

REQUEST FOR PROPOSAL (final)

**For
DISINVESTMENT**

OF

Rahi Tourist Bungalows
Guest Houses
Motels
Yatri Niwas

**DIRECTORATE OF TOURISM,
GOVT. OF UTTAR PRADESH**

Date of Issue

January 28th, 2009

Date of Submissions of Bids

February 20 2009



Advisor : IFCI LTD



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Definitions

In this RFP, unless the context otherwise requires, the following terms and expressions shall have the meanings assigned to them herein this document:

“Accounting Year” means any 12 months period normally followed by the Bidder or its Associate (s) for the purpose of reporting its accounts;

“Application” means the Bid Proposal prepared and submitted in accordance with the contents of the RFP and in the form and format prescribed herein;

“Authority” shall mean the Secretary, Tourism Department Government of Uttar Pradesh;

“Advisors” shall include all the agencies including IFCI Ltd, and such other agencies appointed from time to time by the **“Authority”** to advise them in the **“Disinvestment”** process;

“Associates” means in relation to the Bidder/ Consortium Member, a person who controls or is controlled by or is under common control with such Bidder/ Consortium Member. For this purpose **“Control”** means with respect to an entity which is a company or corporation, the ownership directly or indirectly of more than 50% (Fifty percent) of the voting rights of such entity

“Bid” means offer to buy 76% equity of each of an SPV at a lump sum purchase price.

“Bidder” means a company (incorporated in India or overseas) or a Consortium to whom this RFP has been issued or made available, or those companies who have procured it, directly or indirectly, from GoUP and submitted Bid for one or more SPVs ;

“Bid Due Date” shall have the meaning prescribed in Schedule given in Clause 1.4 for submission of Bids;

“Confidential Information Memorandum” (CIM) means the document giving therein the details of all the SPVs proposed to be disinvested.

“Consortium” is a group of companies coming together under a consortium agreement or by forming a stock company to participate in the selection process and to undertake Transaction if selected, as referred to collectively;

“Crore” means Ten Million;

“Disinvestment” shall mean the sale of 76% of equity of each SPV formed out of the **“Units”** transferred by UPSTDCL/GoUP, through the process of competitive bidding;

“Expected Price” means the value fixed for each SPV towards the sale of their respective 76% equity share capital as determined by the Authority, to be the expected price of Bid.

“Financial Year” refers to the 12 month period ending March 31, i.e. from April 1 to March 31;

“GoUP” means Government of Uttar Pradesh or any of its Departments acting on behalf of the Government of Uttar Pradesh, including Directorate of Tourism, Government of Uttar Pradesh.

“Hospitality/Tourism Services” include service activities pertaining to development, operation, maintenance of hotels, motels, guest houses, tourist bungalows, resorts, bar & restaurants or such businesses that provide transitional or short term lodging/fooding and leisure services and/ or facilities, tourism that may be based on the cultural, historic, and social attractions of a place or on the appeal of a different environment, and providing tours and ancillary services for tourists, development of package holidays, health resorts, medical tourism, Convention/ Banquet Halls.”

“Indian Rupees”, “Rupees” or **“INR”** mean the lawful currency of India;

“Information” means all information contained in the RFP or subsequently provided to the Bidder, whether verbally or in documentary form, by or on behalf of GoUP or the Government Representatives or any of their employees or Advisors;

“Interest” means shareholding percentage of members in the Consortium if the Consortium is structured as a stock company, or percentage of the shares purchased out of the total shares offered to Consortium by GoUP pursuant to Transaction.

“Investor” means the Pre-qualified Applicant who is notified as being ‘selected’ at the RFP Stage on the basis, *inter alia*, of prescribed criteria listed in the RFP;

“Lock In Period” shall mean the time period of three (3) years starting from the date of execution of Share Sale Agreement by the Investor during which the Investor shall retain a minimum of 76% of the issued and paid up capital of the SPV in the manner as prescribed in the SSA.

“Preliminary Information Memorandum” means the information on Directorate of Tourism, GoUP/ UPSTDCL owned Units provided in Section 4 of the RFQ document to assist the Bidder in understanding the business of the above entities.

“Pre-qualified Applicant(s)” means Bidder who are notified as being ‘pre-qualified’ at the RFQ Stage on the basis, *inter alia*, of certain minimum prescribed criteria listed in the RFQ;

“Proposal Stage” means the second stage of the selection process wherein Pre-qualified Applicant(s) will participate on the basis of the RFP leading to Transaction;

“Qualification Stage” means the first stage of the selection process to designate qualified Bidder as ‘Pre-qualified Applicants’ who would then be eligible to participate in the Proposal Stage;

“RBI” means Reserve Bank of India;

“RFP” means the ‘Request for Proposal Document dated 28.01.2009 issued in connection with sale of Transaction Shares’, as may be amended and modified from time to time, together with all annexures;

“RFQ” means ‘Request for Qualification Document’, as may be amended and modified from time to time, together with all annexures;

“Shareholders Agreement/SHA” means the agreement which shall be entered into between the GoUP and the Investor selected in the Proposal Stage for the sale of 76% equity shares of each of the SPV(s);

“Share Sale Agreement/SSA” means the share sale agreement which shall be entered into between GoUP and the Investor.

“Special Purpose Vehicles (SPVs)” means Public Limited Companies to be incorporated under Companies Act, 1956, that will own certain identified number of Units as prescribed under this RFP.

“State” means the state of Uttar Pradesh, India.

“Transaction” means the sale of 76% equity of SPVs.

“Transaction Documents” means this RFP, Non Disclosure Agreement, Share Sale Agreement, Shareholders Agreement, Deed of Adherence, and Consortium Agreement, if applicable or any other document that is decided by the Authority to be executed for the purpose of the Transaction.

“Units” means tourist bungalows/guest houses/motels/yatri-niwas owned by SPVs.

“UPSTDCL” means Uttar Pradesh State Tourism Development Corporation Limited.

“USD”, “US\$” or “\$” means the lawful currency of the United States of America.

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

Disclaimer

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

This RFP is not an agreement and is neither an offer nor invitation by the Authority or any of its employees or advisors, to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers pursuant to this RFP (the "**Bid**"). This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Disinvestment process. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require to make an informed Bid. The information in this RFP has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

The Authority, the Advisors and their respective employees make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bid stage. The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

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

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

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority and their Advisors 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.

This RFP Document has not been filed, registered or approved in any jurisdiction. Recipients of this RFP Document resident in jurisdictions outside India as well as those residents in India should inform themselves of, and observe any applicable legal requirements.

Introduction

1.1 Background

- 1.1.1 With a view to further develop and strengthen tourism within the State and repositioning of business of all of its existing Units for providing and improving the Hospitality Services/Tourism facilities, GoUP intends to seek private sector participation. For this purpose, GoUP has issued an order no 2445/41-08-249/90-TC 2A dated 27.08.2008, a copy of which is enclosed with RFQ issued on 23.01.2009. GoUP would like to have participation of such an investor, who has a strong presence in the Hospitality Services/Tourism sector and is able to leverage the existing infrastructure facilities of Units of GoUP/UPSTDCL with a view to, improve the tourism potential of the State.
- 1.1.2 GoUP through Directorate of Tourism and UP State Tourism Development Corporation Ltd. (UPSTDCL), a 100% owned State Govt. Company, incorporated under the Companies Act, 1956, owns/operates 77 Units. Some of the Units are owned by UPSTDCL and some Units are owned by GoUP. It is proposed to divest GoUP's stake in such Units. Based on geographical location/tourist potential, out of the total 77 Units, 70 Units are proposed to be grouped into suitable bundles. Each bundle containing an identified number of Unit(s) would be converted into a Special Purpose Vehicle (SPV). There are 22 nos of such SPVs that are proposed to be incorporated to which Units owned by UPSTDCL would be transferred through a proposed demerger scheme that is to be sanctioned u/s 391-394 of the Companies Act, 1956 (Demerger Scheme). UPSTDCL has initiated the process of formation of these 22 SPVs and formulation of Demerger Scheme. The Demerger Scheme will be filed with Ministry of Corporate Affairs, Government of India (Ministry), which is expected to be sanctioned in 3-4 months. Thereafter the Units owned by GoUP will be transferred to respective SPVs along with transfer of all their respective licenses, sanctions and permissions subject to applicable laws. Assets and Liabilities of each Unit as per Audited Balance Sheet as on March 31, 2008 would be transferred to their respective SPVs. The profit/loss of Units in SPVs for the period commencing from 01.04.2008 to the date of Disinvestment would belong to respective SPVs. The Disinvestment process is subject to sanction of the Demerger Scheme.
- 1.1.3 76% of the equity of each SPV is proposed to be disinvested through competitive bids. These Units after disinvestment would be required to be run / utilized to provide Hospitality Services and services ancillary thereto as per this RFP and conditions provided herein. The Bids are invited for 76% of the equity share capital of each SPV. Based on this RFP, the Investor for each SPV shall enter into an Agreement with GoUP for purchase of 76% equity of SPV. The actual sale of shares will take place on sanction of Demerger Scheme and transfer of Units by GoUP/UPSTDCL in respective SPVs. The disinvestments of SPVs consisting of Central Government assisted Units (SPV Nos. 14-22) shall be carried out only upon the approval of Central Government, the process of seeking such approval has already been initiated by GoUP. The shares so acquired by the Selected Bidder in SPVs or issued any time thereafter to the extent of 76% of the issued and paid up capital of the SPV shall be

subject to a Lock In Period of 3 years from date of signing of the SSA and SHA that are annexed with the this RFP. The Confidential Information Memorandum giving therein the details of all the above SPVs will be made available in the Data room.

- 1.1.4 UPSTDCL shall introduce the Voluntary Retirement Scheme (VRS) for all Regular Employees of UPSTDCL as per the VRS guidelines of GoUP. The workers in respective Units, who don't opt for VRS, would be transferred to the respective SPVs. All the Employees transferred to SPVs would continue to have their existing terms of employment with continuity of services. The superannuation dues consisting of Gratuity and Leave Encashment of the employees transferred to SPVs up to the date of Disinvestment shall be the responsibility of UPSTDCL and shall be kept in a separate fund with employee wise details, such fund to be operated and maintained by UPSTDCL in the name of "SUPERANNUATION FUND". The responsibility to pay such superannuation dues after due date of Disinvestment including any revision thereof, whether retrospective or not, shall be of the Investor. UPSTDCL shall not be responsible for any revision of such superannuation benefits payable to employees.
- 1.1.5 To further protect the interest of Employees, the Investor would be required to offer VRS to all employees of each SPV during six to twelve months of Share Sale Agreement. The terms of VRS to be offered by the Investor shall not in any case be inferior to the terms of VRS being offered by UPSTDCL. The Investor shall comply with the GoUP policy with regard to employment for the benefit of the members of Scheduled Caste, Scheduled Tribe, Physically Handicapped persons and other socially disadvantage categories of the society.
- 1.1.6 The Investor would be required to further make a minimum investment equivalent to 25% of the purchase price. This investment has to be made by the Investor before he proposes to sell his equity in the SPV, subject to the Lock in Period. This investment is for renovation/ development and up gradation of the Units. The Investment amount may be raised as Secured/ Unsecured Loan or Equity Share Capital. In case it is decided to induct funds by way of fresh equity, GoUP will have the option to either induct proportionate funds as equity to maintain its 24% equity holding or in the alternative allow the Investor to acquire entire additional equity on its own leading to reduction of equity holding percentage of GoUP to a minimum of 11% in the SPV.
- 1.1.7 The Investor shall be responsible for the operation as well as up-gradation of facilities and maintenance of the Units in accordance with the Shareholders Agreement and Share Sale Agreement to be entered into between the Selected Bidder and the Authority in the manner provided by the Authority as part of the Transaction Documents pursuant hereto.
- 1.1.8 The Authority shall receive Bids for 76% of the equity capital of SPV pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP (collectively called the "**Transaction Documents**"), as modified, altered, amended and clarified from time to time by the Authority, and all Bids shall be prepared and submitted in accordance with such terms.

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a two-stage process (collectively referred to as the "**Bidding Process**") for selection of the Bidder for Disinvestment. The first stage i.e. the "**Qualification Stage**" of the process involves qualification of participating parties or their Consortium in accordance with the provisions of the RFQ.
- 1.2.2 Interested Bidders who fulfill the qualifications of RFQ may approach any time after January 28, 2009, the Authority with Certificate from a Chartered Accountant certifying their Technical & Financial qualifications along with their supporting papers, Balance Sheets & thereafter Bidder can undertake Due Diligence of the Units and any litigation cases after executing the Non Disclosure Agreement with GoUP in the format as provided as an annexure to this RFP and also submission of a Demand Draft for Rs.20,000/- in favour of Director General, Department of Tourism, Govt. of UP, Lucknow, or payment through electronic mode in the Saving Bank account at State Bank of India, Motimahal Marg, Hazratganj, Lucknow, Saving Account of UP State Tourism Development Corporation Ltd., being Saving No MSB-30367376665 MICR No. 226002002 IFSC Code No. SBIN0000125. RFP document can also be downloaded from the website of IFCI Ltd and UPSTDCL in which case, while submitting the Bid, the RFQ envelop should contain bank draft for Rs.20,000/-. After the preliminary scrutiny of Technical & Financial capability the RFP document will be issued for selection of Investor. The detailed documents required as per RFQ can be submitted along with RFP by 1700 hrs on 18.02.2009 which is the last date of submission of the Bids. Data room will be opened from 28.01.2009 up to 17.2.2009 on all days from 9.30 am to 6 pm at the address mentioned at clause 2.11.7.
- 1.2.3 Expected Price of 76% equity shares of each SPV shall be as per Appendix- IX to this RFP.
- 1.2.4 The Bidders may submit their documents in two separate envelopes:
- **Envelope-A:** Containing following documents as mentioned in the RFQ Documents, clearly marking RFQ
 - a) Covering letter for the Application
 - b) Statement of Legal Capacity
 - c) RFQ information
 - d) Power of Attorney
 - e) In case of Consortium, Power of Attorney by each member in favour of the Lead Member
 - f) MoU, in case of Consortium
 - g) Demand Draft of Rs. 20,000/- (Rs. Twenty thousand only) payable in favour of The Director General, Tourism, Uttar Pradesh, at Lucknow.
 - **Envelope-B:** Containing following RFP Documents duly signed and sealed.
 - a) Bid Security in the prescribed format (Appendix – II);
 - b) Board Authorisation for submission of Bid and signing all Power of Attorneys
 - c) Power of Attorney for signing of Bid in the prescribed format (Appendix – III);

- d) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – IV);
- e) A copy of the Share Sale Agreement duly signed by the person(s) authorized by the Bidder in whose favour the shares are to be transferred (Appendix – VI)
- f) A copy of the Shareholders’ Agreement duly signed by the persons authorized by the Bidder in whose favour the shares are to be transferred alongwith the Deed of Adherence (Appendix –VII and Appendix - VIIA)
- g) Consortium Agreement (in case of Consortium) in the prescribed format (Appendix- VIII)
- h) The Separate sealed envelope having Financial Bid clearly marked as “CONFIDENTIAL FINANCIAL BID” in the prescribed format (Appendix-I)

RFP documents for each SPV should be submitted separately. First RFQ documents would be examined and if the Bidder is qualified and documents are in order, RFP documents will be examined. Once the RFP documents are found to be in order, then the Financial Bids will be opened.

1.2.5 The RFP Bid shall be valid for a period of not less than 180 days from the date specified in Schedule given in Clause 1.4 for submission of Bids (the “**Bid Due Date**”).

1.2.6 A Bidder is required to deposit, along with its Bid, a bid security as per schedule given in Clause 1.3 (the "**Bid Security**").The Bid Security of the first two highest Bidders shall be retained carrying no interest till the execution of the Share Sale Agreement by the Investor. Bid security of remaining unsuccessful bidders shall be refunded to them within 1 month from the date of selection of two highest bidders. Bidders will not be entitled to claim interest on bid security. The Bid security of second highest bidder shall be returned to the second highest bidder within 30 days of execution of SSA.

Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee as per performa enclosed as Appendix-II to the Authority, and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be rejected if it is not accompanied by the Bid Security.

1.2.7 Generally, the Selected Bidder shall be the highest Bidder. The Government may or may not consider the Bids below the Expected Price. The second highest Bidder, shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the highest Bidder in case such [highest] Bidder withdraws or is not selected for any reason. In the event that the second highest Bidder does not match the Bid of the first highest Bidder, the Authority may, in its discretion, annul the whole Bidding Process and shall return the Bid Security of the second highest Bidder within a period of 1 month from the date of annulment of Bidding process.

- 1.2.8 During the Bid Stage, Bidders are invited to examine the details of each of the SPV(s), and to carry out, at their cost and expense, such due diligence (“**Due Diligence**”) as may be required for submitting their respective Bids for the SPV(s).
- 1.2.9 Bids are invited for the purchase of 76% equity share capital of the SPV.
- 1.2.10 The Bidder who meets the Technical & Financial Capability would be permitted to submit Financial Bid for any number of SPVs subject to criteria as given below. However while bidding for more than one SPV, the Bidder should specify its priority order for the SPVs in separate Bid for each SPV. A letter specifying the list of SPV wise Bid should be enclosed in each Bid document.
- 1.2.11 In case a Bidder is found successful in respect of more than one SPV, he would meet Cumulative Net worth i.e. Financial Capability Criteria as per RFQ for the number of SPVs he has been declared successful for. In the absence of adequate Cumulative Net worth, the Bidder may be permitted to choose the SPV based on his priority specified by him in the Bid Document and cumulative net worth capability.
- 1.2.12 Further details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.13 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.11.7 below. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/Request for Additional Information: RFP for Disinvestment of SPV.

1.3 Table of Bid Security

The Bidder shall be required to furnish Bid Security of the amount along with the Bid for each SPV/bundle as per the following Table:

Sl. No.	SPVs	Amount of Bid Security per SPV/bundle (Rs. In Lakh)
1	3, 5, 9, 10, 13, 20, 22	25
2	4,7, , 17 ,19	50
3	1, 2, 6, 12, 14, 15, 16, ,18, 21	100
4	8, 11	200

1.4 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Sl. No.	Event Description	Date
1	Issue/Sale of Transaction Documents	28/01/2009
2	Pre-Bid Meeting-1	30/01/2009
3	Last date for receiving queries	10/02/2009
4	Pre-Bid meeting-2	07/02/2009
5	Authority's response to queries	12/02/2009
6	Bid Due Date	20/02/2009
7	Examination of RFQ	20/02/2009
8	Technical evaluation of RFP documents	21/02/2009
9	Opening of Financial Bids	21/02/2009
10	Letter of Award to selected Bidders	After 21/02/2009

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

- 2.1.1 A Bidder is eligible to submit only one Bid for each SPV. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid for the same SPV either individually or as a member of any other Consortium, as the case may be.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Request for Qualification document (the RFQ) for the proposed disinvestment shall have the meaning assigned thereto in the RFQ.
- 2.1.3 The CIM for the Transaction is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination before submitting their Bids. Nothing contained in the CIM shall be binding on the Authority nor confer any right on the Bidders, and the Authority and Advisors shall have no liability whatsoever in relation to or arising out of any or all contents of the CIM.
- 2.1.4 The Bid should be furnished in the format at Appendix – I, clearly indicating the Bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.5 The Bid shall consist of purchase price towards acquisition of 76% equity shares in any SPV to be quoted by the Bidder as per the terms and conditions of this RFP
- 2.1.6 The Bidder shall deposit a Bid Security as per schedule mentioned in Clause 1.3 specifying SPV wise Bid Security. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee, acceptable to the Authority, as per format at Appendix – II.

- 2.1.7 The validity period of the Bank Guarantee or Demand Draft, as the case may be, shall not be less than 180 days from the Bid Due Date, and may be extended by the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 2.1.8 The Bidder should submit a Power of Attorney as per the format as Appendix – III, authorising the signatory of the Bid to commit the Bidder.
- 2.1.9 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format as Appendix – IV and a Consortium Agreement in the format as Appendix – VIII.
- 2.1.10 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.11 The Bid and all communications in relation to or concerning the Transaction Documents and the Bid shall be in English language.
- 2.1.12 The Transaction Documents including this RFP and all attached documents are and shall remain the property of the GoUP and are given 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 GoUP will not return any Bid or any information provided therewith.
- 2.1.13 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of this disqualification, the GoUP shall forfeit and appropriate the Bid Security as the case may be. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:
- i. such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) for same SPV have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 5% of its paid up and subscribed capital; or
 - ii. a constituent of such Bidder is also a constituent of another Bidder for same SPV; or
 - iii. such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
 - iv. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - v. such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each others’ information about, or to influence the Bid of either or each of the other Bidder; or

- vi. such Bidder has participated as a consultant to the GoUP in the preparation of any documents, design or technical specifications of the SPV.

2.1.14 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the GoUP in relation to the Transaction is engaged by the Bidder in any manner for matters related to or incidental to such Transaction during the Bidding Process or subsequent to the (i) issue of the LOA and (ii) execution of the Share Sale Agreement as well as SHA. In the event any such adviser is engaged by the Selected Bidder, after issue of the LOA or execution of the Share Sale Agreement, as well as SHA then notwithstanding anything to the contrary contained herein or in the LOA or the Share Sale Agreement or SHA and without prejudice to any other right or remedy of the GoUP, including the forfeiture and appropriation of the Bid Security, which the Authority may have there under or otherwise, the LOA or the Share Sale Agreement or SHA, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder including any repayment of Purchase price.

2.1.15 This RFP is not transferable.

2.1.16 Any award of Share Sale Agreement pursuant to this RFP shall be subject to the terms of Transaction Documents.

2.2 **Inter-se Transfer of Shares among the members of the Consortium**

Where the Investor is a Consortium, Inter-se transfer of shares among the members of the Consortium may be permitted by the Authority during the Lock In Period after execution of Share Sale Agreement, only where:

- a) the Lead Member continues to be the Lead Member of the Consortium and shall maintain atleast 26% equity holding in the Consortium;
- b) the Member satisfying Technical qualification continues to be the same and shall continue to maintain atleast 26% equity holding in the Consortium.
- c) Other members shall also continue to hold minimum 10% of the equity holding in the Consortium.
- d) The networth criteria is fulfilled and maintained.

2.3 **Changes in Ownership**

2.3.1 By submitting the Bid, the Bidder shall be deemed to have acknowledged that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members and amongst them Lead Member will own at least 26% of the equity of the SPV and Consortium Member qualifying Technical Criteria shall continue to hold at least 26% of stake in Consortium for minimum period of 3 years from the date of Share Sale Agreement as per the terms outlined in the Share Sale Agreement. Further, the Bidder shall also deemed to have acknowledged and undertaken that (i) the other members will own minimum stake of 10% each in the Consortium (ii) the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Share Sale Agreement, Shareholders' Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the RFP, be deemed to be a breach of the Share

Sale Agreement as well as SHA and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

- 2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, the Bidder shall pre inform the Authority 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 such an event, the Authority may forfeit and appropriate the Bid Security. In the event such change in control occurs after signing of the Share Sale Agreement (SSA) and SHA during the Lock In Period of 3 years, it would, notwithstanding anything to the contrary contained in the Share Sale Agreement and SHA, be deemed to be a breach thereof, and the Share Sale Agreement and SHA shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Investor.

2.4 **Cost of Bidding**

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

- 2.5 After the Lock-In Period the Investor/Consortium member may sell his shareholding in the SPV to any other investor subject to his offering the other shareholders the right of first refusal. In case the other existing shareholders refuse to exercise their right, the investor/Consortium member may sell his shares to any other financially sound person whose networth is not less than that of the selling shareholder subject to execution of a deed of adherence by such transferee.

2.6 **Site visit and verification of information**

- 2.6.1 Bidders are encouraged to submit their respective Bids after visiting the sites of Units of all such SPVs for which they intend to submit the Bid in regard to Disinvestment and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, tourist potential, applicable laws and regulations, and any other matter considered relevant by them.

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

- a) made a complete and careful examination of the Transaction Documents;
- b) received all relevant information requested from the Authority;
- c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Transaction Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.6.1 above;
- d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid,

- consummation of the Transaction in accordance with the Transaction 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 Transaction Documents or ignorance of any of the matters referred to in Clause 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Share Sale Agreement; and
 - f) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.7 **Right to accept and to reject any or all Bids**

2.7.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul the whole 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 therefor.

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

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

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

- i. invite the second highest Bidder to submit Bids in accordance with Clause 3.3.3 and 3.3.4; or
 - ii. take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.
- 2.7.3 In case it is found during the evaluation or at any time before signing of the Share Sale Agreement or SHA or after its execution and during the period of subsistence thereof, including the Share Sale thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet declared as the Investor either by issue of the LOA or entering into of the Share Sale Agreement as well as SHA, and if the Bidder has already been issued the LOA or has entered into the Share Sale Agreement as well as SHA, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder, as the case may

be. In such an event, the Authority shall forfeit and appropriate the Bid Security, without prejudice to any other right or remedy that may be available to the Authority.

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

B. DOCUMENTS

2.8 Contents of the RFP

- 2.8.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.
- 2.8.2 The Non Disclosure Agreement, Share Sale Agreement, Shareholder Agreement, Deed of Adherence and Consortium Agreement are integral part of this RFP and shall be provided by the Authority as part of the Transaction Documents.

Clarifications

- 2.8.3 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.13. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.4. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 2(two) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Authority will upload the queries, and their respective responses, on its websites without identifying the source of queries.
- 2.8.4 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.
- 2.8.5 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 Transaction Documents. Verbal clarifications and information given by Authority or its employees or Advisors / consultants or its employees/ representatives shall not in any way or manner be binding on the Authority.
- 2.8.6 The Authority shall hold two Pre-Bid Conferences first on January 30, 2009 and second on February 7, 2009 at New Delhi and Lucknow respectively for giving clarifications on the queries raised by prospective Bidders.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the deadline for submission of Bids, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.9.2 Any Addendum thus issued will be available on the website of UPSTDCL i.e. www.up-tourism.com and advisor i.e. IFCI Ltd. website www.ifcilttd.com.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

C. **PREPARATION AND SUBMISSION OF BIDS**

2.10 **Format and Signing of Bid**

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

2.11 **Sealing and Marking of Bids**

- 2.11.1 The bidder shall mark and seal the envelop A as per the provision of Clause 2.2.4 of RFQ. The Bidder shall submit the Bid in the format specified at Appendix-I and seal it in separate envelope and mark the envelopes as “FINANCIAL BID”. This sealed envelope shall be kept in the Envelope containing RFP Documents as specified in Clause 2.11.2
- 2.11.2 The Envelope-B marked as RFP shall contain following documents duly signed by Authorised signatory (ies):
- a) Bid Security in the prescribed format (Appendix – II);
 - b) Board Authorisation for submission of Bid and signing all Power of Attorneys
 - c) Power of Attorney for signing of Bid in the prescribed format (Appendix – III);
 - d) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – IV);
 - e) A copy of the Share Sale Agreement duly signed by the person(s) authorized by the Bidder in whose favour the shares are to be transferred (Appendix – VI)
 - f) A copy of the Shareholders’ Agreement duly signed by the persons authorized by the Bidder in whose favour the shares are to be transferred alongwith Deed of Adherence (Appendix –VII and Appendix-VIIA)
 - g) Consortium agreement in the prescribed format(Appendix- VIII)
 - h) The Separate sealed envelope having Financial Bid clearly marked as “CONFIDENTIAL FINANCIAL BID” in the prescribed format (Appendix-I)

- 2.11.3 A true copy of the documents accompanying the Bid, as specified in Clause 2.11.2 above, shall be placed in spiral binding and the pages shall be numbered serially. Each page thereof shall be initialled in blue ink by the authorised signatory. This copy of the documents shall be placed in the envelope marked “ RFP”.
- 2.11.4 In case a Bidder submits Bids for more than one SPV, a letter specifying the priority wise list of SPVs for which Bids are being submitted should be enclosed in each bid document.
- 2.11.5 The two envelopes specified in Clause 1.2.4 shall be placed in an outer envelope, which shall be sealed and clearly bear the following identification:
“Bid for purchase of 76% equity shares in the SPV (Name-----)” and shall clearly indicate the name and address of the Bidder.
- 2.11.6 CLAUSE NOT IN USE”
- 2.11.7 Each of the envelopes shall be addressed and submitted to:

The Secretary (Tourism),
Government of Uttar Pradesh
Paryatan Bhavan
C-13, Vipin Khand, Gomti Nagar
Lucknow 226 010
Tel : 0522-2307074
Fax: 0522- 2308937
E-mail:upstdc@bsnl.in
upstdc@up-tourism.com

- 2.11.8 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.
- 2.11.9 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.12 **Bid Due Date**

- 2.12.1 Bids should be submitted before 1700 hours IST on the 18/02/2009 at the address provided in Clause 2.11.7 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.7.
- 2.12.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13 **Late Bids**

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

2.14 **Contents of the Bid**

- 2.14.1 The Financial Bid shall be furnished in the format at Appendix – I and shall consist of Purchase Price in Indian Rupee towards Disinvestment of 76% equity shares of SPV to be quoted by the Bidder in accordance with this RFP and the provisions of the Share Sale Agreement.
- 2.14.2 The 76% of the equity share capital of the SPV will be awarded to the Bidder quoting the highest Purchase Price.
- 2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.14.4 The proposed Share Sale Agreement, Shareholders' Agreement, Non Disclosure Agreement, Deed of Adherence and Consortium Agreement shall be deemed to be part of the Bid.

2.15 **Modifications/ Substitution/ Withdrawal of Bids**

- 2.15.1 The Bidder cannot modify, substitute or withdraw its Bid after submission.
- 2.15.2 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.16 **Rejection of Bids**

- 2.16.1 The Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Authority to accept any Bid or to give any reasons for their decision.
- 2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 **Validity of Bids**

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

2.18 **Confidentiality**

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any

statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority.

2.19 **Correspondence with the Bidder**

The Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. **BID SECURITY**

2.20 **Bid Security**

2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.6 and 2.1.7 hereinabove in the form of a bank guarantee issued by a Nationalised Bank, or a Scheduled Bank in India, in favour of the Authority in the format at Appendix – II (the “**Bank Guarantee**”) and having a validity period of not less than 180 days from the Bid Due Date, as may be extended by the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any Nationalised Bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

2.20.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Director General Tourism, Government of Uttar Pradesh, Lucknow and payable at Lucknow (the “**Demand Draft**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.20.3 Any Bid not accompanied by the Bid Security shall be rejected by the Authority as non responsive.

2.20.4 Save as provided in Clauses 1.2.6 and 1.2.7 above, the Bid Security of unsuccessful Bidders (other than the highest two for each SPV) will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or in case the Bidding process is cancelled by the Authority. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.20.5 The Selected Bidder’s Bid Security will be adjusted, without any interest, upon the Bidder signing the Share Sale Agreement against Purchase Price.

2.20.6 The Authority shall be entitled to forfeit and appropriate the Bid Security in any of the events specified in Clause 2.20.7 herein below.

2.20.7 The Bid Security shall be forfeited and appropriated by the Authority under the following conditions:

- a) If a Bidder submits a non-responsive Bid;
- b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
- c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
- d) In the case of Selected Bidder, if it fails within the specified time limit to sign the Share Sale Agreement.

3. **EVALUATION OF BIDS**

3.1 **Opening and Evaluation of Bids**

- 3.1.1 The Authority shall open the Bids at 1130 hours on the date mentioned in Schedule given in Clause 1.4, at the place specified in Clause 2.11.7 and in the presence of the Bidders who choose to attend directly or through any of their authorized representatives, such representatives not to exceed two in number.
- 3.1.2 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.3 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 **Tests of responsiveness**

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
 - (a) it is received as per the format at Appendix – I;
 - (b) it is received by the Bid Due Date including any extension thereof pursuant to clause 2.12.2;
 - (c) it is signed, sealed, bound and marked as stipulated in Clauses 2.10 and 2.11;
 - (d) it is accompanied by the Bid Security as specified in Clause 1.3;
 - (e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;
 - (f) it contains all the information (complete in all respects) as requested in this RFP and/or Transaction Documents (in formats specified in this RFP);
 - (g) it does not contain any condition or qualification i.e. it is an absolutely unconditional Bid; and
 - (h) it is not non-responsive in terms hereof.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3 **Selection of Bidder**

- 3.3.1 The Bidder submitting a responsive Bid in terms of Clause 3.2.1 and quoting the highest financial Bid for the concerned SPV shall be declared as the selected Bidder (the “**Selected Bidder/Successful; Bidder**”). The Authority may or may not consider any Financial Bid below the Expected Price.
- 3.3.2 In the event that two or more Bidders quote the same amount of financial Bid for a particular SPV, the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Bidders having a tie if they choose to attend.
- 3.3.3 In the event that the first highest Bidder withdraws or is not selected for any reason in the first instance, the Authority may invite the second highest Bidder asking it to match the Bid of the first highest Bidder and if such second highest Bidder decides to match its Bid, the Authority shall follow the same process of selection as adopted for the first highest Bidder.
- 3.3.4 If the second highest Bidder also withdraws from matching the Bid of the first highest Bidder or is not selected for any reason, the Authority may, in its discretion, or annul the Bidding Process.
- 3.3.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the 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, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder and the next eligible Bidder may be considered.
- 3.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Share Sale Agreement and Shareholders’ Agreement within the period prescribed in Clause 1.4. The Selected Bidder shall not be entitled to seek any deviation in the Share Sale Agreement or Shareholders’ Agreement.

3.4 **Contacts during Bid Evaluation**

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

4. **FRAUD AND CORRUPT PRACTICES**

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Share Sale Agreement and SHA. Notwithstanding anything to the contrary contained herein, or in the LOA or the

Share Sale Agreement or SHA, the Authority shall reject a Bid, withdraw the LOA, or terminate the Share Sale Agreement as well as SHA, as the case may be, without being liable in any manner whatsoever to the Bidder, if Authority determines that the Bidder 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 forfeit and appropriate the Bid Security, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA, Share Sale Agreement or the Shareholders' Agreement, 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 Share Sale Agreement and Shareholders' Agreement, such Bidder 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 corrupt practice is found to be established.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **“Corrupt practice”** means

(i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Share Sale Agreement or Share Sale Agreement or Shareholders' Agreement or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or

(ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Share Sale Agreement or Shareholders' Agreement, as the case may be, any person in respect of any matter relating to the Disinvestment of SPV or the LOA or the Share Sale Agreement or Share Sale Agreement or Shareholders' Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Disinvestment of SPV;

(b) **“Fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) **“Coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

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

5. **PRE-BID CONFERENCE**

5.1 First Pre-Bid conferences of the Bidders convened on January 30, 2009 at 11.30 A.M. at Hotel Shangrila, Ashoka Road, Connaught Place, New Delhi. A maximum of five representatives of each Bidder were allowed to participate on production of authority letter from the Bidder.

5.2 Second Pre-Bid Conference of the Bidders convened on February 7, 2009 at Room no. 111 Udyog Bhawan, Lucknow

5.3 During the course of Pre-Bid conferences, the Bidders sought clarifications and made suggestions for consideration of the Authority. The Authority provided clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. **MISCELLANEOUS**

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

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

- a) suspend and/ or cancel the Bidding Process
- b) amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto before the Bid Due Date;
- c) consult with any Bidder in order to receive clarification or further information;
- d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

CONFIDENTIAL

APPENDIX – I

FINANCIAL BID

(Refer Clauses 2.1.4 and 2.14)

Dated:

The Director General,
Department of Tourism
Government of Uttar Pradesh
Paryatan Bhavan
C-13, Vipin Khand, Gomti Nagar
Lucknow 226 010

Dear Sir,

Sub: Bid for purchase of 76% equity shares in SPV No.

With reference to your RFP document dated *****, I/we, having examined the Transaction Documents and understood their contents, hereby submit my/our Bid for the aforesaid Transaction. The Bid is unconditional and unqualified.

All information provided in the Bid and in the Appendices is true and correct.

This statement is made for the express purpose of qualifying as a Bidder for purchase of 76% equity shares of SPV (name *****)

I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

We certify that in the last three years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any Transaction or contract nor have had any contract terminated for breach on our part.

I/We declare that our Bid is totally unconditional, irrevocable and without any qualification emphasized by us.

I/ We declare that:

I/ We have examined and have no reservations to the Transaction Documents, including any Addendum issued by the Authority.

I/ We do not have any conflict of interest in accordance with Clauses 2.1.13 and 2.1.14 of the RFP document

I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 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.

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 Transaction, without incurring any liability to the Bidders, in accordance with Clause 2.7 of the RFP document.

I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document and are/ is qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process.

I/ We declare that we/ any Member of the Consortium, are/ is not a Member of a/ any other Consortium submitting a Bid for purchase of 76% equity shares in same SPV

I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Transaction or which relates to a grave offence that outrages the moral sense of the community.

I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.

I/ We further certify that no investigation by a regulatory authority is pending either against us, sister concern or against our Associates or against our CEO or any of our Directors/ Managers/ employees. The details of investigation pending are disclosed in Annexure (strike off whichever not applicable)

I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-V thereof.]

I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

We acknowledge that our Consortium/ proposed Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Member(s)

who will own at least 26% of the equity of the consortium and undertake that each of such Consortium Member (s) shall continue to hold at least 26% of the equity of the SPV for a minimum period of 3 years from the date of Share Sale Agreement in accordance with the provisions of the Share Holder Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Share Holders Agreement in respect tourism units intended to be disinvested.

I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the 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 Share Sale Agreement/ Shareholders' Agreement, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Share Sale Agreement and Shareholders' Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever

I/We hereby irrevocably waive any right which we may have at any stage in law or whatsoever manner otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above SPV(s) and the terms and implementation thereof.

In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Share Sale Agreement and Shareholders' 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.

I/We have studied all the Transaction Documents carefully and also surveyed the sites /locations. We understand that 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 concerning or relating to the Bidding Process.

The purchase consideration has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, drafts of Share Sale Agreement and Shareholders' Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.

I/We have enclosed Bid Security of as per schedule (Rupees _____ only) to the Authority in accordance with the RFP Document.

The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is enclosed along with RFP documents.

I/We agree and understand that the Bid is subject to the provisions of the Transaction Documents. In no case, I/We shall have any claim or right of whatsoever nature if the equity shares in SPV(s) / Share Sale is not awarded to me/us or our Bid is not opened.

I/We hereby submit our Bid of Rs. ____ (in words Rs.....) to the Authority for purchase of 76% of equity shares in SPV NO. ----- with the Transaction Bidding Documents Share Sale Agreement and Shareholders' Agreement.

I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.

I/We agree and undertake to abide by all the terms and conditions of the RFP document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Bank Guarantee for Bid Security

(Refer Clauses 2.1.6 and 2.20.1)

B. G. No. -----Dated:-----

In consideration of the Governor of Uttar Pradesh (herein after called " the Government") having agreed to exempt _____(hereinafter called "the said contractor (s) " from the demand, under the terms and conditions of an agreement, dated _____made between _____and _____for _____

(herein after called " the said agreement"), of security deposit for the due fulfilment by the said contractor(s) of the terms and conditions contained in the said agreement, on production of a bank guarantee for Rs. _____(Rupees _____only) we, (indicate the name of the bank) _____, (hereinafter referred to as " the Bank") at the request of _____/ contractor(s)/ do hereby undertake to pay to the Government an amount not exceeding Rs. _____against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said contractor(s) of any of the terms or conditions contained in the said Agreement.

2. We (indicate the name of bank)_____ do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said contractor(s) of any of the terms or conditions contained in the said agreement or by reason of the contractor(s) failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) supplier(s) in any suit or proceeding pending before any Court or Tribunal or Arbitrator relating thereto our liability under this present being absolute and unequivocal.

The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the contractor(s) supplier(s) shall have no claim against us for making any further payment .

4. We, (indicate the name of bank)_____ further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till _____ (Office/Department) _____

certifies that the terms and conditions of the said Agreement, have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the _____ day of month year__ we shall be discharged from all liability under this guarantee thereafter.

5. We __(indicate the name of bank)_____ further agree with the Government that the Government shall have the fullest liberty without our consent and without effecting in any manner our obligations hereunder to vary any of the terms and conditions of the said agreement or to extend time of performance by the said contractor(s) from time to time or to postpone for any time from time to time any of the powers exercisable by the Government against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act or commission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any of the such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Supplier(s).

7. We __(indicate the name of bank)_____ lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Government in writing.

Dated the _____ day of _____
for _____(indicate the name of Bank)_____

Power of Attorney for signing of Bid

(Refer Clause 2.1.8)

Know all men by these presents, We, _____ (name of the company and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the disinvestment of 76% equity shares in SPV(s) formed or being formed by the GoUP(the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Disinvestment of SPV(s) and/or upon award thereof to us .

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

IN WITNESS WHEREOF WE, _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____, 2009.

For _____
(Signature)
(Name, Title and Address) Witnesses:

Accepted [Notarised]

(Signature)
(Name, Title and Address of the Attorney)

Notes:

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

Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person

executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

Power of Attorney for Lead Member of Consortium

(Refer *Clause 2.1.9*)

Whereas the GoUP(“the Authority”) has invited bids from pre-qualified and short-listed parties for the purchase of 76% equity shares in SPV(s) pursuant to the process of disinvestment, and,

Whereas, _____, _____ and _____ (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the proposed disinvestment in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the proposed disinvestment, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the purchase of 76% equity shares in the SPV(s).

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, _____ having our registered office at _____, M/s. _____, having our registered office at _____, and M/s. _____, having our registered office at _____, [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s _____, having its registered office at _____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is declared as Investor and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the proposed disinvestment, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the

Consortium’s bid for the Transaction and/ or upon award thereof till the Share Sale Agreement is entered into with the Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 2009.

For _____ (Name & Title)

For _____ (Name & Title)

For _____ (Name & Title)

Witnesses:

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

Notes:

- a) *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.*
- b) *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- c) *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

APPENDIX – V

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated: 13th July 2001.

OFFICE MEMORANDUM

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

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

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

- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) The bidders shall be required to provide an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors / Managers / employees, full details of such investigation including the name of investigating agency, the charge / offence for which the investigation has been launched, name and designation of the persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government.
