penalty as the Authority may deem proper, including but not limited to rejection of the Bid of the Bidder and forfeiture of its Bid Security.*

*This RFP document and the information contained herein are confidential and for use only by the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient's professional advisor). In the event that the recipient does not continue with the involvement in the Project in accordance with RFP, the information contained in the RFP document shall not be divulged to any other party. The information contained in the RFP document must be kept confidential.*

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**LEGALLY VETTED**  
14<sup>th</sup> Sept '20  
Feedback Infra (P) Limited

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## Project Summary

S.No.	Parameters	Details
1.	Project Title	Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri, Punjab on Public Private Partnership Mode
2.	Project Area	Approximately 20 acres <i>(Refer Schedule 1 of the Draft O&amp;M Agreement for details)</i>
3.	Authority	Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab, acting through Punjab Heritage and Tourism Promotion Board (PHTPB)
4.	Operator's Investment Obligations	Shall have two components: <ul style="list-style-type: none"> <li>• Mandatory Development</li> <li>• Optional Development</li> </ul> <p><i>The Operator shall necessarily undertake the Mandatory Development as detailed in the Draft O&amp;M Agreement.</i></p> <p><i>The Operator may undertake the Optional Development at its own discretion.</i></p>
5.	Estimated Project Cost	Estimated Project Cost (aggregate for Mandatory Development and Optional Development) – INR 2.54 Crore (Rupees Two Crore and Fifty-Four Lakh) <ul style="list-style-type: none"> <li>• Estimated Project Cost (Mandatory Development) – INR 1.6 Crore (Rupees One Crore and Sixty Lakh)</li> <li>• Estimated Project Cost (Optional Development) - INR 94 Lakhs (Rupees Ninety-Four Lakh)</li> </ul>
6.	PPP Format	Operate, Maintain & Transfer (OMT)
7.	Term of the Agreement (Agreement Period)	15 Years from the Appointed Date.
8.	Consortium	Maximum 3 members
9.	Appointed Date	The date of Issuance of Certificate of Compliance after fulfilment of Conditions Precedent by both the Parties.
10.	Bid Variable (Annual Concession Fee OR Viability Gap Funding)	Either of: Annual Concession Fee (ACF): INR ....., for the first year, as payable by the Operator in favor of the Authority. OR Viability Gap Funding (VGF): INR ....., for the first year, as payable by the Authority in favor of the Operator.  ACF, if applicable, shall be escalated at 5% p.a. for subsequent years. VGF, if applicable, shall not be subject to any escalations.
11.	Financial Covenants	Non-Refundable Bid Document Fee: INR 5,000 (Rupees Five Thousand Only) Bid Security: INR 1.6 Lakh (Rupees One Lakh Sixty Thousand Only) <i>Payable Online on E-proc website.</i> <i>(Refer Clause 3.21 for details)</i> Performance Security: <ul style="list-style-type: none"> <li>• Implementation Performance Security: Higher of</li> </ul>

Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab on Public Private Partnership Mode

S.No.	Parameters	Details
		<ul style="list-style-type: none"> <li>○ INR 8 Lakh (Rupees Eight Lakhs Only); AND</li> <li>○ Amount equivalent to 50% of first year ACF / VGF, as applicable.</li> <li>● Operations Performance Security: Higher of               <ul style="list-style-type: none"> <li>○ INR 20 Lakh (Rupees Twenty Lakhs Only); AND</li> <li>○ Amount equivalent to first year ACF / VGF, as applicable.</li> </ul> </li> </ul> <p>Value of Performance Security shall be escalated by 15% every 3 years.</p> <p>Performance Security can be submitted in form of BG / DD / FDR with lien marked to the Authority. <i>(Refer Article 9 of the Draft O&amp;M Agreement for details)</i></p>
		<p>Additional Performance Security<sup>1</sup>: INR 8 lakh (Rupees Eight Lakh only). <i>(Refer Article 9 of the Draft O&amp;M Agreement for details)</i></p>
12.	Bid Submission Process	<p>Bidder shall submit its bid:</p> <ul style="list-style-type: none"> <li>● Online, on <a href="https://eproc.punjab.gov.in/nicgep/app">https://eproc.punjab.gov.in/nicgep/app</a>; AND</li> <li>● Physical Copy</li> </ul> <p>Refer to Clause 3.14 for details.</p>

### Important Date

S. No	Milestone	Dates
1	Last date for receiving queries	Monday, 21 <sup>st</sup> Sept 2020
2	Pre-Bid Conference	Monday, 21 <sup>st</sup> Sept 2020
3	<b>Proposal Due Date / Bid Due Date (Online)</b>	<b>Wednesday, 7<sup>th</sup> Oct 2020 at 15:00 hrs</b>
4	<b>Proposal Due Date / Bid Due Date (Physical)</b>	<b>Wednesday, 7<sup>th</sup> Oct 2020 at 15:00 hrs</b>

<sup>1</sup> To be submitted only in case the Bidder doesn't itself satisfy the Technical Capacity and has relied on credentials of an Operating Partner in this regard.



## 1 Invitation for Proposal

### 1.1 Introduction

- 1.1.1 The Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab **acting through Punjab Heritage and Tourism Promotion Board (PHTPB)** (the **“Authority”**) intends to implement operations & maintenance of the Baba Banda Singh Bahadur Memorial, Chapar Chiri, near Mohali in Punjab, on Public Private Partnership (PPP) mode.
- 1.1.2 Punjab Infrastructure Development Authority (PIDB), the nodal agency of the Government of Punjab for undertaking PPP projects, has been entrusted to carry out a transparent competitive bid process for selection of a private sector player on behalf of the Authority.
- 1.1.3 This Request for Proposal (RFP) is for the selection of a private sector player for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab (the **“Project”**) on Operate, Maintain and Transfer (OMT) basis for an Agreement Period of 15 (Fifteen) years from the Appointed Date. Project details have been provided in the Schedules to Draft O&M Agreement.
- 1.1.4 A “Single Stage Two Envelope” bidding process is to be followed for determining the Selected Bidder:
- A. Step 1 – Qualification and Shortlisting**  
The Bidders are required to meet the Minimum Eligibility Criteria, as set out in Section 3.2.4 under this RFP document, to qualify for the Project (**“Technically Qualified”** Bidder).
- B. Step 2 – Financial Proposal Evaluation and Selection**  
The Financial Proposal of only the Technically Qualified Bidders would be opened and evaluated. The Technically Qualified bidder quoting the highest ACF shall be selected as the Selected Bidder. In case no Technically Qualified Bidder quotes ACF, the Technically Qualified Bidder quoting the lowest VGF shall be declared as the Selected Bidder.
- 1.1.5 The Bid Document for the Project shall comprise of the ITB, Draft O&M Agreement, Schedules to Draft O&M Agreement and any subsequent addendum or corrigendum issued by the Authority thereof. This ITB contains information about the Project, bid evaluation process, proposal submission details and qualification requirements. All proposals would be evaluated in terms of financial and technical capability of the Bidder.
- 1.1.6 Interested Bidders may download the Bid Documents from <https://eproc.punjab.gov.in/nicgep/app>, after payment of non-refundable fee of INR 5,000/- (Rupees Five Thousand only) online. Bids unaccompanied with the RFP Fee or a receipt of payment thereof shall be liable to rejection by the Authority / PIDB.
- 1.1.7 The Proposals shall be submitted both in Physical Copy and Online. The Physical copy of Proposals must be in the manner specified in the RFP document at the address given below.

**Managing Director**  
**Punjab Infrastructure Development Board (PIDB)**  
**33-35, SCO, Sector 34A Rd, Sub City Center**  
**Sector 34, Chandigarh – 160022**

- 1.1.8 The Authority shall not be responsible for any delay in receiving the Proposals and reserves the right to reject / accept any or all Proposals without assigning any reason thereof.
- 1.1.9 The Selected Bidder shall, prior to execution of the Agreement (the “**Agreement**”), incorporate as per the terms of this RFP, an appropriate Special Purpose Vehicle (the “**SPV**”) under the Companies Act, 2013 to execute the agreement and implement the Project and such SPV (the “**Operator**”) shall be responsible for operation and maintenance of the Project under and in accordance with the provisions of the Agreement to be entered into between the Operator and the Authority.
- 1.1.10 A Contract (the “**Agreement**”) will be drawn up between the “**Authority**” and the “**Operator**” on PPP basis.

## 1.2 Schedule of Bidding Process

Authority shall endeavour to adhere to the following schedule:

Sr. No.	Event Description	Date
1	Issue of Bid Documents	Monday, 14 <sup>th</sup> September 2020
2	Last date for receiving queries	Monday, 21 <sup>st</sup> Sept 2020
3	Pre-Bid Conference	Monday, 21 <sup>st</sup> Sept 2020
4	<b>Proposal / Bid Due Date (Online)</b>	<b>Wednesday, 7<sup>th</sup> Oct 2020 at 15:00 hrs</b>
5	<b>Proposal / Bid Due Date (Physical)</b>	<b>Wednesday, 7<sup>th</sup> Oct 2020 at 15:00 hrs</b>
6	Opening of Technical Proposal	<b>Friday, 9<sup>th</sup> Oct 2020 at 15:00 hrs</b>
7	Announcement of Technically Qualified Bidders	Within 20 days of Bid Due Date
8	Opening of Financial Proposals	To be announced
9	Letter of Award (LOA)	To be announced
10	Acceptance of LOA	Within 7 days of Award
11	Signing of O&M Agreement between Authority & Selected Bidder	Within 60 days of issue of LOA
12	Validity of Bids	180 days from the Bid Due Date

## 1.3 Pre-Bid Conference

- 1.3.1 The date, time and venue of the Pre-Bid Conference shall be:
- Date: Monday, 21<sup>st</sup> Sept 2020
  - Time: To be announced
  - Venue: To be announced
- 1.3.2 The minutes of the pre-bid conference incorporating the clarifications shall be uploaded online only and shall form part of this RFP document. The queries raised after Pre-Bid Conference shall not be entertained.

#### **1.4 Authority's Authorized Representative**

- 1.4.1 The Bidders may, during the Bid process, contact the Authority's Authorized Representative as below, for seeking any clarification. However, it may be noted, that only those clarifications, sought as per procedure laid out in Clause 3.10, shall be answered to by the Authority. The Authority, or any of its representatives, shall not be responsible for any other verbal clarifications / communications. The Authority may be contacted, for clarifications, at following address through post.

**Managing Director, PIDB  
SCO 33-35,  
Sector 34-A, Chandigarh  
Tel: +91 172 2665 410 | 438 1111  
mdpibd@gmail.com**

- 1.4.2 All queries / clarification requests sent by the Bidder, by e-mail, should also be marked to the Transaction Advisor at the following address:

**Feedback Infra (P) Limited  
Contact: +91-1244629201 / +91 98119 95073  
E-mail: [infra.advisory@feedbackinfra.com](mailto:infra.advisory@feedbackinfra.com)**

## 2 Project

### 2.1 Introduction

- 2.1.1 The Authority requests proposals for operations & maintenance of the Baba Banda Singh Bahadur Memorial, Chapar Chiri, near Mohali in Punjab, on Public Private Partnership (PPP) mode.
- 2.1.2 Baba Banda Singh Bahadur Memorial, dedicated to Sikh warrior Baba Banda Singh Bahadur, was constructed in 2011. It is located ~5 km from Mohali on the Kharar-Banur road. Fateh Burj, located inside the Memorial, is the tallest minar in India.

#### **Salient Features of the Memorial:**

- Land area – Approximately 20 acres
- Essential features:
  - 328 ft tall Fateh Burj
  - ~100-seat auditorium
  - ~120 seat food-court
  - ~1,200 seat Open Air Theatre
  - ~5 acre Open Area for hosting fairs / events
  - Entrance pavilion with a visual art gallery
  - Water body
- Currently being managed by Greater Mohali Area Development Authority (GMADA).

### 2.2 Scope of Work

- 2.2.1 Scope of work of the Operator is as follows:
- i. Procure all required permits/clearances for operations and maintenance of the Memorial.
  - ii. Prepare and submit a Concept Report, Maintenance Manual and O&M Programme for Authority's approval.
  - iii. Operations and maintenance of all Project Facilities within the Memorial.
  - iv. Undertake and manage all kinds of operational expenses like consumables, salaries, water, electricity, repair and maintenance, etc. during the Agreement Period.
  - v. Undertake the repair and maintenance work of all the Project Facilities and bear all the cost related to the same.
  - vi. Levy and collect revenues from users, subject to limitations imposed in the O&M Agreement.
  - vii. Engage in permitted commercial activities, subject to limitations imposed in the O&M Agreement.
  - viii. Ensure efficient management, operations and maintenance of the Project Facilities at high standards commensurate with aims and objectives of the Authority in operating the Project.
  - ix. Ensure safety and security of the Project Facilities and users / visitors at all times.
  - x. Undertake proper arrangements for crowd management during the peak hours and ensure that this does not disturb anyone in the project neighbourhood.
  - xi. Create, maintain and update on regular basis presence on social media platforms to

- provide a glimpse of activities at the Memorial.
- xii. Create a website for the Memorial project, showing historical significance, event calendar, layout plan, visitor FAQs, location & driving directions, contact details etc.
  - xiii. Maintain a grievance book at the Tourist Information Centre kiosks for registering issues or problems faced by visitors and their suggestions.
  - xiv. Prepare and publish an Event Calendar for various Events, happenings and activities at the Memorial.
  - xv. Provide best-in-class services and experiences at the project to enhance overall visitor experience.
  - xvi. Ensure proper facilities for accessibility by differently abled visitors.
  - xvii. Dispose garbage from the Project at the safest place outside the project premises in an environment friendly manner and as per the local laws.
  - xviii. Make adequate provisions and measures for fire protection and fire-fighting arrangement, as may be prescribed by the competent authorities.
  - xix. Ensure that all the buildings, furniture and equipment are insured against all theft, natural calamity, accidents etc.
  - xx. Pay all statutory and non-statutory dues including, but not limited to power & water expenses, expenses for internal upkeep, running expenses etc.
  - xxi. Keep the entire Project operational and in good-to-use condition at all times.
  - xxii. Maintain a digital record of all visitors to the Project.
  - xxiii. Maintain specialized items like electrical equipment, sound system, projection system, light & sound show equipment, lifts, air-conditioning system etc., if applicable, through Original Equipment Manufacturers only.
  - xxiv. Supervise, monitor and control the activities of contractors, sub-contractors, their employees and agents, as may be necessary.
  - xxv. Take all reasonable precautions for the prevention of accidents on or about the project site and provide all reasonable assistance and emergency medical aid to accident victims.
  - xxvi. Provide adequate number of personnel, qualified and experienced, for the purpose of operating and maintaining the facilities.

**Note:** For detailed scope of work, please refer to the Draft O&M Agreement.

### 2.3 Operator's Investment Obligations

The Operator shall be required to make certain interventions on the Memorial:

- Mandatory Development – To be necessarily undertaken by the Operator within 12 (twelve) months from Appointed Date.
- Optional Development – May be undertaken by the Operator, at its discretion. However, if undertaken, such Optional Development which the Operator decides to undertake, shall be completed within 30 (thirty) months from the Appointed Date.

**Note:** Please refer to the Schedule 5 of the Draft O&M Agreement for details on Operator Interventions.

## 2.4 Key Terms

Following terms shall be applicable pursuant to the O&M Rights to be granted to the Operator:

- a) Land and asset ownership shall always vest with Authority. Any property tax to be payable by the Authority.
- b) Operator shall not levy any entry ticket / entry fee from the visitors.
- c) Operator shall not be allowed to mortgage / create charge on the Project land or on any existing structure as on the Appointed Date.
- d) Operator shall not be allowed to sub-license any part of the Memorial, whether extant or to be created during the course of the Agreement, except as explicitly allowed in the commercial rights granted under this Agreement.
- e) Operator shall not change the name or branding of the Memorial.
- f) Operator shall not do or permit any activities in the Memorial which may hamper religious and historical significance of the Memorial.
- g) Operator shall not be allowed to use the facility for any other purpose, except those related to the memorial and as explicitly outlined in the O&M Agreement.
- h) Operator shall be allowed to undertake permitted commercial activities, subject to restrictions imposed in the Draft O&M Agreement, as below:
  - i. Operations of food court and souvenir shop.
  - ii. Collect User Fee for use of OAT and/or Auditorium for third-party events.
  - iii. Host events within the Memorial.
  - iv. Collect User Fee for use of visitor audio guides.
  - v. Third-party advertising.
  - vi. Parking fee.
- i) Operator shall not modify or demolish any existing buildings or structures
- j) Operator shall not erect / install any structures within Zone 1 to 6 of the Memorial. Temporary structures may be erected in Zone 7, as per provisions in Clause H, Schedule 3 of O&M Agreement.
- k) Operator shall not serve and/or allow liquor or non-vegetarian food within the Memorial.

**Note:** For detailed terms and conditions pertaining to the above, please refer to the Draft O&M Agreement.

## 2.5 Commercial Consideration

2.5.1 The Bidder shall quote, as bid variable, the Annual Concession Fee (ACF) payable to the Authority or the Viability Gap Funding (VGF) sought from the Authority, as the case may be, in the first year of the O&M Agreement.

2.5.2 ACF, if applicable, shall be due and payable every year in advance for the duration of the Agreement.

- The first ACF shall be due and payable on the 1<sup>st</sup> anniversary of Appointed Date.
- ACF for the subsequent years, shall be payable on subsequent anniversaries of Appointed Date and shall be escalated at 5% p.a. on a compounded basis.
- Last ACF shall be payable on the 14<sup>th</sup> anniversary of Appointed Date.

2.5.3 VGF, if applicable, shall be due and payable every year for the duration of the Agreement, with

the first VGF payment due on 1st anniversary of the Appointed Date. The VGF, for subsequent years, shall be payable on the subsequent anniversaries of the Appointed Date. The last VGF shall be payable on the 14<sup>th</sup> anniversary of the Appointed Date. The VGF shall not be subject to any escalations.

For more details, please refer to the Agreement.

### 3 Instructions to Bidders

#### A. General

##### 3.1 General Terms of Bidding

- 3.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium/JV shall not be entitled to submit another Bid either individually or as a member of any Consortium/JV, as the case may be.
- 3.1.2 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Draft O&M Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the O&M Agreement.
- 3.1.3 The Bidder shall deposit a Bid Security of INR 1.6 Lakh (Rupees One Lakh Sixty Thousand Only) payable online on e-proc website.
- 3.1.4 The Bidder should submit a Power of Attorney as per the format at Format D, authorizing the signatory of the Bid to commit the Bidder.
- 3.1.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 3.1.6 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 3.1.7 The document, including this RFP and all attached documents, provided by the Authority are and shall remain or becomes the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 3.1 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 3.1.8 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
  - i. the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 25% (twenty five per cent) of the paid up and subscribed share capital of such Bidder,



Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 25% (twenty 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 sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 3.1.8, indirect shareholding held through one or more intermediate persons shall be computed as follows:

- a. where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
- b. subject always to sub-clause(a) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-Clause (b) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- ii. a constituent of such Bidder is also a constituent of another Bidder; or
- iii. such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- iv. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- v. such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
- vi. such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

**Explanation:**

In case a Bidder is a Consortium/JV, then the term Bidder as used in this Clause 3.1.8, shall include each Member of such Consortium/JV.

In the event of disqualification of a Bidder due to Conflict of Interest found during the Bidding Process, the Authority shall be entitled to forfeit and appropriate the Bid Security.

In the event such Conflict of Interest is discovered after signing of the O&M Agreement with the Selected Bidder, the Authority has a right to initiate termination proceedings under Operator Default. The provisions of the Draft O&M Agreement shall apply.

If at any stage, the Bidder is found indulged in misrepresentation, he shall be liable under Section 90/420 of Indian Penal Code, along with other contractual penalties as mentioned in

the Draft O&M Agreement.

### 3.2 Qualification / Shortlisting of Bidders

- 3.2.1 The Bidder could be an independent legal entity such as Registered Partnership Firms (under the Indian Partnership Act, 1932) or Registered Company (under Companies Act, 1956 or 2013) or registered Societies (under Indian Societies Act, 1860) or registered Private Trusts (under Indian Trusts Act, 1882) or registered Public Trusts (under relevant laws of India). Bidder could also be a Consortium/JV of independent entities, subject to a maximum of 3 Consortium/JV Members.
- 3.2.2 The Bidder should be legally competent to enter into a contract as per prevailing Indian Laws.
- 3.2.3 Only those bidders meeting Minimum Eligibility Criteria as per Clause 3.2.4 and other provisions of Section-I: ITB of the RFP Document will be considered “Technically Qualified” for the Project.
- 3.2.4 **Minimum Eligibility Criteria**  
A Bidder should satisfy both **A. Technical Capacity** and **B. Financial Capacity**, as per this Clause 3.2.4, in order to meet and satisfy the Minimum Eligibility Criteria.

#### A. Technical Capacity<sup>2</sup>

For demonstrating Technical Capacity, the Bidder shall be required to satisfy either of **Technical Capacity 1 OR Technical Capacity 2**, as below:

##### **A1. Technical Capacity - 1**

The Bidder shall have, over the last 3 (three) financial years:

- i. Paid for, or received payments for, meeting O&M Expenses of Eligible Projects;  
OR
- ii. Collected and appropriated revenues from operations and maintenance of Eligible Projects.  
such that the sum total of above amounts is at least INR 3.2 crore (Rupees Three Crore and Twenty Lakhs), across a maximum of 6 (six) Eligible Projects.

##### **Where:**

Eligible Project shall include:

- i. Historical monuments, owned by any government agency, and spread across a land area of minimum 1 acre.
- ii. Museums, owned by any government agency, and with a built-up area of minimum 20,000 sqft.
- iii. Public parks and/or gardens and/or zoo and /or lakes rejuvenation projects spread across a land area of minimum 5 acres.
- iv. Area based development like mixed-use townships, educational institutions etc. with a land area of minimum 5 acres.

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<sup>2</sup> A sample computation of Technical Capacity is provided in the Format E

- v. Clubs, community centres, hotel, resort, convention centres, retail mall / arcade / shopping centre, commercial office with a built-up area of at least 50,000 sqft.

**and Where:**

'O&M Expense' means expenses incurred by the entity claiming the experience on operations, maintenance and/or facilities management of the Eligible Project, including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under any contract in connection with or incidental to O&M. However, O&M Expense shall not include debt repayments, interests and investments on any other purpose not incidental to the O&M.

**OR**

**A2. Technical Capacity – 2**

The Bidder shall have experience of undertaking hotels / resorts / F&B operations such that the average annual revenues received from one or multiple such hotels / resorts is at least INR 3.2 Crore (Rupees Three Crore and Twenty Lakhs) over last 3 financial years.

**Format for Submission**

The Bidder should furnish details of technical experience as per Format E.

**Evidence to support claim**

The following documentary evidence must be submitted along with the Proposal, to support above claim:

- a) Proof of the Eligible Project
  - a. A certificate from appropriate project owning authorities / clients certifying project details, clearly showing project size, scope of the Bidder, as the case may be, and completion date. OR
  - b. In case of owned projects, certificate from statutory auditor certifying project size and status. OR
  - c. In case of Eligible Projects awarded under PPP mode: Relevant pages of the work order / letter of award / contract / agreement. Relevant pages shall mean the Preamble of such contract / agreement detailing the parties, section containing information on project details like size, cost, and the last pages detailing the signatories.
- b) Proof of O&M Expense Paid or Received
  - a. Certificate from Statutory Auditor with details of various heads of O&M Expenses and their respective amounts for each of the 3 preceding FYs. OR
  - b. Certificate from the project owning authority / client certifying the amounts under each head of O&M Expense incurred for each of the 3 preceding FYs.

**Note 1:**

In the event that the Bidder doesn't itself satisfy the **Technical Capacity 1 or Technical Capacity 2** above, it shall:

- i. Furnish an undertaking, as per Format E, that it would meet **the Technical Capacity 1 or Technical Capacity 2** through an Operating Partner, if selected to undertake the Project. It would further undertake to adhere to the following conditions.
- ii. If selected to undertake the Project, it shall enter into an O&M Contract, before COD, with an Operating Partner, whose credentials fulfil **the Technical Capacity 1 or Technical Capacity 2**.
- iii. Ensure that the Operating Partner is operating the Memorial at all times till the 5<sup>th</sup> anniversary of COD ("**Operator Lock-in Period**")
- iv. Submit an Additional Performance Security, in the form of a Bank Guarantee, for an amount of INR 8 Lakhs<sup>3</sup>, as a pre-condition to signing of the Agreement for fulfilment of its obligations as mentioned in Points (ii) and (iii) above. The Operator shall be obligated to keep the Additional Performance Security revalidated, renewed, extended and continuously in force and effect up to a period of six months beyond the expiry of the Operator Lock-in Period.

**Note 2:**

The following terms shall be applicable:

- a) The Authority shall monitor whether the Operating Partner is operating the Memorial at all times during the Operator Lock-in Period, failing which, the Authority shall issue a Show Cause Notice, giving 30 day to the Operator to respond and satisfy the Authority. In the event the Operator fails to provide satisfactory response, the Authority shall be entitled to forfeit and appropriate the Additional Performance Security.
- b) In case of forfeiture of the original Additional Performance Security by the Authority due to non-conformance as mentioned in point a) above, the Operator shall be required to **a)** replenish and renew the Additional Performance Security, to its original amount, within 15 (fifteen) days of forfeiture of the original Additional Performance Security and **b)** Ensure compliance to the undertaking as mentioned in Note 1 in Clause 3.2.4 above. Failure to replenish the Additional Performance Security within 15 days shall trigger Operator's event of default which shall eventually lead to initiation of termination proceedings by the Authority, as per O&M Agreement.
- c) The renewed and replenished Additional Performance Security shall be kept valid and in force and effect up to a period of six months beyond the expiry of the Operator Lock-in Period.
- d) Upon such renewal and replenishment of Additional Performance Security by the Operator as per point b) & c) above, the Authority shall grant to the Operator, additional time of 90 (ninety) days from the date the forfeiture of original Additional Performance Security [as per point b) above] to re-board the

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<sup>3</sup> Equivalent to 5% of Cost of Mandatory Development

previous Operating Partner or on-board another Replacement Operating Partner (which also meets the criteria defined in Technical Capacity of the RFP), failing which the Authority shall take the following measures:

- i. Declare Operator event of default,
- ii. Issue Notice of Breach to the Operator, leading to Termination, after the expiry of Cure Period as mentioned in the O&M Agreement; and
- iii. Forfeit the replenished Additional Performance Security.

## **B. Financial Capacity**

For the purpose of Financial Capacity, the Bidder shall satisfy either of the following:

- a. **Net Worth:** Minimum net worth of INR 80 lakhs (Rupees Eighty Lakhs) as on 31<sup>st</sup> March 2019.  
**OR**
- b. **Turnover:** Minimum average turnover of INR 88 Lakhs (Rupees Eighty-Eight Lakhs) over the last 3 (three) financial years preceding the Bid Due Date.

For the purposes of this RFP, 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.

### **Evidence to support claim**

The Bidders should support Financial Capacity with audited annual accounts, including, audited Balance Sheet and Profit and Loss Account of the Bidder.

### **Format for Submission**

The Bidder should submit Financial Capacity as per Format E.

### **NOTE:**

- I. The Bidder may showcase credentials of their own or their Associate(s) for the purpose of satisfying Minimum Eligibility Criteria as per Clause 3.2.4. For the purpose of this RFP, ‘**Associate**’ shall mean, in relation to the Bidder, an entity that controls, is controlled by, or is under the common control with such Bidder. The expression “control” means, with respect to an entity, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such entity. It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder shall be provided to demonstrate that a person is an Associate of the Bidder.
- II. In case of a Consortium/JV, Technical Capacity of Consortium/JV shall be calculated as a sum of Technical Capacities of individual Consortium/JV Members who hold at least 26% equity stake for a period of 5 years from Appointed Date.
- III. In case of a Consortium/JV, Financial Capacity of Consortium/JV shall be calculated as a sum of Financial Capacities of individual Consortium/JV Members who hold at least 26% equity stake for a period of 5 years from Appointed Date.

### **3.3 Proposal submitted by a Consortium/JV**

- 3.3.1 There can be a maximum of 3 (three) members in a Consortium/JV.
- 3.3.2 The aggregate Technical Capacities and Financial Capacities of only those Consortium/JV members, who have and shall continue to have an equity shareholding of at least 26% (twenty six percent) each in the SPV for a period of 5 (five) years from Appointed Date, shall be considered for the purpose of evaluation under Clause 3.2.4.
- 3.3.3 Any material changes in the membership of a Bidder will be rejected by the Authority. Proposals submitted by a Consortium/JV must provide a written agreement (JV / Consortium Agreement) to be signed by each member in that Consortium/JV which describes the responsibilities of each member in the Consortium/JV. One of the Consortium/JV members would be required to be nominated as Lead Member and the same shall also be mentioned in the Consortium / JV Agreement.
- 3.3.4 Members of the Consortium/JV shall be liable jointly and severally for the execution of the Project in accordance with the terms of the Agreement and a statement to this effect shall be included in the Consortium/JV Agreement mentioned under this section, as well as in the Proposal and in the Agreement. The Authority may require such documents / undertakings / indemnities as it may deem fit from Consortium/JV members before or at the time of issuance of Letter of Award / Signing of Agreement.
- 3.3.5 The Lead Member, nominated at the time of submission of the Proposal, shall continue to be the Lead Member for the entire Agreement Period with a minimum shareholding of 51% up till COD and minimum 26% up till 5 (five) years from COD.
- 3.3.6 The Non-Lead Member(s), nominated at the time of submission of the Proposal, whose credentials are counted for evaluation of Technical Capacity and Financial Capacity, shall hold a minimum shareholding of 26% for a period up till 5 (five) years from COD.
- 3.3.7 The representative of the Lead Member shall hold authorization in the form of Power of Attorney. The Proposal must designate one or more person(s) to represent the Bidder in its dealings with the Authority. Unless specifically advised to the contrary, Authority will assume that the person(s) designated is authorized to perform all tasks, including, but not limited to, providing information, responding to inquiries and entering into contractual commitments on behalf of the Company or the Consortium/JV as the case maybe. Any and all limitations on the Authority of the designated person(s) should be detailed in the Proposal.

### **3.4 Change in Ownership**

- 3.4.1 Subject to Clause 3.2, by submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium/JV Members who shall, until the 5th (fifth) anniversary of the Appointed Date of the Project, hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator.

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

### 3.5 Number of Bids and costs thereof

- 3.5.1 Each Bidder shall submit only 1 (One) Bid / Proposal for the Project. Violation of this shall lead to disqualification of the Bidder.
- 3.5.2 All Bidders are required to submit a detailed Proposal (the **“Proposal”** or **“Bid”**) in accordance with the guidelines set forth in this RFP Document. The cost of preparation of Proposal and related expenses shall be borne by the Bidders themselves.

### 3.6 Site visit and verification of information

- 3.6.1 The Bidders shall be deemed to have conducted a due diligence exercise with respect to all aspects of the Project, including a detailed survey of the Site, when they submit the Proposal. Interested Bidders are invited to visit and inspect the Site at their own expense. Failure to investigate fully the Site or subsurface conditions shall not be a valid ground to relieve the Bidder after the submission of its Bid/ Proposal or relieve the Bidder from any responsibility for estimating the difficulty or costs of successfully completing the Project.
- 3.6.2 It shall be deemed that by submitting a Bid, the Bidder has:
- a. Made a complete and careful examination of the Bidding Documents;
  - b. Received all relevant information requested from the Authority;
  - c. Accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in this RFP;
  - d. Satisfied itself about all matters, things and information including matters referred to in Clause 3.6 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
  - e. Acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 3.6 hereinabove shall not be a basis for any claim for compensation,

damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the O&M Agreement by the Operator;

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

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

### **3.7 Verification and Disqualification**

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

### **3.8 Right to accept or reject any or all Bids/ Bids**

3.8.1 The Authority reserves the right to reject any / all Proposals including the Lowest Proposal or withdraw the invitation of the Proposal at any stage without citing any reason. Nothing contained herein shall confer any right upon a Bidder or create any obligation / liability upon the Authority of any type whatsoever.

## **B. Documents**

### **3.9 Contents of the RFP**

3.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any addendum issued in accordance with Clause 3.11.

#### **Instruction to Bidders (ITB)**

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

#### **Appendices**

- A – Letter of Application & Interest
- B – General Information of the Bidder
- C – Affidavit
- D1 – Format for Power of Attorney for Authorized Signatory
- D2 – Format of Power of Attorney by each Member of Consortium/JV in favour of Lead Member



E– Minimum Eligibility Criteria

F– Acknowledgement Letter (to be submitted by each Member of Consortium/JV)

G – Statement of Legal Capacity

H1 – Draft Consortium Agreement

H2 – Draft JV Agreement

I – Format of Financial Proposal (indicative only – TO BE SUBMITTED ONLINE ONLY)

The draft O&M Agreement, along with Schedules, provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

### **3.10 Clarifications**

- 3.10.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ e-mail at the address provided in Clause 1.4. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.2. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be published online on the website only. The Authority will publish all the queries and its responses thereto on the website without identifying the source of queries.
- 3.10.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. 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.
- 3.10.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

### **3.11 Amendment of RFP**

- 3.11.1 At any time prior to the Bid / Proposal Due Date, Authority may for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP Document through the issuance of addendum.
- 3.11.2 Any Addendum and Corrigendum thereto, thus issued shall be part of the RFP and shall be published online only. The Authority will assume no responsibility for receipt of the Addendum and Corrigendum.
- 3.11.3 To give prospective Bidders reasonable time in which to take any Addendum and/or Corrigendum into account in preparing their bids, the Authority may, at its sole discretion, extend the Due Date.

## C. Preparation and Submission of Bid

### 3.12 Language

- 3.12.1 The Proposal and all related correspondence and documents shall be written in English language. If any supporting document attached to the Bid is in any other language, the same will be supported by its English true translation and in case of any ambiguity the translation shall prevail.
- 3.12.2 Any currency for the purpose of the Proposal / Bid shall be in form of Indian National Rupee (INR).

### 3.13 Format and signing of Bid

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

### 3.14 Sealing, Marking and Submission Proposals /Bids

The Proposals shall be submitted both as Hard Copy and Online.

#### 3.14.1 Submission of Hard Copies / Physical Copies

The Proposals shall be sealed, marked and submitted as explained below:

1. **Envelope No.1** shall be marked as “**Proposal Fee**” and shall contain:
  - a. Snapshot of online payment of Bid / Proposal Security
  - b. Snapshot of online payment of Bid Document Fee.
2. **Envelope No. 2:** containing the original documents pertaining to technical proposal shall be sealed and marked as “**Technical Proposal**” and shall contain the following –
  - a. Letter of Application and Interest (As per Format A);
  - b. General Information of the Bidder (As per Format B);
  - c. Affidavit (As per Format C);
  - d. Power of Attorney for Authorized Signatory (as per Format D1);
  - e. Power of Attorney by each Member of the Consortium/JV in favour of Lead Member (as per Format D2);
  - f. Minimum Eligibility Criteria (As per Format E);
  - g. Acknowledgement (As per Format F);
  - h. Statement of Legal Capacity (As per Format G);
  - i. Consortium Agreement (as per Format H1);
  - j. JV Agreement (as per Format H2)

- k. Relevant supporting documents (duly signed/notarized, as applicable) like:
  - i. Certificate of Registration
  - ii. Annual Reports
  - iii. Brochures
  - iv. Contract /Agreements
  - v. Client Certificates
  - vi. Audited financial statements etc.

Note:

- a. Financial Proposal shall be submitted ONLINE ONLY and not in hard copy.
- b. All the above envelopes shall be enclosed in an outer cover / envelope marked as **“Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab on Public Private Partnership Mode”**.
- c. The Outer Envelope shall be addressed to:

Managing Director  
Punjab Infrastructure Development Board (PIDB)  
33-35, SCO, Sector 34A Rd, Sub City Center  
Sector 34, Chandigarh – 160022

The Hard copies / Physical bid shall be submitted to the above address on or above the Bid Due Date (Physical) as per Clause 1.2. It is being clarified here that the information as asked from the Bidder should be in the format as provided.

If the envelope is not sealed and marked, as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the Proposal submitted. In that case, the prematurely opened Proposals will be rejected.

Any Proposal received by the Authority after the Proposal / Bid Due Date will be liable for rejection.

#### 3.14.2 Submission of Online Bids

- a) The following payments shall be made online:
  - Bid / Proposal Security payment
  - Bid Document Fee payment
- b) The following shall be submitted online:
  - Scanned copy of the original Technical Proposal
  - Financial Proposal
- c) The Bidder shall submit the above documents on-line through e-portal <https://eproc.punjab.gov.in/nicgep/app>, before 1500 hours on the Bid Due Date (online submission). Technical Bids of Bidders who fail to submit Bid in the physical form as per

Clauses 3.14.1 above shall not be liable for opening of its Online Bid and shall be straightway rejected.

**d) Process of Online Submission**

- i. Before uploading their Bid, the Bidders are advised to familiarize themselves with the uploading process as detailed out on the e-tendering portal.
- ii. For participation in the e-tendering process, the Bidders need to register themselves on e-tendering portal of the Government of Punjab i.e. <https://eproc.punjab.gov.in/nicgep/app> and get issued Digital Class 3 signatures. The Bidder may be required to submit its documents including GST Certificate, PAN Card etc. at the time of registration. This process may take some time. Hence, the bidder is advised to undertake and complete registration at least a week in advance of the bid due date.
- iii. In case the Bidder is a Consortium/JV, the Lead Member of the Consortium/JV shall register itself and submit the Bid.
- iv. On registration, they shall be provided User ID and a system generated password enabling them to download/ submit their Bid, along with Digital System Certificate (DSC). For any clarification/ difficulty regarding e-tendering process they can contact 0172-2970263 or 0172-2970284.
- v. Bids without digital signatures shall not be accepted by the Electronic tendering system.
- vi. Bids must be submitted on-line through e-portal before the specified time (to be counted as per server clock). The Bidders should endeavour to submit their bids well in advance of the due time. The Authority shall not be responsible for the failure in submission of the bid for any reason including due to poor internet connection or network congestion or malfunction of the e-portal.

**3.15 Late Bids**

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

**3.16 Modifications/ substitution/ withdrawal of Bids**

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

The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 3.14, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

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

### 3.17 Rejection of Bids

Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its sole discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

### 3.18 Validity of Bids

The Proposal shall remain valid for a period not less than 180 (one hundred and eighty) days from the Proposal Due Date (the “**Proposal Validity Period**”). The Authority reserves the right to reject any Proposal that does not meet this requirement. Proposal Validity Period shall be extended for a specified additional period at the request of the Authority to the Bidder.

A Bidder agreeing to the request will not be allowed to modify his Proposal but would be required to extend the validity of his Bid / Proposal Security for the period of extension.

The Proposal Validity Period for the Proposal / Bid submitted by the Selected Bidder shall be extended till the date of execution of the O&M Agreement.

### 3.19 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the short-listed Bidders shall not be disclosed to any person not officially concerned with the process. The Authority shall treat all information submitted as part of all Proposals confidential and shall insist that all those who have access to such material also treat it in confidence. The Authority shall not divulge any such information unless it is ordered to do so by any government authority that has the power under law to require its disclosure or due to statutory compliances.

### 3.20 Correspondence with the Bidder

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

## D. Bid / Proposal Security

### 3.21 Bid / Proposal Security

The Bid / Proposal shall be accompanied by a Bid / Proposal Security for a value of INR 1.6 Lakh (Rupees One Lakh Sixty Thousand Only) payable online on e-proc website.

Any Proposal submitted without the Bid / Proposal Security or not in the form as specified in the RFP Document shall be declared non-responsive and shall be summarily rejected.

The Authority shall not be liable to pay any interest on the Bid / Proposal Security.

The Proposal Security shall be forfeited by the Authority in the following cases:

- a) If the Bidder withdraws its Bid / Proposal after Technical Proposal opening and during the Proposal Validity Period.
- b) If the Bidder submits non-responsive Bid.
- c) In the Bidder engages in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- d) In case of a Selected Bidder, if the Bidder fails within the specified time limit, to sign and return the duplicate copy of the LOA.
- e) In case of a Selected Bidder, if the Bidder fails within the specified time limit, to sign the O&M Agreement.
- f) In case of a Selected Bidder, if the Bidder fails within the specified time limit to furnish the required Performance Security.

**Note:** Proposal Security of only H1, H2 & H3 Bidders would be retained till the O&M Agreement is signed between the Selected Bidder and the Authority. The 'Proposal Security' of other Bidders would be returned, without interest, within 60 (Sixty) day of opening of Financial Proposals.

The Proposal Security of the Selected Bidder will be retained till the later of:

- i) signing of O&M Agreement between the Selected bidder and the Authority, or
- ii) submission of Implementation Performance Security and Additional Performance Security (if applicable).

### 3.22 Performance Security

The Selected Bidder, for due and faithful performance of its obligations under the O&M Agreement, shall be required to provide "Performance Security" and "Additional Performance Security" (if applicable) as per Article 9 of the Draft O&M Agreement.

## 4 Evaluation of Bids

### 4.1 Opening and Evaluation of Bids

The received Technical Proposals shall be opened, by the tender opening committee of the Authority, in presence of the Bidders at scheduled time on the Bid Due Date, unless intimated otherwise. The date for opening of Financial Proposals shall be intimated in advance to the Technically Qualified bidders.

The Authority, reserves the right to reject any Proposal, if

- a) It is not signed, sealed and marked as stipulated in Clause3.14.
- b) The information and documents have not been submitted as requested and in the formats specified in the RFP Document.
- c) There are inconsistencies between the Proposal and the supporting documents.
- d) It does not mention the Proposal Validity Period as set out in Clause3.18.
- e) There are conditions proposed with the Technical and/or Financial Proposals.
- f) It provides the information with material deviations.

For avoidance of doubt, a material deviation or reservation is one:

- a) Which affects in any substantial way, the scope, quality, or performance of the Project, or
- b) Which limits in any substantial way, inconsistent with the RFP Document, the Authority's rights or the Bidder's obligations, or
- c) Which would affect unfairly the competitive position of other Bidders' presenting substantially responsive bids.

To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

No request for modification or withdrawal shall be entertained by the Authority in respect of such Proposals.

The evaluation will be done in 2 (two) steps as explained below:

#### **Step – I: Qualification and Shortlisting**

**Step 1A:** Proposals shall be tested for responsiveness as per Test of Responsiveness in Clause4.2.

**Step 1B:** The Proposal Security in Envelope–1 shall be checked. Proposals without Proposal Security will be rejected.

**Step 1C:** The submission(s) in Envelope–2 shall be checked. The Proposals not meeting the prescribed Technical and Financial Capacity criteria as per Clause3.2.4 will be rejected outrightly.

All Bidders passing Step–I of the evaluation will be considered as Technical Qualified Bidders

and shall be considered for the next stage.

#### **Step – 2: Financial Proposal Evaluation and Selection**

The Financial Proposals of only those Bidders who have passed Step-I shall be opened in presence of the nominees of the Authority and Bidders.

In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest ACF. In case, no bidder quotes an ACF, the Bidder quoting the lowest VGF shall be declared the Highest Bidder. The Highest Bidder shall be declared as the Selected Bidder / Successful Bidder. Financial Proposals of Bidders who do not qualify the Step-I of evaluation shall not be opened.

The Selected Bidder shall be issued Letter of Award (LOA) by PIDB, on behalf of the Authority. After issuance of the LOA in writing and acceptance of the same by the Selected Bidder within 7 (seven) days, the Selected Bidder shall enter into a O&M Agreement (draft enclosed as Section 2 to the RFP document) with the Authority, within the period prescribed in Clause 1.2, or the date as mutually agreed between the Parties to the Agreement.

#### **4.2 Tests of responsiveness**

Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive if:

- a) it is received as per the formats attached in Appendices;
- b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 1.2;
- c) it is signed, sealed, bound together in hard cover and marked as stipulated in Clause 3.14;
- d) it is submitted online as stipulated in Clause 3.14;
- e) it is accompanied by the Bid Security as specified in Clause 3.21;
- f) it is submitted as required in the RFP;
- g) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- h) it does not contain any condition or qualification; and
- i) it is not non-responsive in terms hereof.

The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

#### **4.3 Selection of Bidder**

Subject to the provisions of Clause 3.13, the Bidder whose Bid is adjudged as responsive in terms of Clause 4.2, who meets the Minimum Eligibility Criteria as per Section 3.2.4 and who is declared as the Highest Bidder as per Section 3.1.5, shall ordinarily be declared as the selected Bidder (the “Selected Bidder” or “Successful Bidder”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.



In the event that two or more Bidders quote the same amount of Bid Variable (the “Tie Bidders”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted (with prior notice) in the presence of the Tie Bidders, who are present on the day prescribed in the notice.

In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “first round of bidding”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “second round of bidding”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was better as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth Highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third Highest Bidder shall be the Selected Bidder.

In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified above, the Authority may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are Higher than the Bid of the second Highest Bidder in the first round of bidding.

After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by PIDB, on behalf of the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, PIDB or the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

After acknowledgement of the LOA as aforesaid by the Selected Bidder, the Authority shall cause the Operator to execute the O&M Agreement within the period prescribed in Clause 1.2. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the O&M Agreement.

#### **4.4 Avoidance of Contact during Bid Evaluation**

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

related to the Bids under consideration.

#### **4.5 Bids of other Bidders**

The Authority shall return the Bid Security received from the Bidders who have not qualified in Step-I of the evaluation, within 60 (sixty) days of opening of the Technical Proposal. The Proposal Security shall be returned without payment of any interest.

#### **4.6 Termination of O&M Agreement**

The Selected Bidder shall be required to comply with all provisions of the RFP at all times. Non-compliance to provisions of the O&M Agreement, including non-submission of Performance Security before signing of O&M Agreement, shall be considered as event of Selected Bidder / Operator default and result in termination of O&M Agreement and forfeiture of Bid Security thereof.

## 5 Fraud and Corrupt Practices

The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the O&M Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the O&M Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the O&M Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the O&M Agreement, or otherwise.

Without prejudice to the rights of the Authority under Clause 5 hereinabove and the rights and remedies which the Authority may have under the LOA or the O&M Agreement, or otherwise if a Bidder or Operator, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the O&M Agreement, such Bidder or Operator shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

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

- a) "Corrupt practice" means 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 O&M 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);
- b) "Fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c) "Coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- d) "Undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any

manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- e) “Restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## **6 Pre-Bid Conference**

Pre-Bid Conference of the interested Bidders shall be convened at the designated date, time and place. A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

During the course of Pre-Bid Conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the 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.

## 7 Miscellaneous

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

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

- a) Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- b) Consult with any Bidder in order to receive clarification or further information;
- c) Retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

## 8 Appendices

### A. Letter of Bid & Interest

**(To be printed on Bidder's Letter Head | To be signed and submitted by the Bidder's authorized signatory)**

To,  
Managing Director  
Punjab Infrastructure Development Board (PIDB)  
33-35, SCO, Sector 34A Rd, Sub City Center  
Sector 34, Chandigarh – 160022

**Subject: RFP for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab on Public Private Partnership Mode**

Dear Sir,

1. With reference to your RFP document dated \*\*\*\*\*, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I /We acknowledge that Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab, acting through Punjab Heritage and Tourism Promotion Board (PHTPB), hereinafter called 'the Authority' will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Operator for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Operator for the operations and maintenance of the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/We acknowledge the right of the Authority to reject our Bid without assigning any reasons or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we / any of our Consortium/JV Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project of contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/We declare that:
  - a. I/We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
  - b. I/We do not have any conflict of interest in accordance with the RFP document; and
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Section 4 of the RFP document, in respect of any tender or request for Proposal issued by or any agreement entered into with the Authority or any other public-sector enterprise or any government. Central or State;
  - d. I/We confirm that I/we are not blacklisted with any Ministry or Department of the Central Government, or by any of the State Governments / UT as on date. We further confirm that we will inform the Authority immediately in case of any change in this situation.
  - e. I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
8. I /We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
9. The Authority and its authorized representatives are hereby authorized to conduct any inquiries / investigation to verify the statements, documents and information submitted in connection with the Bid and to seek clarification from our banker regarding any financial and technical aspects. This letter of Bid will also serve as authorization to any individual or authorized representative of any institution referred to the supporting information, to provide such information deemed necessary as requested by yourselves to verify statements and information provided in the Bid or with regard to the resources, experience and competence of the Bidder.
10. I/We believe that I/we satisfy the Financial criteria and meet the requirements as specified in the RFP document.
11. I /We declare that we/any Member of the Consortium/JV, or out/its Associates are not a Member of a/any other Consortium/JV submitting a Bid for the Project.
12. I/We certify that in regard to matters other than security and integrity of the country, we/any Member of the Consortium/JV 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.
13. I/We further certify that in regard to matters relating to security and integrity of the country, we/any Member of the Consortium/JV or any of our/their Associate have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.



14. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/managers/employees.
15. I/We undertake that in case due to any change in fact or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/We acknowledge and undertake that our Consortium/JV will be selected based on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of at least 5 (five) years from Appointed Date, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the O&M Agreement in respect of Change in Ownership.
17. I/We acknowledge and agree that in the event of a change in control of Associates whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of selection under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority and PIDB may, in its sole discretion, disqualify us or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the O&M Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach of thereof and the O&M Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 2013 or shall incorporate as such prior to execution of the O&M Agreement.
19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.
20. In the event of my/our being declared as the Selected Bidder, I/we agree to enter into an O&M Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I /We have studied all the Bidding Documents carefully and also visited the Project site. We understand that except to the extent as expressly set forth in the O&M Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of O&M Rights.
22. I/We offer a Bid / Proposal Security of ..... (Rupees .....) to the Authority in accordance with the RFP Document.

23. The Bid / Proposal Security has been paid online.
24. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I /We shall have any claim or right of whatsoever nature if the Project/Agreement is not awarded to me/us or our Bid is not opened or rejected.
25. The Bid Variable has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft O&M Agreement, our own estimates of cost and demand and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
26. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
27. I/We shall keep this offer valid for 180 (one hundred and eighty) days from the Proposal / Bid Due Date specified in the RFP.
28. {We, the Consortium/JV Members agree and undertake to be jointly and severally liable for all the obligations of the Operator under the O&M Agreement till occurrence of Financial Close in accordance with the O&M Agreement.}

Authorized signatory

Date:

Name and seal of Bidder

Place:

## B. General Information of the Bidder

(To be printed on A4 paper | To be signed and submitted by the Bidder's authorized signatory)

1. Details of Bidder
  - a. Name:
  - b. Legal Status:
  - c. Country of incorporation:
  - d. Address of the corporate headquarters (if any) in India:
  - e. Year of Incorporation:
  
2. Details of individual(s) who will serve as the point of contact / communication for the Authority within the Company:
  - a. Name:
  - b. Designation:
  - c. Company:
  - d. Address:
  - e. Telephone Number and Fax Number:
  - f. E-Mail Address:
  
3. In case of Consortium/JV:
  - a. Information above (1 & 2) should be provided for all the members of the Consortium/JV.
  - b. Information regarding role of each member should be provided:

Sr. No.	Name of Member	Equity Stake	Role*
1			
2			
3.			

\* Specify whether Lead Member / Ordinary Member

Signed

(Name of the Authorised Signatory)

For and on behalf of

(Name of the Bidder)

Designation

Place:

Date:

To be enclosed:

1. Documents certifying Bidder's legal status/ Certificate of incorporation / registration (duly certified/notarized).
2. In case of a Consortium/JV, Consortium Agreement / JV Agreement (duly certified/notarized).
3. Latest brochures of the organization (duly certified/notarized, wherever possible).
4. Audited financial statements and CA certificate
5. Annual Reports

### C. Affidavit

**(To be given separately by each Consortium/JV member in case of a Consortium/JV or otherwise by the Bidder on a Stamp Paper of INR 100 | To be Notarized)**

I, \_\_\_\_\_, s/o \_\_\_\_\_, resident of \_\_\_\_\_, the \_\_\_\_\_ (insert designation) of the \_\_\_\_\_ (insert name of the Bidder), do solemnly affirm and state as follows:

1. That I am the authorised signatory of \_\_\_\_\_(insert name of Company/ Consortium/JV) (hereinafter referred to as "**Bidder / Consortium/JV Member**") and I am duly authorized by the bidder organization / Consortium/JV to swear and depose this Affidavit on behalf of the bidder organization / Consortium/JV.
2. That I have submitted information with respect to our eligibility for the Request For Proposal (RFP) for **Selection of Private Sector Player for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab** (hereinafter referred to as "**Project**") and I further state that all the said information submitted by us is accurate, true and correct and is based on our records available with us.
3. That, we hereby also authorize and request any bank, authority, person or firm to furnish any information, which may be requested by the Authority to verify our credentials / information provided by us under this tender and as may be deemed necessary by the Authority.
4. That if any point of time including the Agreement Period, in case of the Authority, requests any further / additional information regarding our Financial and / or Technical capabilities, or any other relevant information, we shall promptly and immediately make available such information accurately and correctly to the satisfaction of the Authority.
5. That, we fully acknowledge and understand that furnishing of any false or misleading information by us in our RFP shall entitle us to be disqualified from the tendering process for the said Project. The costs and risks for such disqualification shall be entirely borne by us.
6. That all the terms and conditions of the Request for Proposal (RFP) Document have been duly complied with.

#### DEPONENT

(Name, Designation and Address)

#### VERIFICATION:

I, the above-named deponent, do verify that the contents of paragraphs 1 to 6 of this affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed.

Verified at \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

#### DEPONENT

(Name, Designation and Address)

**D. (D-1): Format for Power of Attorney for Authorized Signatory**

**(To be submitted on a Stamp Paper of INR 100 | To be Notarized)**

Know all men by these presents, we/ I ..... (name and address of the registered office) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Bid/ Proposal for the project envisaging “**Selection of Private Sector Player for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab**”, including signing and submission of all documents and providing information/responses to the Authority representing us in all matters before the Authority and generally dealing with the Authority in all matters in connection with our Bid/ Proposal for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall always be deemed to have been done by us.

For.....

Accepted

..... (Signature)

(Name, Title and address) of the Attorney

**Note:**

*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.*

**D-2 : Power of Attorney by Each Member of the Consortium in favour of Lead Member  
(To be given on a Stamp Paper of INR 100 | To be Notarized)**

Dated -----

**POWER OF ATTORNEY  
TO WHOMSOEVER IT MAY CONCERN**

WHEREAS we have decided to participate in the bidding process for “**Selection of Private Sector Player for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab**”(the “Project”) as member of -----[name of the Consortium/JV] independently, we, ----- [name of authorising company/agency], a ----- incorporated under the laws of -----, the registered address of which is -----, to lawfully represent and act on our behalf as the Lead Member of the Consortium/JV to sign any qualification statement, Proposal, conduct negotiations, sign contracts, incur liabilities and receive instructions for us and on our behalf and execute all other necessary matters in connection with the Project. We hereby confirm that we are jointly and severally liable, together with other members of the Consortium/JV, to Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab acting through Punjab Heritage and Tourism Promotion Board (PHTPB) (the “Authority”) for all of the obligations of the Consortium/JV in respect of our qualification statement, technical and financial Proposal for the Project, in accordance with the RFP document for the Project issued on ----- and as amended prior to date hereof.

We hereby ratify and confirm that all acts done by our said attorney ----- (name of lead member) shall be binding on us as if the same has been done by us personally.

We hereby also ratify and confirm that if we are selected as the Selected / Successful Bidder, then the Lead Member of the Consortium/JV shall sign the O&M Agreement and all the Consortium/JV members shall be jointly and severally liable towards the Project, throughout the Agreement Period.

IN WITNESS WHEREOF, we have hereunto set our respective hands this \_\_\_\_ day of \_\_\_\_ 2020 in the presence of the following witnesses

Witness 1  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Witness 2  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

By \_\_\_\_\_ [the Authorising Company]  
Signature \_\_\_\_\_ [Signature of Authorised signing officer]  
Name \_\_\_\_\_ [Name of Authorised signing officer]  
Title \_\_\_\_\_ [Title of Authorised signing officer]

## **E. Minimum Eligibility Criteria**

### **GUIDELINES**

1. The Statutory Auditor/ Chartered Accountant issuing the certification for Experience of the Bidder must hold a valid Certificate of Practice.
2. For conversion of US Dollars to INR, the rate of conversion shall be INR [65 (Sixty-Five)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.
3. Documentary evidence must be submitted along with the Proposal, to support Financial Capacity claim. The Bidders should provide support Financial Capacity with audited annual accounts, including, audited Balance Sheet and Profit and Loss Account of the Bidder.
4. Refer to the following format for establishing experience of bidder.

**E.1. Bid Response Sheet 1- Format for Technical Capacity**

**(Fill Either E.1.1 OR E.1.2)**

**Form E.1.1: Details of Eligible Projects for Technical Capacity-1:**

	Project 1	Project 2	Project 3	Project n
Entity claiming the experience (Bidder / Associate)				
Name and nature of the Project				
Type of project (ex. Memorials, Museum etc.)				
Brief scope of the Bidder / Associate, claiming the experience				
Type of Project – PPP-DBFOT / PPP-OMT /Management Contract / Manpower Contract / Own Development etc.				
Project Location				
Land Area (in acres)				
Project BUA (in sqft)				
Duration of Project				
Authority / Client for whom the project is carried out				
Years during which the entity has undertaken O&M of the Project				
O&M Expenses incurred by the entity, for each of last 3 years (i.e. 2017-18, 2018-19, 2019-20) Or O&M Fee earned by the entity, for each of the last 3 years (i.e. 2017-18, 2018-19, 2019-20)				
Number of Employees, directly related to O&M of Eligible Projects, on rolls of the entity as on 31 <sup>st</sup> March 2020.				
Number of Employees, directly related to O&M of Eligible Projects, hired by the Bidder on contractual basis, as on 31 <sup>st</sup> March 2020.				
Details of Proof submitted				

**Sample Computation of Technical Capacity-1:**

The following table shows computation of Technical Capacity for sample details of O&M Expenses submitted by the Bidder.

	Eligible Project 1	Eligible Project 2	Eligible Project 3
	Amount Paid	Amount Received	Amount Collected
2017-18	(INR 54 L)	INR 30 L	
2018-19	(INR 52 L)	INR 20 L	(INR 3 Cr)
2019-20	(INR 50 L)	INR 24 L	(INR 3.1 Cr)
Average of last 3 FYs	<b>(INR 52 L)</b>	<b>INR 24.7 L</b>	<b>(INR 3.05 Cr)</b>
<b>Sum of the Eligible Projects</b>	<b>INR 381.7 L</b>		



**Form E.1.2: Details of Eligible Projects for Technical Capacity - 2:**

	Project 1	Project 2	Project 3	Project n
Entity claiming the experience (Bidder / Associate)				
Name of hotel / resort				
Brief scope of the Bidder / Associate, claiming the experience				
Type of Project – PPP-DBFOT / PPP-OMT /Management Contract / Manpower Contract / Own Development etc.				
Revenue earned in each of last 3 financial years				
Average annual revenue for last 3 financial years				
Aggregate of average annual revenue				

**Note**

1. Only the eligible projects that satisfy Technical Capacity criteria shall be included.
2. All the Financial numbers are to be given in INR.
3. In case of the use of credentials of an Associate of a Bidder, a certificate from a qualified external auditor who audits the book of accounts of the Bidder shall be provided to demonstrate that the person is an Associate of the Bidder
4. The form may also be submitted separately for the Consortium/JV Members, with certification by the respective statutory auditor of each of the Consortium/JV Members. In such case, the Bidder must also submit a summary sheet, with aggregate experience of all Consortium/JV Members, signed and verified by the Lead Member.
5. The following documentary evidence must be submitted along with the Proposal, to support Technical Capacity claim:
  - a. Proof of the Eligible Project
    - i. A certificate from appropriate project owning authorities / clients certifying project details, clearly showing project size, scope of the Bidder, as the case may be, and completion date. OR
    - ii. In case of owned projects, certificate from statutory auditor certifying project size and status. OR
    - iii. In case of Eligible Projects awarded under PPP mode: Relevant pages of the work order / letter of award / contract / agreement. Relevant pages shall mean the Preamble of such contract / agreement detailing the parties, section containing information on project details like size, cost, and the last pages detailing the signatories.
  - b. Proof of O&M Expense Paid or Received
    - i. Certificate from Statutory Auditor with details of various heads of O&M Expenses and their respective amounts for each of the 3 preceding FYs. OR
    - ii. Certificate from the project owning authority / client certifying the amounts under each head of O&M Expense incurred for each of the 3 preceding FYs.
  - c. Proof of revenue
    - i. Certificate from Statutory Auditor.

- ii. Copies of annual audited financial statements.

(Signature of Authorised Signatory)

**Company seal & stamp**

**Signature, Name, Address and Membership number of Statutory Auditor**

## E.2 Undertaking for meeting Technical Capacity through an Operating Partner

I / We undertake that if selected to undertake the Project:

1. I/we shall meet the Technical Capacity through a professional third-party operator, which fulfils the Technical Capacity (“Operating Partner”).
2. I/We shall enter into an O&M Contract with the Operating Partner before COD.
3. I/We shall ensure that the Operating Partner is operating the Memorial at all times from COD till the 5th anniversary of COD (“Operator Lock-in Period”).
4. I/We shall submit an Additional performance Security, in the form of a Bank Guarantee, for an amount of INR 8 lakhs as a pre-condition to signing of the Agreement and shall be obligated to keep the Additional Performance Security revalidated, renewed, extended and continuously in force and effect up to a period of six months beyond the expiry of the Operator Lock-in Period.

Authorized signatory

Date:

Name and seal of Bidder

Place:

**E.3 Bid Response Sheet 2- Format for Financial Capacity**

<b>Turnover (INR Crore)</b>				<b>Net Worth (INR Crore)</b>
<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Average</b>	<b>31<sup>st</sup> March 2019</b>

**Note:**

1. All the Financial numbers are to be given in INR.
2. In case of the use of credentials of an Associate of a Bidder, a certificate from a qualified external auditor who audits the book of accounts of the Bidder shall be provided to demonstrate that the person is an Associate of the Bidder.
3. The form may also be submitted separately for the Consortium/JV Members, with certification by the respective statutory auditor of each of the Consortium/JV Members. In such case, the Bidder must also submit a summary sheet, with aggregate experience of all Consortium/JV Members, signed and verified by the Lead Member.

(Signature of Authorised Signatory)

Company seal & stamp

Signature, Name, Address and Membership No. of Statutory Auditor

**F. Acknowledgement Letter**

**(To be submitted on Company's Letter Head by single bidder / all Consortium/JV members))**

I \_\_\_\_\_ (full name), s/o \_\_\_\_\_, the  
\_\_\_\_\_ (insert designation) of the  
\_\_\_\_\_ (insert name of the single Bidder/ Consortium/JV  
member, in case of a Consortium/JV), state as follows :

- a. Have reviewed the entire Proposal.
- b. Proposal submitted is in accordance with each key element of the Proposal, including, but not limited to, its technical and Financial components, description of the member's responsibilities and commitments to the Project, and the designated person(s) who will represent the Consortium/JV during the negotiation process.
- c. Have participated in only one Proposal for this Project.
- d. Each of the Consortium/JV members will be jointly and severally liable to the Authority.
- e. Acknowledges that the Authority reserves the right to reject any / all Proposals including the best Proposal or withdraw the invitation of the Proposal at any stage without citing any reason.

Authorised signatory

Date:

Name and seal of Bidder

Place:

**G. Statement of Legal Capacity**

**(To be forwarded on the letterhead of the Bidder / Lead Member of the Consortium/JV)**

Ref.

Date:

To,  
**Managing Director**  
**Punjab Infrastructure Development Board (PIDB)**  
**33-35, SCO, Sector 34A Rd, Sub City Center**  
**Sector 34, Chandigarh – 160022**

Dear Sir,

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

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

We have agreed that ..... (insert individual's name) will act as our representative/ will act as the representative of the Consortium/JV on its behalf\* and has been duly authorized to submit the RFP. 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.....

**H. (H1): Draft Consortium Agreement**  
**(To Be Made on Stamp Paper of Requisite Value and Notarized)**

This Consortium Agreement (the "AGREEMENT") made at \_\_\_\_\_ on this \_\_ day of \_\_\_\_\_, (Year)

**BY AND BETWEEN**

M/s \_\_\_\_\_ {*Lead Member (Consortium Member 1)*}, a \_\_\_\_\_ incorporated under \_\_\_\_\_ (*name of the relevant act/law of under which registered in the Country of Registration*) and having its registered office at \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the ONE PART;

AND

M/s \_\_\_\_\_ (*Consortium Member 2*), a \_\_\_\_\_ incorporated under the \_\_\_\_\_ and having its registered office at \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the SECOND PART;

AND

M/s \_\_\_\_\_ (*Consortium Member 3*), a \_\_\_\_\_ incorporated under the \_\_\_\_\_ and having its registered office at \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the THIRD PART;

(\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ shall be individually referred to as the "Party" and jointly referred to as the "Parties" or "Consortium Members").

WHEREAS:

- A. PIDB and Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab, acting through Punjab Heritage and Tourism Promotion Board (PHTPB) (hereinafter referred to as the "**Authority**"), invited Bids/ Proposals for the work of '**Selection of Private Sector Player for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab**' (hereinafter referred to as the "Project").
- B. M/s \_\_\_\_\_, M/s \_\_\_\_\_ and M/s. \_\_\_\_\_ have agreed to consolidate their resources and experience, and apply jointly as a Consortium (hereinafter referred to as the "Consortium"), vide this Consortium Agreement, for the purpose of developing and completing the Project, within time frame stipulated in the Request for Proposal Document (hereinafter referred to as the "RFP document").

- C. M/s \_\_\_\_\_, M/s \_\_\_\_\_ and M/s. \_\_\_\_\_ have therefore agreed to enter into this Consortium Agreement in respect of the submission of the Bid/ Proposal for the Project on the terms set out below.

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 RFP.

**2. Consortium**

- a. The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.
- b. 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, 2013 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 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. The role of role and the responsibility of each Party for the “Project” shall be as follows:

Name of Member	Type of Member	Shareholding	Role & Responsibility
	Consortium Member 1 (Lead Member)		
	Consortium Member 2		
	Consortium Member 3		

**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 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**

- a. The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:  
First Party (Lead Member):  
Second Party:  
Third Party:
- b. 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 till the 5<sup>th</sup> (fifth) anniversary of the Appointed Date, be held by each of the Parties, whose technical capacity and financial capacity have been reckoned for the purposes of qualification and shortlisting of Bidders for the Project in terms of the RFP.
- c. The Parties undertake that the First Party (Lead Member) shall hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until 5<sup>th</sup> anniversary of the Appointed Date.
- d. The Parties undertake that they shall comply with all equity lock-in requirements set forth in the O&M 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 laws 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 Associates is a party that presently affects, or which would have a material adverse effect on the financial condition or prospects or business of such Party in the 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 O&M Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not prequalified 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**

- a. This Joint Bidding Agreement shall be governed by laws of India.
- b. Confidentiality – All information, document, etc. exchanged between the Parties related to this agreement or the preparation of any Bid or the performance of the Project shall remain confidential and shall not be revealed to third parties for a certain time period to be agreed upon. Unless otherwise required by law, the Parties undertake not to disclose to any third party or any else and / or use any Information, without prior consent of the other Party.
- c. Term and Duration – This Agreement shall come into effect on the date of submission of the Bid/Proposal for the Project. This Agreement shall terminate upon the successful completion of the Project and may be

extended further for such period as may be required by the Authority. This Agreement can be terminated only upon Consortium's Bid for the Project is conclusively rejected by the Authority.

- d. Costs/Expenses – All out-of-pocket expenses/costs of and incidental to this Agreement including stamp duty and registration fees, if any shall be borne and paid by the Parties. Each Party shall pay and bear their own advocated/solicitors fees in the preparation of this Agreement.
- e. Governing Law – This Agreement shall in all respect be governed, construed and interpreted in accordance with laws of Republic of India.
- f. Settlement of Disputes – Any disputes arising out of this Agreement shall be amicably settled by the Authorised representatives of the Parties, failing with any such disputes shall be resolved by Arbitration in accordance with the Arbitration and Conciliation Act, 1996, by one or more arbitrators appointed in accordance with the said Act. This Clause shall survive the termination of this Agreement.
- g. Language of Arbitration shall be English. The venue of the Arbitration proceedings shall be in Amritsar, India. The Parties jointly and severally undertake that the Project shall not be affected during the dispute(s) or the settlement of dispute(s) period.
- h. The Award rendered by the Arbitral Tribunal shall be final and binding upon the Parties.
- i. In the event of a dispute between the Parties over the subject of this Agreement, the prevailing party shall be entitled to reasonable advocates/solicitors' fees and costs incurred in the resolution of such dispute.
- j. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.
- k. Amendments – This Agreement can be amended or suppressed by further agreement made in writing at the request of any of the Parties after unanimous approval by the Parties and by obtaining prior consent and written approval from the Authority.
- l. Notices – Any notices, requests, demands or any communications from any party to the other party under this Agreement shall be by Regd. / Speed mail or facsimile transmission sent to the addresses as indicated in this Agreement. Any party may change its address but shall promptly inform the Authority and the other Parties/ Consortium Members of any such change.

- m. Assignment – None of the Parties to this Agreement shall have the right to assign its benefits or liabilities under this Agreement to any other company, firm or person without obtaining prior consent and written approval of the Authority.
- n. Entire Agreement – This Agreement constitutes the entire agreement between the Parties and supersedes all prior writings, agreements or understandings relating to the subject matter thereof.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

SIGNED AND DELIVERED BY \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SIGNED AND DELIVERED BY \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SIGNED AND DELIVERED BY \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Witness:

1. \_\_\_\_\_
2. \_\_\_\_\_

## H2: Draft JV Agreement

### (To Be Made on Stamp Paper of Requisite Value and Notarized)

This JV Agreement (the "AGREEMENT") made at \_\_\_\_\_ on this \_\_ day of \_\_\_\_\_, (Year)

#### BY AND BETWEEN

M/s \_\_\_\_\_ {Lead Member (JV Member 1)}, a \_\_\_\_\_ incorporated under \_\_\_\_\_ (name of the relevant act/law of under which registered in the Country of Registration) and having its registered office at \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the ONE PART;

AND

M/s \_\_\_\_\_ (JV Member 2), a \_\_\_\_\_ incorporated under the \_\_\_\_\_ and having its registered office at \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the SECOND PART;

AND

M/s \_\_\_\_\_ (JV Member 3), a \_\_\_\_\_ incorporated under the \_\_\_\_\_ and having its registered office at \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the THIRD PART;

(\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ shall be individually referred to as the "Party" and jointly referred to as the "Parties" or "JV Members").

WHEREAS:

D. PIDB and Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab, acting through Punjab Heritage and Tourism Promotion Board (PHTPB) (hereinafter referred to as the "**Authority**"), invited Bids/ Proposals for the work of '**Selection of Private Sector Player for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab**' (hereinafter referred to as the "Project").

E. M/s \_\_\_\_\_, M/s \_\_\_\_\_ and M/s. \_\_\_\_\_ have agreed to consolidate their resources and experience, and apply jointly as a Joint Venture (hereinafter referred to as the "JV"), vide this JV Agreement, for the purpose of developing and completing the Project, within time frame stipulated in the Request for Proposal Document (hereinafter referred to as the "RFP document").

F. M/s \_\_\_\_\_, M/s \_\_\_\_\_ and M/s. \_\_\_\_\_ have therefore

agreed to enter into this JV Agreement in respect of the submission of the Bid/ Proposal for the Project on the terms set out below.

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 RFP.

## 2. Joint Venture

- a. The Parties do hereby irrevocably constitute a Joint Venture (the “JV”) for the purposes of jointly participating in the Bidding Process for the Project.
- b. The Parties hereby undertake to participate in the Bidding Process only through this JV and not individually and/ or through any other JV 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 JV is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act, 2013 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 of the JV and shall have the power of attorney from all Parties for conducting all business for and on behalf of the JV during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- b. The role of role and the responsibility of each Party for the “Project” shall be as follows:

Name of Member	Type of Member	Shareholding	Role & Responsibility
	JV Member 1 (Lead Member)		
	JV Member 2		
	JV Member 3		

## 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 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**

- a. The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:  
First Party (Lead Member):  
Second Party:  
Third Party:
- b. 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 till the 5<sup>th</sup> (fifth) anniversary of the Appointed Date, be held by each of the Parties, whose technical capacity and financial capacity have been reckoned for the purposes of qualification and shortlisting of Bidders for the Project in terms of the RFP.
- c. The Parties undertake that the First Party (Lead Member) shall hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until 5<sup>th</sup> anniversary of the Appointed Date.
- d. The Parties undertake that they shall comply with all equity lock-in requirements set forth in the O&M 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 laws 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 JV 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 Associates is a party that presently affects, or which would have a material adverse effect on the financial condition or prospects or business of such Party in the 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 O&M Agreement, in case the Project is awarded to the JV. However, in case the JV is either not prequalified 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**

- a. This JV Agreement shall be governed by laws of India.
- b. Confidentiality – All information, document, etc. exchanged between the Parties related to this agreement or the preparation of any Bid or the performance of the Project shall remain confidential and shall not be revealed to third parties for a certain time period to be agreed upon. Unless otherwise required by law, the Parties undertake not to disclose to any third party or any else and / or use any Information, without prior consent of the other Party.
- c. Term and Duration – This Agreement shall come into effect on the date of submission of the Bid/Proposal for the Project. This Agreement shall terminate upon the successful completion of the Project and may be extended further for such period as may be required by the Authority. This Agreement can be terminated only upon JV's Bid for the Project is conclusively rejected by the Authority.



- d. Costs/Expenses – All out-of-pocket expenses/costs of and incidental to this Agreement including stamp duty and registration fees, if any shall be borne and paid by the Parties. Each Party shall pay and bear their own advocated/solicitors fees in the preparation of this Agreement.
- e. Governing Law – This Agreement shall in all respect be governed, construed and interpreted in accordance with laws of Republic of India.
- f. Settlement of Disputes – Any disputes arising out of this Agreement shall be amicably settled by the Authorised representatives of the Parties, failing with any such disputes shall be resolved by Arbitration in accordance with the Arbitration and Conciliation Act, 1996, by one or more arbitrators appointed in accordance with the said Act. This Clause shall survive the termination of this Agreement.
- g. Language of Arbitration shall be English. The venue of the Arbitration proceedings shall be in Amritsar, India. The Parties jointly and severally undertake that the Project shall not be affected during the dispute(s) or the settlement of dispute(s) period.
- h. The Award rendered by the Arbitral Tribunal shall be final and binding upon the Parties.
- i. In the event of a dispute between the Parties over the subject of this Agreement, the prevailing party shall be entitled to reasonable advocates/solicitors' fees and costs incurred in the resolution of such dispute.
- j. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.
- k. Amendments – This Agreement can be amended or suppressed by further agreement made in writing at the request of any of the Parties after unanimous approval by the Parties and by obtaining prior consent and written approval from the Authority.
- l. Notices – Any notices, requests, demands or any communications from any party to the other party under this Agreement shall be by Regd. / Speed mail or facsimile transmission sent to the addresses as indicated in this Agreement. Any party may change its address but shall promptly inform the Authority and the other Parties/ JV Members of any such change.
- m. Assignment – None of the Parties to this Agreement shall have the right to assign its benefits or liabilities under this Agreement to any other company, firm or person without obtaining prior consent and written approval of the

Authority.

- n. Entire Agreement – This Agreement constitutes the entire agreement between the Parties and supersedes all prior writings, agreements or understandings relating to the subject matter thereof.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

SIGNED AND DELIVERED BY \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNED AND DELIVERED BY \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNED AND DELIVERED BY \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness:

1. \_\_\_\_\_

2. \_\_\_\_\_

**I. Format for Financial Proposal**  
**(INDICATIVE ONLY – TO BE SUBMITTED ONLINE ONLY)**

To,  
**Managing Director**  
**Punjab Infrastructure Development Board (PIDB)**  
**33-35, SCO, Sector 34A Rd, Sub City Center**  
**Sector 34, Chandigarh – 160022**

**Subject: RFP for Operations & Maintenance of Baba Banda Singh Bahadur Memorial, Chapar Chiri in Punjab on Public Private Partnership Mode**

Dear Sir,

We hereby submit our Financial Proposal for the captioned Project.

If the Project is awarded to us:

- We offer to pay the Authority, an Annual Concession Fee (ACF), payable each year during the Agreement Period. The ACF payable by us to the Authority, on first anniversary of Appointed Date, shall be INR.....(Rupees .....Only);  
**OR**
- We seek to receive from the Authority, a Viability Gap Funding (VGF) payable each year during the Agreement Period. The VGF sought by us from the Authority, in the first year of Agreement Period, shall be INR .....(Rupees .....Only).

**We understand that the ACF, if applicable, shall be escalated at 5% p.a. for the subsequent years. VGF, if applicable, shall not be subject to any escalations.**

We are making this Financial Proposal after taking into consideration all the terms and conditions stated in the RFP Document and after careful assessment of the Project, all risks and contingencies and all other conditions that may affect the Financial Proposal.

We agree to keep our offer valid for 180 days from the due date of submission of this Proposal.

Authorised signatory

Date:

Name and seal of Bidder

Place:

**Note: The above format is for reference purpose only and shall not be submitted as hard copy. The Financial Proposal shall be submitted online only.**