

**Bhubaneswar Municipal Corporation (BMC)  
(Government of Odisha)**



**RFP for appointment of Independent Engineer for development of Regional MSW Processing and Landfill  
Facility for Bhubaneswar and Cuttack**

**RFP No. 12842**

**Date: 19.09.2014**

The Housing and Urban Development Department (H&UDD), Government of Odisha (GoO), is entrusted with the responsibility of developing urban infrastructure in the state of Odisha. As a part of this endeavor, the H&UDD through the Bhubaneswar Municipal Corporation (BMC) and the Cuttack Municipal Corporation (CMC) is undertaking the development, operation and maintenance of Regional Municipal Solid Waste (MSW) Processing and Landfill facility at Bhuasani, for the collection, treatment and scientific disposal of waste from Bhubaneswar and Cuttack.

**About the Project**

The Project is being undertaken by BMC and CMC on a Public Private Partnership (PPP) basis through the Design, Build, Finance, Operate and Transfer (DBFOT) model. A consortium of Essel Infraprojects Limited and Rochem Separation System (India) Private Limited has been selected as the "Preferred Bidder" through a competitive bidding process. The Preferred Bidder has incorporated Essel Bhubaneswar MSW Limited (the "Concessionaire") for implementation of the project. Further details about the project are present in the RFP package for the Project available at [www.bmc.gov.in](http://www.bmc.gov.in)

**Invitation**

BMC invites Proposals in response to the Request for Proposal (RFP) for selection of an Independent Engineer, from a single entity or a group of companies, forming a consortium (registered under The Companies Act, 1956 or equivalent International Law), the "Bidder", having experience as indicated in the RFP Document. The Bidder shall be responsible for independent monitoring of the progress of the Project during the term of the Concession Agreement in conformity with the TOR indicated in the RFP Document.

Interested Bidders are requested to procure the Request for Proposal (RFP) Document from **22/09/2014** to **14/10/2014** up to 3:00 PM. The RFP Document can also be downloaded from [www.bmc.gov.in](http://www.bmc.gov.in) between the said dates. The last date for the submission of Proposals in response to the RFP is **14/10/2014 till 4:00 PM**.

**Proposals to be delivered to:**

The Municipal Commissioner,  
Bhubaneswar Municipal Corporation,  
Vivekananda Marg, Bhubaneswar - 751014  
Phone: 0674-2431403, Fax: 0674-2432895  
E-Mail: [mc.bmc@bmc.gov.in](mailto:mc.bmc@bmc.gov.in)

**For queries and further information please contact:**

**Mr. Srimanta Mishra**  
Project Officer, JNNURM  
Bhubaneswar Municipal Corporation  
Vivekananda Marg, Bhubaneswar – 751014  
Phone: +91 94370 40406  
Email: [po-jnnurm@bmc.gov.in](mailto:po-jnnurm@bmc.gov.in)

**Anurav Jain, Consultant, Urban Practice**  
CRISIL Risk & Infrastructure Solutions Limited  
CRISIL House, Central Avenue,  
Hiranandani Business Park, Powai, Mumbai 400 076,  
Mobile: +91 90044 81186  
Email: [anurav.jain@crisil.com](mailto:anurav.jain@crisil.com)

**Sd/-**

**Addl. Commissioner  
Bhubaneswar Municipal Corporation**

Request For Proposal (RFP)  
for  
Appointment of Independent Engineer for  
development of Regional MSW Processing and Landfill  
Facility for Bhubaneswar and Cuttack, Odisha

HOUSING and URBAN DEVELOPMENT DEPARTMENT  
GOVERNMENT OF ODISHA

Transaction Advisor: Orissa Industrial Infrastructure Development Corporation  
(IDCO)

September 2014

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## **DISCLAIMER**

The information contained in this Request for Proposal document ("RFP") or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the Corporation or any of its employees or advisers, is provided to Bidders 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 Corporation 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 the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Corporation in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Corporation, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. 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 and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidders 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 Corporation accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Corporation, its employees and advisers 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, reliability or completeness 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 Selection Process.

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

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

The issue of this RFP does not imply that the Corporation is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the Consultancy and the Corporation reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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

## GLOSSARY

<b>Agreement</b>	As defined in Schedule-2
<b>Agreement Value</b>	As defined in Clause 6.1.2 of Schedule-2
<b>Applicable Laws</b>	As defined in Schedule-2
<b>Associate</b>	As defined in Clause 2.3.3
<b>Authorized Representative</b>	As defined in Clause 2.13.3
<b>Bidder</b>	As defined in Clause 1.2
<b>Bid Security</b>	As defined in Clause 2.21.1
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Conditions of Eligibility</b>	As defined in Clause 2.2.1
<b>Conflict of Interest</b>	As defined in Clause 2.3.1
<b>Consultancy</b>	As defined in Clause 1.2
<b>Consultancy Team</b>	As defined in 2.1.3
<b>IE</b>	As defined in Clause 1.2
<b>Contracting Authority</b>	As defined in Clause 1.1.1
<b>Corporation</b>	As defined in Clause 1.1.1
<b>CV</b>	Curriculum Vitae
<b>DBFOT</b>	Design, Build, Finance, Operate and Transfer
<b>Documents</b>	As defined in Clause 2.12
<b>Effective Date</b>	As defined in Clause 2.1 of Schedule-2
<b>Eligible Assignments</b>	As defined in Clause 3.3.4
<b>Expatriate Personnel</b>	As defined in Clause 1.1.1(i) of Schedule-2
<b>Financial Proposal</b>	As defined in Clause 2.16.1
<b>Form of Agreement</b>	Form of Agreement as in Schedule-2
<b>INR, Re, Rs.</b>	Indian Rupee(s)
<b>Key Personnel</b>	As defined in Clause 2.1.3
<b>LOA</b>	Letter of Award
<b>Member</b>	As defined in Clause 2.3.3(a)
<b>Official Website</b>	As defined in Clause 1.11.2
<b>Personnel</b>	As defined in Clause 1.1.1(n) of Schedule-2
<b>PPP</b>	Public Private Partnership
<b>Professional Personnel</b>	As defined in Clause 2.15.7
<b>Prohibited Practices</b>	As defined in Clause 4.1
<b>Project</b>	As defined in Clause 1.1.1

<b>Project Manager</b>	As defined in Clause 4.6 of Schedule-2
<b>Proposal</b>	As defined in Clause 1.2
<b>Proposal Due Date or PDD</b>	As defined in Clauses 1.5 and 1.8
<b>Prequalification Document</b>	As defined in Clause 2.14.1
<b>RFP</b>	As defined in Disclaimer
<b>Selected Bidder</b>	As defined in Clause 1.6
<b>Selection Process</b>	As defined in Clause 1.6
<b>Services</b>	As defined in Clause 1.1.1(q) of Schedule-2
<b>Statutory Auditor</b>	An Auditor appointed under Applicable Laws
<b>Sub-IE</b>	As defined in Clause 1.1.1(r) of Schedule-2
<b>Support Personnel</b>	As defined in Clause 2.15.7
<b>Team Leader</b>	As defined in Clause 2.1.3
<b>Technical Proposal</b>	As defined in Clause 2.15.1
<b>Qualification Proposal</b>	As defined in Clause 2.14
<b>TOR</b>	As defined in Clause 1.1.4
<b>US\$</b>	United States Dollar

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

## **INVITATION FOR PROPOSAL**



## 1. INTRODUCTION

### 1.1 Background

- 1.1.1 The Housing and Urban Development Department (H&UDD), Government of Odisha (GoO), is engaged in development of Urban Infrastructure in the state of Odisha, as a part of this endeavour has decided to undertake development and operation and maintenance of Regional Municipal Solid Waste (MSW) Processing and landfill facility for waste collected from cities of Bhubaneswar and Cuttack (the "**Project**") through Public Private Partnership (the "**PPP**") on Design, Build, Finance, Operate and Transfer basis (the "**DBFOT**"). The H&UDD has decided to carry out the bidding process for the Project and has authorized Bhubaneswar Municipal Corporation ("**BMC**" or the "**Corporation**" or the "**Contracting Authority**") vide letter no 16761/HUD/13-HUD-65-REFM-17-SCH-007/3013 (Vol-II) dated 15th May 2013 on behalf of Corporation and Cuttack Municipal Corporation ("**CMC**") for selection of private entity as the bidder to whom the Project may be awarded. **Orissa Industrial Infrastructure Development Corporation (IDCO)** has been appointed to provide transaction advisory services to the Contracting Authority for identifying a Successful Bidder to undertake the implementation of the proposed Project.
- 1.1.2 In this regard the Corporation and Cuttack Municipal Corporation have executed separate concession agreements (the "**Concession Agreement**") with a Consortium comprised of (a) **Essel Infraprojects Limited**; and (b) **Rochem Separation System (India) Private Limited**. The Consortium has incorporated Essel Bhubaneswar MSW Limited (the "**Concessionaire**") for the purpose of the Project.
- 1.1.3 The current scope of the project is to develop a regional MSW processing and landfill facility for treating and disposing the MSW collected from Bhubaneswar and Cuttack. The Concessionaire shall, at its own cost, responsibility and risk, be entitled and obliged to carry out, throughout the Concession Period, the following rights as granted to the Concessionaire by the Contracting Authority (the "**Concession Rights**"):
- (a) Design, construction and operation of transfer stations at Bhubaneswar and Cuttack on the sites identified by BMC and CMC respectively;
  - (b) Provision and operation of adequate number of suitable vehicles for the transportation of waste from the transfer stations to the regional processing plant and scientific landfill facility at the specified site in Bhuasani;
  - (c) Design, construction and operation of regional processing plant and scientific landfill facility at Bhuasani; and
  - (d) Processing of the MSW using a suitable technology, management of the products of processing and scientific disposal of inert in to the Scientific Landfill facility.
- 1.1.4 An Independent Engineer is to be appointed as per the provisions of the Concession Agreements for the Project. In pursuance of the above, the Corporation has decided to

carry out the process for selection of an Independent Engineer who shall work in accordance with the Terms of Reference specified as Schedule-1 (the "**TOR**").

## 1.2 Request for Proposal

The Corporation invites Proposals (the "**Proposals**") for selection of an Independent Engineer (the "**IE**" or the "**Bidder**") who shall be responsible for independent monitoring of the progress of the Project during the term of the Concession Agreement in conformity with the TOR (collectively the "**Consultancy**").

The Corporation intends to select the IE through an open competitive bidding in accordance with the procedure set out herein.

## 1.3 Due diligence by Bidders

Bidders are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Corporation and the Project site, sending written queries to the Corporation.

## 1.4 Sale of RFP document

RFP document can be obtained between 11:00 hrs. and 16:00 hrs. on all working days on payment of a fee of Rs. 6000/- plus 5% VAT in the form of a demand draft drawn on any Scheduled Bank in India in favor of Commissioner, Bhubaneswar Municipal Corporation and payable at Bhubaneswar. The document can also be downloaded from the Official website of the Corporation [www.bmc.gov.in](http://www.bmc.gov.in) . In case of a downloaded form, the Bidder shall submit the demand draft along with the Proposal.

## 1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 180 (one hundred and eighty) days from the Proposal Due Date (the "**PDD**").

## 1.6 Brief description of the Selection Process

The Corporation has adopted a single stage selection process (collectively the "**Selection Process**") in evaluating the Proposals comprising qualification, technical and financial bids to be submitted in three separate sealed envelopes. In the first stage, the Bidders shall be evaluated for their compliance with the qualification requirements as specified in Clause 3.1. Based on the evaluation of prequalification, top 5 (five) qualified Bidders shall be short-listed for further evaluation. In the second stage, a technical evaluation will be carried out as specified in Clause 3.3. In the third stage, a financial evaluation will be carried out as specified in Clause 3.5. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.6. The first ranked Applicant shall be selected for negotiation (the "**Selected Bidder**") while the second ranked Bidder will be kept in reserve.

## 1.7 Currency conversion rate and payment

- 1.7.1 For the purposes of technical evaluation of Bidders, Rs. 60 per US\$ shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to US\$ as on the date 60 (sixty) days prior to the Proposal Due Date, and the amount so derived in US\$ 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.
- 1.7.2 All payments to the IE shall be made in INR in accordance with the provisions of this RFP. The IE may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the IE.

## 1.8 Schedule of Selection Process

The Corporation would endeavor to adhere to the following schedule:

Event Description	Date
1. Last date for receiving queries/clarifications	06 <sup>th</sup> October, 2014
2. Corporation response to queries	10 <sup>th</sup> October, 2014 (The responses will be published on the Official Website of Corporation)
3. Proposal Due Date or PDD	14 <sup>th</sup> October, 2014 (15:00 hours)
4. Opening of Proposals	On Proposal Due Date
5. Letter of Award (LOA)	Within 30 days of PDD
6. Signing of Agreement	Within 15 days of LOA

## 1.9 Pre-Proposal visit to the Site and inspection of data

Prospective Bidders may visit the site and review the available data at any time prior to PDD. For this purpose, they will provide at least two days' notice to the nodal officer specified below:

**Mr Shrimanta Mishra**

Project Officer, JNNURM

Bhubaneswar Municipal Corporation

Vivekananda Marg, Bhubaneswar - 751014

Phone: +91 94370 40406

Email: [po-jnnurm@bmc.gov.in](mailto:po-jnnurm@bmc.gov.in)

## 1.10 Last date of receiving queries

The Bidders may address their queries to the nodal officer specified below on or before 6<sup>th</sup> October, 2014

**Mr Shrimanta Mishra**

Project Officer, JNNURM

Bhubaneswar Municipal Corporation

Vivekananda Marg, Bhubaneswar - 751014

Phone: +91 94370 40406

Email: [po-jnnurm@bmc.gov.in](mailto:po-jnnurm@bmc.gov.in)

**1.11 Communications**

1.11.1 All communications including the submission of Proposal should be addressed to:

**Dr. Krishan Kumar, IAS**

The Municipal Commissioner,

Bhubaneswar Municipal Corporation,

Vivekananda Marg, Bhubaneswar - 751014

Phone: 0674-2431403

Fax: 0674-2432895

E-Mail: [mc.bmc@bmc.gov.in](mailto:mc.bmc@bmc.gov.in)

1.11.2 The **Official Website** of the Corporation is: [www.bmc.gov.in](http://www.bmc.gov.in) All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

**“RFP for Appointment of Independent Engineer for development of Regional MSW Processing and Landfill Facility for Bhubaneswar and Cuttack, Odisha”**

## 2. INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 Scope of Proposal

2.1.1 Bidders are advised that the selection of IE shall be on the basis of an evaluation by the Corporation through the Selection Process specified in this RFP. Bidders shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the Corporation's decisions are without any right of appeal whatsoever.

2.1.2 The Bidder shall submit its Proposal in the form and manner specified in this Part- 2 of the RFP. The Qualification and Technical Proposals shall be submitted in the form at Appendix-II and the Financial Proposal shall be submitted in the form at Appendix-III. Upon selection, the Bidder shall be required to enter into an agreement with the Corporation which shall be made available along with the RFP.

2.1.3 Key Personnel

The Consultancy Team (the "**Consultancy Team**") shall consist of the following key personnel (the "**Key Personnel**") who shall discharge their respective responsibilities as specified below:

No.	Key Personnel	Indicative Responsibility
a.	Solid Waste Management Expert / Team Leader	I. Lead the entire team and provide expert inputs. II. Draw upon previous expertise in land filling, collection, transportation, processing, and supervision of solid waste management activities. III. Review the DPR, drawings, completion schedule and O&M plan to be submitted by the Concessionaire IV. Review with support of the Civil Engineer the landfill construction, processing facility and other civil works for the project. V. Review the construction of the Processing Facility and VI. Review tipping fee statements, do periodic tests and site visits, ensure that the concessionaire meets all the requirements as per the concession agreement.
b.	Environmental Engineer	I. Support the Team Leader in undertaking the activities listed above and as required II. Review the environmental and social management plan (ESMP) and monitor the adherence to environmental and social impact assessment (ESIA) and the environmental and social management plan (ESMP) submitted by the Concessionaire.

No.	Key Personnel	Indicative Responsibility
c.	Quantity Surveyor	I. Review of the BOQ and ascertain the capital and O&M costs suggested by the Concessionaire. II. Support the Team Leader as required.
d.	Civil Engineer	III. Review the landfill construction, processing facility and other civil works for the project. IV. Support the Team Leader as required
e.	Financial Analyst	I. To review the financial model prepared by the Concessionaire and provide feedback of the same to the Corporation and the Concessionaire. II. Support the Team Leader as required.
f.	Engineering Support Staff (2)	III. Support the main Team in undertaking its day-to-day activities

## 2.2 Conditions of Eligibility of Bidders

2.2.1 Bidders must read carefully the minimum conditions of eligibility (the "**Conditions of Eligibility**") provided herein. Proposals of only those Bidders who satisfy the Conditions of Eligibility will be considered for evaluation.

2.2.2 To be eligible for evaluation of its Proposal, the Bidder shall fulfil the following:

- A. The Bidder shall be a company incorporated in India under the (Indian) Companies Act 1956 or a company incorporated under equivalent law abroad. The Bidder shall be required to submit a true copy of its Incorporation Certificate along with its Proposal.
- B. **Financial Capacity:** The Bidder shall have to meet the stipulated requirements under Clause 2.14.3 of this RFP document.
- C. **Technical Capacity:** The Bidder shall have to meet the stipulated requirements under Clause 2.14.4 of this RFP document.

2.2.3 The Bidder shall enclose with its Proposal, certificate(s) from its Statutory Auditors stating its total revenues from professional fees during each of the past five financial years and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Bidder does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that audits the annual accounts of the Bidder.

2.2.4 The Bidder should submit a Power of Attorney as per the format at Form-4 of Appendix-I.

2.2.5 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.

- 2.2.6 A Bidder or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder or its Associate.
- 2.2.7 While submitting a Proposal, the Bidder should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Bidders may format the specified forms making due provision for incorporation of the requested information.
- 2.2.8 In addition, the Bidders shall provide work orders of relevant assignments undertaken along with completion certificate or experience certificate (for ongoing assignments) clearly outlining the scope of the project, activities undertaken, the timelines of the project and the value of the assignment (in Rs. Crore).
- 2.2.9 The bidders shall also provide previous 5 (five) years audited financial statements including profit and loss, balance sheet and cash flow statements.

### **2.3 Conflict of Interest**

- 2.3.1 A Bidder shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "**Conflict of Interest**"). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Corporation shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the Corporation for, *inter alia*, the time, cost and effort of the Corporation including consideration of such Bidder's Proposal, without prejudice to any other right or remedy that may be available to the Corporation hereunder or otherwise.
- 2.3.2 The Corporation requires that the IE provides professional, objective, and impartial advice and at all times hold the Corporation's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The IE shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Corporation.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- a) the Bidder, or Associate (or any constituent thereof) and any other Bidder, or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of a Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 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, or Associate is less than 5%

(five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.3.3(a), 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% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; and / or

- b) a constituent of such Bidder is also a constituent of another Bidder; and / or
- c) such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; and / or
- d) such Bidder has the same legal representative for purposes of this Proposal as any other Bidder; and / or
- e) 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 other's information about, or to influence the Proposal of either or each of the other Bidder; and / or
- f) There is a conflict among this and other consulting assignments of the Bidder (including its personnel and Sub-IE) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the IE will depend on the circumstances of each case. While providing consultancy services to the Corporation for this particular assignment, the IE shall not take up any assignment that by its nature will result in conflict with the present assignment; and / or
- g) a firm which has been engaged by the Corporation or CMC to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; and / or
- h) the Bidder, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (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 or ownership interest of a Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

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

2.3.4 A Bidder eventually appointed to provide Consultancy for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the Corporation in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the Corporation in accordance with the rules of the Corporation. For the avoidance of doubt, an entity affiliated with the IE shall include a partner in the IE's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the IE, as the case may be, and any Associate thereof.

## **2.4 Number of Proposals**

No Bidder or its Associate shall submit more than one Proposal for the Consultancy. A Bidder applying individually or as an Associate shall not be entitled to submit another proposal either individually or as an associate for another firm, as the case may be.

## **2.5 Cost of Proposal**

The Bidders shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to the Corporation, Project site etc. The Corporation will not be

responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

## **2.6 Site visit and verification of information**

Bidders are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, access to the site, Applicable Laws and regulations or any other matter considered relevant by them. Visits shall be organized for the benefit of prospective Bidders on dates, time and venue as specified in Clause 1.9.

## **2.7 Acknowledgement by Bidder**

2.7.1 It shall be deemed that by submitting the Proposal, the Bidder has:

- a) made a complete and careful examination of the RFP;
- b) received all relevant information requested from the Corporation;
- c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Corporation or relating to any of the matters referred to in Clause 2.6 above;
- d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Proposal and performance of all of its obligations there under;
- e) acknowledged that it does not have a Conflict of Interest; and
- f) Agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 The Corporation 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 RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Corporation.

## **2.8 Right to reject any or all Proposals**

2.8.1 Notwithstanding anything contained in this RFP, the Corporation reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.8.2 Without prejudice to the generality of Clause 2.8.1, the Corporation reserves the right to reject any Proposal if:

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

Misrepresentation/ improper response by the Bidder may lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Proposals have been opened and Bidder quoting the lowest bid gets disqualified / rejected, then the Corporation reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of the Corporation, including annulment of the Selection Process.

## **B. DOCUMENTS**

### **2.9 Contents of the RFP**

2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 2.11:

#### **Request for Proposal**

1. Introduction
2. Instructions to Bidders
3. Criteria for Evaluation
4. Fraud and corrupt practices
5. Pre-Proposal Conference
6. Miscellaneous

#### **Schedules**

##### **1. Terms of Reference**

##### **2. Form of Agreement**

Annex-1: Terms of Reference

Annex-2: Deployment of Personnel

Annex-3: Estimate of Personnel Costs

Annex-4: Approved Sub-IE(s)

Annex-5: Cost of Services

Annex-6: Payment Schedule

Annex-7: Bank Guarantee for Performance Security

##### **3. Guidance Note on Conflict of Interest**

#### **Appendices**

##### **Appendix-I: Pre-Qualification Proposal**

Form 1: Letter of Proposal

Form 2: Particulars of the Bidder

Form 3: Statement of Legal Capacity

Form 4: Power of Attorney

**Appendix-II: Qualification Proposal**

Form 1: Financial Capacity of Bidder

Form 2: Particulars of Key Personnel

Form 3: Auditor's certification on revenues

Form 4: Abstract of Eligible Assignments of Bidder

Form 5: Abstract of Eligible Assignments of Key Personnel

Form 6: Eligible Assignments of Bidder

Form 7: Eligible Assignments of Key Personnel

Form 8: CV of Key Personnel

Form 9: Proposed methodology and work plan

**Appendix-III: Financial Proposal**

Form 1: Covering Letter

Form 2: Financial Proposal

**2.10 Clarifications**

2.10.1 Bidders requiring any clarification on the RFP may send their queries to the Corporation in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

"Queries/Request for Additional Information concerning RFP for Appointment of Independent Engineer for development of Regional MSW Processing and Landfill Facility for Bhubaneswar and Cuttack, Odisha"

The Corporation shall endeavor to respond to the queries within the period specified therein but not later than 7 (seven) days prior to the Proposal Due Date. The responses will be sent by fax or e-mail. The Corporation will post the reply to all such queries on the Official Website without identifying the source of queries.

2.10.2 The Corporation reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the Corporation to respond to any question or to provide any clarification.

**2.11 Amendment of RFP**

2.11.1 At any time prior to the deadline for submission of Proposal, the Corporation may, for any reason, whether at its own initiative or in response to clarifications requested by an Bidder, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website.

- 2.11.2 All such amendments will be notified on the Official Website along with the revised RFP containing the amendments and will be binding on all Bidders.
- 2.11.3 In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, the Corporation may, in its sole discretion, extend the Proposal Due Date.

## **C. PREPARATION AND SUBMISSION OF PROPOSAL**

### **2.12 Language**

The Proposal with all accompanying documents (the "**Documents**") and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

### **2.13 Format and signing of Proposal**

- 2.13.1 The Bidder shall provide all the information sought under this RFP. The Corporation would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.13.2 The Bidder shall prepare one original set of the Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit 2 (two) copies of the Proposal, along with Documents, marked "COPY". In the event of any discrepancy between the original and its copies, the original shall prevail.
- 2.13.3 The Proposal and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall initial each page. 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 Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the "**Authorized Representative**") as detailed below:
- a) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation; or
- A copy of the Power of Attorney certified under the hands of a director of the Bidder and notarized by a notary public in the form specified in Appendix-I (Form- 4) shall accompany the Proposal.
- 2.13.4 Bidders should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Corporation, and that evaluation will be carried out only on the basis

of Documents received by the closing time of Proposal Due Date as specified in Clause 2.18.1. Bidders will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Corporation reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.24.

## 2.14 Qualification

2.14.1 Bidders shall submit their submissions in response to the Conditions of Eligibility detailed out at Clause 2.2 of this RFP document. The submissions shall be as per the formats at Appendix-I (the "**Qualification Proposal**").

2.14.2 While submitting the Qualification Proposal, the Bidder shall, in particular, ensure that:

- a) Letter of Proposal;
- b) The Bid Security is provided;
- c) All forms relating to Qualification Document are submitted in the prescribed formats and signed by the prescribed signatories;
- d) Power of Attorney, if applicable, is executed as per Applicable Laws;
- e) A copy of the Incorporation Certificate duly attested by the Authorized Signatory is enclosed;
- f) The Proposal is responsive in terms of Clause 2.22.3.

2.14.3 **Financial Capacity:** The Bidder shall have received a minimum income of Rs. 40 (forty) lakh per annum from professional fees during each of the 5 (five) financial years preceding the PDD. The financial capacity details shall be provided as per the format prescribed at Form 1 of Appendix II of this RFP document. The Bidder shall provide documentary evidence as per Form 3 of Appendix II of the RFP document. Those Bidders that do not meet the Financial Capacity shall not be considered for further evaluation. The Bid Security of the unsuccessful Bidders shall be returned along with the unopened Technical and Financial Proposals.

2.14.4 **Technical Capacity:** Technical Capacity shall be evaluated of only those Bidders who meet the Financial Capacity specified at Clause 2.14.3 above. In Technical Capacity, the Bidder shall over the past 5 (five) years preceding the PDD, demonstrate the following:

Sr. No.	Description	Number of assignments	Marks per assignment
1.	Assignments where the Bidder has acted as an Independent Engineer / Project Management Consultant of a MSW Processing and Landfill Facility Project with a minimum size of 200 tons per day of Municipal Solid Waste comprising of construction and/ or operation and management activities. Further the services for this project	To be specified by the Bidder.	10

Sr. No.	Description	Number of assignments	Marks per assignment
	should have been provided by the Bidder for a minimum period of 12 (twelve) months, during the 7 (seven) years preceding the PDD.		
2.	Assignments where the Bidder has undertaken preparation of a Detailed Project Report for a MSW Processing and Landfill Facility of a minimum size of 200 tons per day. Such assignments should have been completed in the past 7 (seven) years preceding the PDD.	To be specified by the Bidder.	5

The first 3 (three) columns of the above table shall be provided on the letter head of the Bidder duly signed by the Authorized Signatory. The details of each of the assignment shown above shall be provided as per the format prescribed at Form 6 of Appendix II of this RFP document. The Bidder shall provide documentary evidence in terms of certificate from concerned Government Authority certifying the details provided in Form 6 of Appendix II of the RFP document.

- 2.14.5 On evaluation of the Technical Capacity, the Bidders shall be ranked in descending order of the score obtained. The top 5 (five) Bidders shall be short-listed for further evaluation. In case of a tie, the Bidder having higher number of assignments in category 1 in the above table shall be given a higher rank. If tie still persists, then the Bidder having the highest income from professional fees in the latest financial year preceding the PDD shall be accorded a higher rank. The Bid Security of the unsuccessful Bidders shall be returned along with the unopened Technical and Financial Proposals.
- 2.14.6 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.
- 2.14.7 The Qualification Document shall not include any financial information relating to the Financial Proposal.
- 2.14.8 The Corporation reserves the right to verify all statements, information and documents, submitted by the Bidder in response to the RFP. Any such verification or the lack of such verification by the Corporation to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Corporation there under.
- 2.14.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the IE either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall,

notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Corporation without the Corporation being liable in any manner whatsoever to the Bidder or IE, as the case may be.

2.14.10 In such an event, the Corporation shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the Corporation for, inter alia, time, cost and effort of the Corporation, without prejudice to any other right or remedy that may be available to the Corporation.

## 2.15 Technical Proposal

2.15.1 Bidders shall submit the Technical Proposal in the formats at Appendix-I (the "**Technical Proposal**").

2.15.2 To be eligible for evaluation of its Technical Proposal, the Bidder shall fulfil the following requirements:

A. **Availability of Key Personnel:** The Bidder shall offer and make available all Key Personnel meeting the requirements specified in sub-clause (B) below.

B. **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfill the Conditions of Eligibility specified below:

Sr. No.	Key Personnel	Educational Qualification	Length of Professional Experience
1.	Solid Waste Management Expert (Team Leader)	a) Graduate or Post Graduate degree in Environment Sciences / Environmental Planning with minimum 10 (ten) years' experience as on PDD. b) Should have experience as Team Leader on at least 1 (one) Eligible Assignment.	10 years
2.	Environmental Engineer	a) Graduate or Post Graduate degree in Environment Sciences / Environmental Planning with minimum 7 (seven) years' experience as on PDD. b) Should have experience as Environmental Engineer on at least 2 (two) Eligible Assignments.	7 years
3.	Quantity Surveyor	a) Diploma in Surveying or Graduate / Diploma in Civil Engineering with minimum 7 (seven) years' experience as on PDD. b) Should have experience as Quantity Surveyor on at least 2 (two) Eligible Assignments.	7 years
4.	Civil Engineer	a) BE/ B. Tech (Civil Engineering) with minimum 7 (seven) years of experience as on PDD. b) Should have experience as Civil Engineer on at least 2 (two) Eligible Assignments.	7 years
5.	Financial Analyst	a) Post Graduate in Commerce / Chartered Accountant or equivalent with minimum 7 (seven) years of experience as on PDD.	7 years



Sr. No.	Key Personnel	Educational Qualification	Length of Professional Experience
		b) Should have experience as Financial Analyst on at least 2 (two) Eligible Assignments.	
6.	Additional personnel	The Bidder may propose additional staff names for the purpose of the assignment; however the same will not be considered while determining technical qualification criteria	-

- 2.15.3 While submitting the Technical Proposal, the Bidder shall, in particular, ensure that:
- a) All forms are submitted in the prescribed formats and signed by the authorized signatories;
  - b) CVs of all Key Personnel have been included;
  - c) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.15.2 of the RFP document;
  - d) No alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
  - e) The CVs have been recently signed and dated by the respective Personnel and countersigned by the Authorized Signatory of the Applicant. Photocopy or unsigned / countersigned CVs shall be rejected;
  - f) The CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;
  - g) Professional Personnel proposed have good working knowledge of English language;
  - h) Key Personnel would be available for the period indicated in the TOR; and
  - i) No Key Personnel should have attained the age of 70 (seventy) years at the time of submitting the proposal.
- 2.15.4 Failure to comply with the requirements spelt out in this Clause 2.15 shall make the Proposal liable to be rejected.
- 2.15.5 If an individual Key Personnel makes a false statement regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the Corporation for a period of 5 (five) years. The award of this Consultancy to the Bidder may also be liable to cancellation in such an event.
- 2.15.6 The Technical Proposal shall not include any financial information relating to the Financial Proposal.
- 2.15.7 The proposed team shall be composed of experts and specialists (the "**Professional Personnel**") in their respective areas of expertise and managerial/support staff (the

"Support Personnel") such that the IE should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.3 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the format at Form-8 of Appendix-II.

2.15.8 The Corporation reserves the right to verify all statements, information and documents, submitted by the Bidder in response to the RFP. Any such verification or the lack of such verification by the Corporation to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Corporation there under.

2.15.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the IE either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Corporation without the Corporation being liable in any manner whatsoever to the Bidder or IE, as the case may be.

In such an event, the Corporation shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the Corporation for, *inter alia*, time, cost and effort of the Corporation, without prejudice to any other right or remedy that may be available to the Corporation.

## 2.16 Financial Proposal

2.16.1 Bidders shall submit the financial proposal in the formats at Appendix-III (the "**Financial Proposal**") clearly indicating the total cost of the Consultancy (Form-2 of Appendix-III) in both figures and words, in Indian Rupees, and signed by the Bidder's Authorized Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.16.2 While submitting the Financial Proposal, the Bidder shall ensure the following:

- i. All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc.), accommodation, air fare, equipment, printing of documents, surveys, etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

- ii. The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- iii. Costs (including break down of costs) shall be expressed in INR.

## **2.17 Submission of Proposal**

- 2.17.1 The Bidders shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialled by the Authorized Representative of the Bidder as per the terms of the RFP document. In case the Proposal is submitted on the document down loaded from Official Website, the Bidder shall be responsible for its accuracy and correctness as per the version uploaded by the Corporation and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP document and the original RFP issued by the Corporation, the latter shall prevail.
- 2.17.2 The Proposal will be sealed in an outer envelope, which will bear the address of the Corporation, RFP Notice number, Consultancy name as indicated at Clauses 1.11.1 and 1.11.2 and the name and address of the Bidder. It shall bear on top, the following:

"Do not open, except in presence of the Authorized Person of the Corporation"

If the envelope is not sealed and marked as instructed above, the Corporation assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Bidder.
- 2.17.3 The aforesaid outer envelope will contain three separate sealed envelopes, one clearly marked '**Qualification Proposal**', second clearly marked '**Technical Proposal**' and the third clearly marked '**Financial Proposal**'. The envelope marked "Prequalification Document" shall contain:
  - 2.17.4 Submissions as per Clause 2.14.2; and
  - 2.17.5 Bid security as specified in Clause 2.21.1
  - 2.17.6 The envelope marked "Qualification Proposal" shall contain:
    - i. Proposal in the prescribed format (Form-1 of Appendix-I) along with all the forms (Forms 2 to 4) of Appendix-I and supporting documents.
    - ii. Financial Capacity as per prescribed format (Form-2 of Appendix-II) along with supporting documents as per prescribed format (Form-3 of Appendix-II)
    - iii. Technical Capacity on the letter head of the Bidder comprising of the information required under Clause 2.14.4 and individual assignment details as per prescribed format (Form-6 of Appendix-II) along with supporting documents.
- 2.17.7 The envelope marked "Technical Proposal" shall contain:
  - i. All the forms of Appendix-II and supporting documents except Forms 2 & 3.

- 2.17.8 The envelope marked "Financial Proposal" shall contain the financial proposal in the prescribed format (Forms 1 & 2 of Appendix-III).
- 2.17.9 The Qualification Document, Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorized Representative of the Bidder. All pages of the original Qualification Document, Technical Proposal and Financial Proposal must be numbered and initialled by the person or persons signing the Proposal.
- 2.17.10 The completed Proposal must be delivered on or before the specified time on Proposal Due Date. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.
- 2.17.11 The Proposal shall be made in the Forms specified in this RFP document. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.
- 2.17.12 The rates quoted shall be firm throughout the period of performance of the assignment up to and including acceptance of the Final Report by the Corporation and discharge of all obligations of the IE under the Agreement.

## **2.18 Proposal Due Date**

- 2.18.1 Proposal should be submitted at or before 1500 hrs. on the Proposal Due Date specified at Clause 1.8 at the address provided in Clause 0 in the manner and form as detailed in this RFP document. A receipt thereof should be obtained from the person specified therein.
- 2.18.2 The Corporation may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Bidders.

## **2.19 Late Proposals**

Proposals received by the Corporation after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

## **2.20 Modification/ substitution/ withdrawal of Proposals**

- 2.20.1 The Bidder may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Corporation prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Bidder on or after the Proposal Due Date.
- 2.20.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.17, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.20.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the Corporation, shall be disregarded.

## 2.21 Bid Security

2.21.1 The Bidder shall furnish as part of its Proposal, a bid security of Rs. 50,000/- (Rupees fifty thousand only) in the form of a Demand Draft / Bank Guarantee issued by one of the Nationalized/ Scheduled Banks in India in favour of the Commissioner, Bhubaneswar Municipal Corporation, payable at Bhubaneswar (the "**Bid Security**"), returnable not later than 30 (thirty) days from PDD except in case of the two Bidders quoting the lowest fees as required in Clause 2.25.1. In the event that the first ranked Bidder commences the assignment as required in Clause 2.30; the second rank Bidder, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from PDD. The Selected Bidder's Bid Security shall be returned, upon the Bidder submitting the Performance Security at the time signing the Agreement in accordance with the provisions thereof.

2.21.2 Any Bid not accompanied by the Bid Security shall be rejected by the Corporation as non-responsive.

2.21.3 The Corporation shall not be liable to pay any interest on the Bid Security and the same shall be interest free.

2.21.4 The Bidder, by submitting its Proposal pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Corporation 's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Corporation as the mutually agreed pre-estimated compensation and damage payable to the Corporation for, *inter alia*, the time, cost and effort of the Corporation in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- a) If a Bidder submits a non-responsive Proposal;
- b) If a Bidder engages in any of the Prohibited Practices specified in Section 4 of this RFP document;
- c) If a Bidder withdraws its Proposal during the period of its validity as specified in this RFP document and as extended by the Bidder from time to time;
- d) In the case of the Selected Bidder, if the Bidder fails to reconfirm its commitments during negotiations as required vide Clause 2.25.1;
- e) In the case of a Selected Bidder, if the Bidder fails to sign the Agreement or commence the assignment as specified in Clauses 2.29 and 2.30 respectively; or
- f) If the Bidder is found to have a Conflict of Interest as specified in Clause 2.3.

## **D. EVALUATION PROCESS**

### **2.22 Evaluation of Proposals**

- 2.22.1 The Corporation shall open the Proposals at 15:30 hours on the Proposal Due Date, at the place specified in Clause 1.11.1 and in the presence of the Bidders who choose to attend. The envelopes marked "Qualification Proposal" shall be opened first. The envelopes marked "Technical Proposal" and "Financial Proposal" shall be kept sealed for opening at a later date.
- 2.22.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.20 shall not be opened.
- 2.22.3 Prior to evaluation of Proposals, the Corporation will determine whether each Proposal is responsive to the requirements of the RFP. The Corporation may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:
- a) the Qualification Proposal is received in the form specified at Appendix-I and the requirements stipulated at Clause 2.14 and Clause 2.17.6;
  - b) it is accompanied by the receipt of purchase of the RFP document from the Corporation or in the event of download of the RFP document from Official Website is accompanied by a demand draft of Rs. 6000 plus 5% VAT in favor of "Commissioner, Bhubaneswar Municipal Corporation" payable at Bhubaneswar towards the cost of the RFP document;
  - c) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.18;
  - d) It is accompanied by the Bid Security as specified in Clause 2.21.1.
  - e) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.13 and 2.17;
  - f) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
  - g) it contains all the information (complete in all respects) as requested in the RFP;
  - h) it does not contain any condition or qualification; and
  - i) It is not non-responsive in terms hereof.
- 2.22.4 The Corporation reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Corporation in respect of such Proposals.
- 2.22.5 The Corporation shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.
- 2.22.6 After the evaluation Qualification Document, the Corporation shall prepare a list of top 5 (five) pre-qualified Bidders in terms of Clause 3.2 for opening of their Technical Proposals. Subsequently, the Technical Proposals of pre-qualified Bidders shall be

evaluated and the Corporation shall prepare a list of short-listed Bidders in terms of Clause 3.4. A date, time and venue will be notified to all Bidders for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of qualified and shortlisted Bidders along with their Technical Score will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Bidders who choose to be present. The Corporation will not entertain any query or clarification from Bidders who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.5 and 3.6.

2.22.7 Bidders are advised that Selection will be entirely at the discretion of the Corporation. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.

2.22.8 Any information contained in the Proposal shall not in any way be construed as binding on the Corporation, its agents, successors or assigns, but shall be binding against the Bidder if the Consultancy is subsequently awarded to it.

## **2.23 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the Corporation in relation to matters arising out of, or concerning the Selection Process. The Corporation will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. The Corporation 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 Corporation.

## **2.24 Clarifications**

2.24.1 To facilitate evaluation of Proposals, the Corporation may, at its sole discretion, seek clarifications from any Bidder regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Corporation for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.24.2 If a Bidder does not provide clarifications sought under Clause 2.24.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Corporation may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Corporation.

## **E. APPOINTMENT OF IE**

### **2.25 Negotiations**

- 2.25.1 The Selected Bidder may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the IE under this RFP document. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 70% (seventy per cent) marks as required under Clause 3.3.2 shall be replaced by the Bidder with a better candidate to the satisfaction of the Corporation. In case the Selected Bidder fails to reconfirm its commitment, the Corporation reserves the right to designate the next ranked Bidder as the Selected Bidder and invite it for negotiations.
- 2.25.2 The Corporation will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Bidder to the satisfaction of the Corporation.
- 2.25.3 The Authority will examine the credentials of all Sub-Consultants proposed for this Consultancy and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.

### **2.26 Substitution of Key Personnel**

- 2.26.1 The Corporation will not normally consider any request of the Selected Bidder for substitution of Key Personnel as the ranking of the Bidder is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Corporation.
- 2.26.2 The Corporation expects all the Key Personnel to be available during implementation of the Agreement. The Corporation will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Corporation. Any substitution where the qualification is not approved by the Corporation, a sum equal to 20% (twenty per cent) of the remuneration specified for the original Key Personnel shall be deducted from the payments due to the IE. In the case of a second substitution also does not meet the criteria, such deduction shall be 50% (fifty per cent) of the remuneration specified for the original Key Personnel. Any further substitution may lead to disqualification of the Bidder or termination of the Agreement.

### **2.27 Indemnity**

The IE shall, subject to the provisions of the Agreement, indemnify the Corporation for an amount not exceeding 3 (three) times the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services.



## **2.28 Award of Consultancy**

After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Corporation 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 Corporation may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Corporation on account of failure of the Selected Bidder to acknowledge the LOA, and the next highest ranking Bidder may be considered.

## **2.29 Execution of Agreement**

After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Bidder shall not be entitled to seek any deviation in the Agreement.

## **2.30 Commencement of assignment**

The IE shall commence the Services at the Project site within 7 (seven) days of the date of the Agreement or such other date as may be mutually agreed. If the IE fails to either sign the Agreement as specified in Clause 2.29 or commence the assignment as specified herein, the Corporation may invite the second ranked Bidder for negotiations. In such an event, the Bid Security of the first ranked Bidder shall be forfeited and appropriated in accordance with the provisions of Clause 2.21.4.

## **2.31 Proprietary data**

Subject to the provisions of Clause 2.23, all documents and other information provided by the Corporation or submitted by a Bidder to the Corporation shall remain or become the property of the Corporation. Bidders and the IE, as the case may be, are to treat all information as strictly confidential. The Corporation will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the IE to the Corporation in relation to the Consultancy shall be the property of the Corporation.

### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation of Qualification Document

3.1.1 In the first stage, the Qualification Document will be evaluated on the ability of the Bidder to meet the Conditions of Eligibility as stipulated at Clause 2.2 of the RFP document.

#### 3.2 Qualification of Bidders

3.2.1 The evaluation of the Qualification Proposal shall be undertaken as per the process detailed out at Clauses 2.2, 2.14 and 2.22.3.

3.2.2 The top 5 (five) ranked Proposals meeting the Conditions of Eligibility and responsive shall be pre-qualified for the opening of their Technical Proposals.

#### 3.3 Evaluation of Technical Proposals

3.3.1 In the first stage, the Technical Proposal will be evaluated on the basis of Bidder's experience, its understanding of TOR, proposed methodology and Work Plan, and the experience of Key Personnel. Only those Bidders whose Technical Proposals get a score of 70 (seventy) marks or more out of 100 shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score ( $S_T$ ).

3.3.2 Each Key Personnel must score a minimum of 70% marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 70% marks or any two of the remaining Key Personnel score less than 70% marks. In case the Selected Bidder has one Key Personnel, other than the Team Leader, who scores less than 70% marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the Corporation, would score 70% or above.

3.3.3 The scoring criteria to be used for evaluation shall be as follows:

Item Code	Parameter	Maximum marks	Criteria
1.	Relevant Experience of the Bidder	25	30% of the maximum marks shall be awarded for the number of Eligible Assignments undertaken by the Bidder. The remaining 70% shall be awarded for: (i) the comparative size and quality of Eligible Assignments; (ii) other similar work in the infrastructure sectors; and (iii) overall turnover, experience and capacity of the firm.
2.	Proposed	5	Evaluation will be based on the quality of

Item Code	Parameter	Maximum marks	Criteria
	methodology and work plan		submissions.
3.	Relevant experience of Key Personnel	70	30% of the maximum marks for each Key Personnel shall be awarded for the number of Eligible Assignments the respective Key Personnel has worked on. The remaining 70% shall be awarded for: (i) the comparative size and quality of Eligible Assignments; and (ii) other similar work in infrastructure sectors.
a.	Solid Waste Management Expert cum Team Leader	25	
b.	Environmental Engineer	15	
c.	Quantity Surveyor	10	
d.	Civil Engineer	10	
e.	Financial Analyst	10	
	<b>Grand Total</b>	<b>100</b>	

While awarding marks for the number of Eligible Projects, the Bidder or Key Personnel, as the case may be, that has undertaken the highest number of Eligible Assignments shall be entitled to the maximum score for the respective category and all other competing Bidders or respective Key Personnel, as the case may be, shall be entitled to a proportionate score. No score will be awarded to a Bidder/Key Personnel for fulfilling the eligibility criteria of a minimum number of Eligible Assignments and only projects exceeding the eligibility criteria shall qualify for scoring. For the avoidance of doubt and by way of illustration, if the minimum number of Eligible Projects for meeting the eligibility criteria is 3 (three), then an equivalent number will be ignored for each Bidder/Key Personnel and only the balance remaining will be considered for awarding scores relating to the number of Eligible Assignments on a proportionate basis. However, for assigning scores in respect of the size and quality of Eligible Assignments, all Eligible Assignments of the Bidder/Key Personnel shall be considered.

#### 3.3.4 Eligible Assignments

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments in respect of preparation of feasibility

report and/or detailed project report including engineering surveys and social and environmental impact assessment, for the following projects shall be deemed as eligible assignments (the “**Eligible Assignments**”):

- i) A solid waste management project undertaken through PPP route / cash contract having an estimated capital cost (excluding land) of at least Rs. 80 crore in case of a project in India and US\$ 40 million for projects elsewhere; or
- ii) An infrastructure project undertaken through PPP route / cash contract having an estimated capital cost (excluding land) of at least Rs. 200 crore in case of project in India and US\$ 100 million for project elsewhere.

Provided that the Bidder claiming credit for an Eligible Assignment shall have, prior to PDD, received professional fees of at least Rs. 20 (twenty) lakh for such assignment, and where credit is being claimed by a Key Personnel, she/he should have completed the relevant assignment prior to PDD.

Provided further that if the Bidder is taking credit for an Eligible Assignment which was undertaken for a private sector entity, such assignment shall have been completed prior to PDD and the Bidder shall have received professional fees of at least Rs. 40 (forty) lakh.

### **3.4 Short-listing of Bidders**

Of the Bidders ranked as aforesaid, if the number of such short-listed Bidders is less than two, the Corporation may, in its sole discretion, pre-qualify the Bidder(s) whose technical score is less than 70 points even if such Bidder(s) do(es) not qualify in terms of Clause 3.3.2; provided that in such an event, the total number of pre-qualified and short-listed Bidders shall not exceed two.

### **3.5 Evaluation of Financial Proposal**

3.5.1 In the second stage, the financial evaluation will be carried out as per this Clause 3.5. Each Financial Proposal will be assigned a financial score ( $S_F$ ).

3.5.2 For financial evaluation, the total cost indicated in the Financial Proposal will be considered.

3.5.3 The Corporation will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the IE. The lowest Financial Proposal ( $F_M$ ) will be given a financial score ( $S_F$ ) of 100 points. The financial scores of other proposals will be computed as follows:

$$S_F = 100 \times F_M / F$$

(F = amount of Financial Proposal)

### **3.6 Combined and final evaluation**

3.6.1 Proposals will finally be ranked according to their combined technical ( $S_T$ ) and financial ( $S_F$ ) scores as follows:

$$S = S_T \times T_W + S_F \times F_W$$

Where  $S$  is the combined score, and  $T_W$  and  $F_W$  are weights assigned to Technical Proposal and Financial Proposal that shall be 0.80 and 0.20 respectively.

3.6.2 The Selected Bidder shall be the first ranked Applicant (having the highest combined score). The second ranked Applicant shall be kept in reserve and may be invited for negotiations in case the first ranked Applicant withdraws, or fails to comply with the requirements specified in Clauses 2.25, 2.29 and 2.30, as the case may be.

## 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 Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Corporation shall reject a Proposal without being liable in any manner whatsoever to the Bidder, if it 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 (collectively the "Prohibited Practices") in the Selection Process. In such an event, the Corporation shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Corporation for, *inter alia*, time, cost and effort of the Corporation, in regard to the RFP, including consideration and evaluation of such Bidder's Proposal.
- 4.2 Without prejudice to the rights of the Corporation under Clause 4.1 hereinabove and the rights and remedies which the Corporation may have under the LOA or the Agreement, if an Bidder or IE, as the case may be, is found by the Corporation 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 Selection Process, or after the issue of the LOA or the execution of the Agreement, such Bidder or IE shall not be eligible to participate in any tender or RFP issued by the Corporation during a period of 2 (two) years from the date such Bidder or IE, as the case may be, is found by the Corporation to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Section, 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 action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Corporation who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising there from, 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 Corporation, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial

or technical IE/ adviser of the Corporation in relation to any matter concerning the Project;

- b) "**fraudulent practice**" means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- c) "**coercive practice**" means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person's participation or action in the Selection Process;
- d) "**undesirable practice**" means (i) establishing contact with any person connected with or employed or engaged by the Corporation with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection 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 Selection Process.

## **5. PRE-PROPOSAL CONFERENCE**

- 5.1** No Pre-Proposal Conference of the Bidders is envisaged. Bidders are however requested to send their queries as per the schedule at Clause 1.8.
- 5.2** The Corporation 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 Selection Process.



## **6. MISCELLANEOUS**

- 6.1** The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Odisha shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2** The Corporation, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection 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 Corporation by, on behalf of and/or in relation to any Bidder; and/or
  - d) Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.
- 6.3** It shall be deemed that by submitting the Proposal, the Bidder agrees and releases the Corporation, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4** All documents and other information supplied by the Corporation or submitted by an Bidder shall remain or become, as the case may be, the property of the Corporation. The Corporation will not return any submissions made hereunder. Bidders are required to treat all such documents and information as strictly confidential.
- 6.5** The Corporation reserves the right to make inquiries with any of the clients listed by the Bidders in their previous experience record.

## **SCHEDULE 1: TERMS OF REFERENCE**

### **1. Scope**

- 1.1 The Terms of Reference for the IE (the "TOR") are, being specified pursuant to the Concession Agreements dated 29<sup>th</sup> May 2014 (the "Agreement"), which has been entered into between the Bhubaneswar Municipal Corporation and Essel Bhubaneswar MSW Limited (the "Concessionaire") and Cuttack Municipal Corporation and Essel Bhubaneswar MSW Limited for Development of Regional MSW Processing & Landfill Facility for Bhubaneswar and Cuttack, Odisha (the "Project").
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project. Whereas the TOR details out the scope of the IE, it is hereby clarified that the Concession Agreement shall govern the scope of the IE. In the event of any deviation in the scope of the IE in the TOR and the Concession Agreement, the scope of the IE as per the Concession Agreement shall be considered. The detailed TOR is provided in Annex -1 – Terms of Reference of the Agreement Providing Independent Engineering Consultancy Services.

## **SCHEDULE 2: AGREEMENT**

(Separately attached)

### SCHEDULE 3: GUIDANCE NOTE ON CONFLICT OF INTEREST

1. This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.
2. IEs should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of IEs should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the Corporation and an IE or between IEs and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:
  - a. Corporation and IEs:
    - i. Potential IE should not be privy to information from the Corporation which is not available to others; or
    - ii. Potential IE should not have defined the project when earlier working for the Corporation; or
    - iii. Potential IE should not have recently worked for the Corporation overseeing the project.
  - b. IEs and concessionaires/contractors:
    - i. No IE should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ contractor save and except relationships restricted to project-specific and short-term assignments; or
    - ii. No IE should be involved in owning or operating entities resulting from the project; or
    - iii. No IE should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of the Corporation who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by IEs. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Corporation. All conflicts must be declared as and when the IEs become aware of them.
5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the IE’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls

approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by an IE coupled with provision of safeguards to the satisfaction of the Corporation.

6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if IEs drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope–creep” arises when IEs advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Corporation but which will generate further work for the IEs. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for IEs to extend the length of their assignment.
8. Every project contains potential conflicts of interest. IEs should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the Corporation at the earliest. Officials of the Corporation involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

## **APPENDICES**

## APPENDIX-I

(See Clause 2.14)

### QUALIFICATION PROPOSAL

Form-1

#### Letter of Proposal

(On Bidder's letter head)

(Date and Reference)

To,

**Mr Shrimanta Mishra**

Project Officer, JNNURM

Bhubaneswar Municipal Corporation

**Sub:** Appointment of IE development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha

Dear Sir,

With reference to your RFP Document dated....., I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as IE for development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha. The proposal is unconditional and unqualified.

1. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the IE for the aforesaid Project.
3. I/We shall make available to the Corporation any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of the Corporation to reject our proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we or any of our 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 against the Bidder, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. I/We declare that:

- a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Corporation;
  - b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document;
  - c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Corporation or any other public sector enterprise or any government, Central or State; and
  - d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the IE, without incurring any liability to the Bidders in accordance with Clause 2.8 of the RFP document.
  8. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
  9. 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.
  10. 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.
  11. 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 Corporation [and/ or the Government of India] in connection with the selection of IE or in connection with the Selection Process itself in respect of the above mentioned Project.
  12. The Bid Security of Rs. \*\*\*\*\* (Rupees \*\*\*\*\* ) in the form of a Demand Draft is attached, in accordance with the RFP document.
  13. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
  14. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Proposal Due Date specified in the RFP.
  15. A Power of Attorney in favor of the authorized signatory to sign and submit this Proposal and documents is attached herewith in Form 4.



16. In the event of my/our firm being selected as the IE, I/we agree to enter into an Agreement in accordance with the format Schedule-2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
17. I/We have studied RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Corporation or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
18. The Financial Proposal is being submitted in a separate cover. This Qualification Document, the Technical Proposal and the Financial Proposal shall constitute the Proposal which shall be binding on us.
19. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

(Name and seal of the Bidder)

**APPENDIX-I**

**Form-2**

**Particulars of the Bidder**

1.1	Title of Consultancy: Independent Engineering services for development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha
1.2	Title of Project: Development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha
1.3	Name of the Firm:
1.4	State the following: Name of Company or Firm: Legal status: Country of incorporation: Registered address:  Year of Incorporation: Year of commencement of business: Principal place of business: Brief description of the Company including details of its main lines of business Name, designation, address and phone numbers of authorized signatory of the Bidder: Name: Designation: Company: Address: Phone No.: Fax No. : E-mail address:

<p>1.6</p>	<p>For the Bidder, , state the following information:</p> <p>i. In case of non-Indian Firm, does the Firm have business presence in India? Yes/No</p> <p>If so, provide the office address (es) in India.</p> <p>ii. Has the Bidder been penalized by any organization for poor quality of work or breach of contract in the last five years? Yes/No</p> <p>iii. Has the Bidder/Member ever failed to complete any work awarded to it by any public authority/entity in last five years? Yes/No</p> <p>iv. Has the Bidder been blacklisted by any Government department/Public Sector Undertaking? Yes/No</p> <p>v. Has the Bidder suffered bankruptcy/insolvency in the last five years? Yes/No</p> <p><b>Note: If answer to any of the questions at (ii) to (v) is yes, the Bidder is not eligible for this consultancy assignment.</b></p>
<p>1.7</p>	<p>Does the Bidder's company combine functions as an IE or adviser along with the functions as a contractor and/or a manufacturer? Yes/No</p> <p>If yes, does the Bidder agree to limit the Bidder's role only to that of a IE/ adviser to the Corporation and to disqualify themselves, their Associates/ affiliates, subsidiaries and/or parent organization subsequently from work on this Project in any other capacity? Yes/No</p>
<p>1.8</p>	<p>Does the Bidder intend to borrow or hire temporarily, personnel from contractors, manufacturers or suppliers for performance of the Consulting Services? Yes/No</p> <p>If yes, does the Bidder agree that it will only be acceptable as IE, if those contractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this Project (including tendering relating to any goods or services for any other part of the Project) other than that of the IE? Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this Project and they agree to limit their role to that of IE/ adviser for the Corporation only? Yes/No</p> <p>(Signature, name and designation of the authorized signatory) For and on behalf of</p>

**APPENDIX-I**

**Form-3**

**Statement of Legal Capacity**

*(To be forwarded on the letter head of the Bidder)*

Ref. Date:

To,

**Mr Shrimanta Mishra**

Project Officer, JNNURM

Bhubaneswar Municipal Corporation

Dear Sir,

**Sub:** RFP for IE: Independent Engineering services for development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha

I/We hereby confirm that we, the Bidder, satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that (insert individual's name) will act as our Authorized Representative on our behalf and has been duly authorized to submit our Proposal. Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of .....

*1Please strike out whichever is not applicable*

**APPENDIX-I**

**Form-4**

**Power of Attorney**

Know all men by these presents, we, (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr. / MS son/daughter/wife and presently residing at , who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the "Authorized Representative") 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 Proposal for and selection as the IE for Independent Engineering services for development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha, proposed to be developed by the Berhampur (the "Corporation") including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Corporation, representing us in all matters before the Corporation, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Corporation in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Corporation.

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

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

20\*\*

For .....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarized

Accepted

.....

(Signature, name, designation and address of the Attorney)

*Notes:*

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

*The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 100 (one hundred) and duly notarized by a notary public.*

*Wherever required, the Bidder should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favor 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 legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, Bidders from countries that have signed the Hague Legislation Convention, 1961 need not get their Power of Attorney legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

## APPENDIX-II

### Form-1

#### Financial Capacity of the Bidder

(Refer Clause 2.2.2(B))

S. No.	Financial Year	Annual Revenue (Rs. crore)
1.	Financial Year 2009-10	
2.	Financial Year 2010-11	
3.	Financial Year 2011-12	
4.	Financial Year 2012-13	
5.	Financial Year 2013-14	

I, on behalf of Bidder [insert company name], hereby certify that ..... (Name of the Bidder) has received the payments shown above against the respective years on account of professional fees.

Name of the Power of Attorney holder:  
Seal of the firm  
Date:

(Signature, name and designation of the authorized signatory)

**APPENDIX-II**

**Form-2**

**Particulars of Key Personnel**

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignments*
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.							
2.							
3.							
4.							
5.							
6.							



**APPENDIX-II**

**Form-3**

**Auditor's certification on revenues**

<b>Certificate from the Statutory Auditor<sup>\$</sup></b>		
This is to certify that the "Bidder", had revenues of at least Rs. 40 (forty) lakh.		
Year	Operational Revenues (Rs.)	Name of Statutory Auditor certifying the respective year's revenues
Financial Year 2009-10		
Financial Year 2010-11		
Financial Year 2011-12		
Financial Year 2012-13		
Financial Year 2013-14		
Operational Revenues include only revenues from business operations and does not include other income such as interest, miscellaneous income etc.		
Statutory Auditor – Name of the statutory auditor for the respective year		
Name of the audit firm:		
Seal of the audit firm		
Date:		
(Signature, name and designation of the authorized signatory)		

\$ In case the Bidder does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Bidder.

**APPENDIX-II**

**Form-4**

**Abstract of Eligible Assignments of the Bidder#**

(Refer Clauses 3.3)

S. No	Name of Project	Name of Client	Estimated capital cost of Project (in Rs. Crore / US\$ million)	Payment of professional fees received by the Bidder (in Rs. Lakh)
(1)	(2)	(3)	(4)	(5)
1				
2				
3				
4				

# The Bidder should provide details of only those projects that have been undertaken by it under its own name.

## Exchange rate should be taken as Rs. 60 per US \$ for conversion to Rupees.

\* The names and chronology of Eligible Projects included here should conform to the project- wise details submitted in Form-6 of Appendix-II.

**Certificate from the Statutory Auditor<sup>§</sup>**

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/ or the clients.

Name of audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation of the authorized signatory)

§ In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

**Note:** The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Bidder.

**APPENDIX-II**

**Form-5**

**Abstract of Eligible Assignments of Key Personnel®**

*(Refer Clause 2.15 and 3.3)*

Name of Key Personnel:

Designation:

S. No	Name of Project*	Name of Client	Estimated capital cost of project (in Rs crore / US\$ million)	Name of firm for which the Key Personnel worked while executing the mandate	Designation of the Key Personnel on the assignment	Date of completion of the assignment	Mandays spent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

@ Use separate Form for each Key Personnel.

\* The names and chronology of projects included here should conform to the project-wise details submitted in Form-7 of Appendix-II.

**Note:** The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.

**APPENDIX-II**

**Form-6**

**Eligible Assignments of Bidder**

(Refer Clause 3.1 and 3.3)

Name of Bidder:	
Name of the Project:	
Description of services performed by the Bidder	<b>(Independent Engineer/Project Management Consultant/Technical Consultant for Detailed Project Report Preparation)</b>
Name of client and Address:(Indicate whether public or private entity)	
Name, telephone no. and fax no. of client's representative:	
Quantum of Municipal Solid Waste handled under the Project (in tons per day)	
Status of Project	(Completed / On-going) Please delete as applicable
Professional fees received for the assignment	
Whether completed in 5 (five) years preceding PDD	(Yes / No) Please delete as applicable
Start date and finish date of the services (month/ year):	Start Date (month/ year):  End Date (month/ year):
Brief description of the Project:	

**Notes:**

1. Use separate sheet for each Eligible Project.
2. The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Bidder.
3. Exchange rate should be taken as Rs. 60 per US \$ for conversion to Rupees.

**APPENDIX-II**

**Form-7**

**Eligible Assignments of Key Personnel**

*(Refer Clause 2.15, and 3.3)*

Name of Key Personnel:	
Designation of Key Personnel in executing the respective Project:	
Name of the Project:	
Name of Firm where employed:	
Description of services performed by the Key Personnel	(Independent Engineer/Project Management Consultant/ Technical Consultant for preparation of Detailed Project Report) Please delete as applicable
Name of client and Address: (indicate whether public or private)	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of the Project (in Rs. crore or US\$ million):	
Start date and finish date of the services (month/ year):	Start Date (month/ year):  End Date (month/ year):
Brief description of the Project:	
It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.  (Signature and name of Key Personnel)	

**Notes:**

1. Use separate sheet for each Eligible Project.
2. The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.

**APPENDIX-II**

**Form-8**

**Curriculum Vitae (CV) of Key Personnel**

1.	<b>Proposed Position</b>	:				
2.	<b>Name of Firm</b>	:				
3.	<b>Name of Staff</b>	:				
4.	<b>Date of Birth</b>	:		<b>Nationality :</b>		
5.	<b>Education</b>	:				
6.	<b>Membership of Professional Associations</b>	:				
7.	<b>Years of Experience</b>	:				
8.	<b>Countries of Work Experience</b>	:				
9.	<b>Languages</b>		<b>Speak</b>	<b>Read</b>	<b>Write</b>	
10.	<b>Employment Record</b>	:				
	<b>From: Employer: Position Held :</b>		<b>TO:</b>			
11.	<b>Detailed Tasks Assigned</b>		<b>12. Work Undertaken That Best Illustrates Capability To Handle The Tasks Assigned</b>			
			<b>Name of assignment or project:</b> <b>Year:</b> <b>Location:</b> <b>Client:</b> <b>Main project features:</b> <b>Positions held:</b> <b>Activities performed:</b>			

**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience.

I also certify that I am willing to work on the Project and I will be available for entire duration of the Project assignment as required.

\_\_\_\_\_ Date: \_\_\_\_\_  
 [Signature of staff member and authorized representative of the Firm] Day/Month/Year

Full name of staff member: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_

**Notes:**

1. Use separate form for each Key Personnel
2. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-5 of Appendix-II.
3. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorized Representative of the Bidder firm along with the seal of the firm. Photocopies will not be considered for evaluation.

## **APPENDIX-II**

### **Form-9**

#### **Proposed Methodology and Work Plan**

The proposed methodology and work plan shall be described as follows:

1. Understanding of TOR (not more than two pages)

The Bidder shall clearly state its understanding of the TOR and also highlight its important aspects. The Bidder may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the TOR.

2. Methodology and Work Plan (not more than three pages)

The Bidder will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Bidder will submit a brief write up on its proposed team and organization of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. The Bidder should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

**Note:** Marks will be deducted for writing lengthy and out of context responses.



## APPENDIX-III

### FINANCIAL PROPOSAL

Form-1

#### Covering Letter

(On Bidder's letter head)

(Date and Reference)

To,

**Mr Shrimanta Mishra**

Project Officer, JNNURM

Bhubaneswar Municipal Corporation

Dear Sir,

Subject: Appointment of IE for Independent Engineering services for development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha

I/We, (Bidder's name) herewith enclose the Financial Proposal for selection of my/our firm as IE for above.

I/We agree that this offer shall remain valid for a period of 180 (one hundred and eighty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

**Note:** The Financial Proposal is to be submitted strictly as per forms given in the RFP.

**APPENDIX-III**

**Form-2**

**Financial Proposal**

Item No.	Description	Amount (Rs.) (Monthly)	Months	Total (Rs.)
A.	Fees and Overhead Expenses		36	
B.	<b>Service Tax</b>	-	-	
C.	<b>Total (including taxes) (A+B) (in Rs.)</b> In Indian Rupees in figures in words			

**Note:**

1. The financial evaluation shall be based on the above Financial Proposal
2. Fees to be quoted for a term of 3 (three) years.
3. Bidder to include the cost of required facilities (such as office space, furniture etc.) in the above quote.
4. No escalation on any account will be payable on the above amounts.
5. All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.

---

**Agreement**

**Providing Independent Engineering Consultancy Services**

**For**

**Development of Regional MSW Processing and Landfill Facility for  
Bhubaneswar and Cuttack, Odisha**

HOUSING and URBAN DEVELOPMENT DEPARTMENT  
GOVERNMENT OF ODISHA

Transaction Advisor: Orissa Industrial Infrastructure Development Corporation  
(IDCO)

September 2014

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## Agreement

(To be executed on appropriate stamp papers)

### Independent Engineer for the Project - Development of Regional MSW Processing and Landfill Facility for Bhubaneswar and Cuttack, Odisha

#### Agreement No

This Agreement (hereinafter called the "**Agreement**") is made on the \_\_\_ day of the [month] of 2014,

#### **Between**

1. **Bhubaneswar Municipal Corporation**, established vide Housing and Urban Development Department Notification No. 24148/dated 28.7.1994 and operating under Orissa Municipal Corporation Act of 2003 and having its offices at Vivekanda Marg, Gautam Nagar, Bhubaneswar – 751014, acting through the Municipal Commissioner, acting through the municipal commissioner (hereinafter called the "**Corporation**");

#### **And**

2. M/s \_\_\_\_\_, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (hereinafter called the "**Independent Engineer**" or "**IE**" shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the Other Part.

#### **WHEREAS**

- (A) The Corporation vide its Request for Proposal for providing consultancy services as Independent Engineer (hereinafter called the "**Consultancy**") for independent monitoring of the progress of the Project of development of Regional MSW Processing and Landfill Facility for Bhubaneswar and Cuttack, Odisha;
- (B) the IE submitted its proposal for the aforesaid work, whereby the IE represented to the Corporation that it had the required professional skills, and in the said proposals the IE also agreed to provide the Services to the Corporation on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the Corporation, on acceptance of the aforesaid proposal of the IE, awarded the Consultancy to the IE vide its Letter of Award dated ("**LOA**"); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement. NOW, THEREFORE, the parties hereto hereby agree as follows:

## 1. General

### 1.1 Definitions and Interpretation

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- a) **“Agreement”** means this Agreement, together with all the Annexes;
- b) **“Applicable Laws”** means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- c) **“Confidential Information”** shall have the meaning set forth in Clause 3.3;
- d) **“Conflict of Interest”** shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- e) **“Dispute”** shall have the meaning set forth in Clause 9.2.1;
- f) **“Effective Date”** means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- g) **“Expatriate Personnel”** means such persons who at the time of being so hired had their domicile outside India;
- h) **“Government”** means the Government of India ;
- i) **“INR, Re. or Rs.”** means Indian Rupees;
- j) **“Member”**, in case the IE consists of a joint venture or consortium of more than one entity, means any of these entities, and **“Members”** means all of these entities;
- k) **“Party”** means the Corporation or the IE, as the case may be, and **Parties** means both of them;
- l) **“Personnel”** means persons hired by the IE as employees and assigned to the performance of the Services or any part thereof;
- m) **“Resident Personnel”** means such persons who at the time of being so hired had their domicile inside India;
- n) **“RFP”** means the Request for Proposal document in response to which the IE’s proposal for providing Services was accepted;
- o) **“Services”** means the work to be performed by the IE as an Independent Engineer pursuant to this Agreement, as described in the Terms of Reference (TOR) hereto;
- p) **“Third Party”** means any person or entity other than the Government, the Corporation or the IE.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.



**1.1.2** The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- a) Agreement;
- b) Annexes of Agreement;
- c) RFP; and
- d) Letter of Award.

**1.2 Relation between the Parties**

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Corporation and the IE. The IE shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

**1.3 Rights and obligations**

The mutual rights and obligations of the Corporation and the IE shall be as set forth in the Agreement, in particular:

- a) the IE shall carry out the Services in accordance with the provisions of the Agreement; and
- b) the Corporation shall make payments to the IE in accordance with the provisions of the Agreement.

**1.4 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Odisha shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

**1.5 Language**

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

## **1.6 Table of contents and headings**

The tables of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

## **1.7 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- a) in the case of the IE, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the IE's Representative set out below in Clause 1.9 or to such other person as the IE may from time to time designate by notice to the Corporation; p
- b) in the case of the Corporation, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Corporation with a copy delivered to the Corporation's Representative set out below in Clause 1.9 or to such other person as the Corporation may from time to time designate by notice to the IE; provided that if the IE does not have an office in Odisha it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

## **1.8 Location**

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the IE.

## **1.9 Authorized Representatives**

**1.9.1** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Corporation or the IE, as the case may be, may be taken or executed by the officials specified in this Clause 1.9.

**1.9.2** The Corporation may, from time to time, designate one of its officials as the Corporation's Representative. Unless otherwise notified, the Corporation's Representative shall be:

**Dr. Krishan Kumar, IAS**

The Municipal Commissioner,

Bhubaneswar Municipal Corporation,  
Vivekananda Marg, Bhubaneswar - 751014  
Phone: 0674-2431403  
Fax: 0674-2432895  
Email: mc.bmc@bmc.gov.in

**1.9.3** The IE may designate one of its employees as IE's Representative. Unless otherwise notified, the IE's Representative shall be:

-----

-----

Tel: -----

Mobile: -----

Fax: -----

Email: -----

**1.10 Taxes and duties**

Unless otherwise specified in the Agreement, the IE shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Corporation shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

## **2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT**

### **2.1 Effectiveness of Agreement**

This Agreement shall come into force and effect on the date of this Agreement (**the “Effective Date”**).

### **2.2 Commencement of Services**

The IE shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

### **2.3 Termination of Agreement for failure to commence Services**

If the IE does not commence the Services within the period specified in Clause 2.2 above, the Corporation may, by not less than 2 (two) weeks’ notice to the IE, declare this Agreement to be null and void, and in the event of such a declaration, the Performance Security of the IE shall stand forfeited.

### **2.4 Expiration of Agreement**

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the expiry of 36 (thirty six) months from the Effective Date. Upon Termination, the Corporation shall make payments of all amounts due to the IE hereunder.

### **2.5 Entire Agreement**

**2.5.1** This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the IE arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

**2.5.2** Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

## 2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.2 and 6.1.2 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party. The Corporation will not normally consider any request of the Selected Bidder for substitution of Key Personnel as the ranking of the Bidder is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Corporation.

## 2.7 Force Majeure

### 2.7.1 Definition

- a) For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, cyclone, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

### 2.7.2 No breach of Agreement

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

### 2.7.3 Measures to be taken

- a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfill its obligations hereunder with a minimum of delay.

- b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

#### **2.7.4 Extension of time**

Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

#### **2.7.5 Consultation**

Not later than 30 (thirty) days after the IE has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

### **2.8 Suspension of Agreement**

The Corporation may, by written notice of suspension to the IE, suspend all payments to the IE hereunder if the IE shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the IE to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the IE of such notice of suspension.

### **2.9 Termination of Agreement**

#### **2.9.1 By the Corporation**

The Corporation may, by not less than 30 (thirty) days' written notice of termination to the IE, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- a) the IE fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Corporation may have subsequently granted in writing;
- b) the IE becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- c) the IE fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Section 9 hereof;

- d) the IE submits to the Corporation a statement which has a material effect on the rights, obligations or interests of the Corporation and which the IE knows to be false;
- e) any document, information, data or statement submitted by the IE in its Proposals, based on which the IE was considered eligible or successful, is found to be false, incorrect or misleading;
- f) as the result of Force Majeure, the IE is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- g) the Corporation, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.
- h) In the event of dispute between IE and Concessionaire and upon complaint against functioning of IE and upon examination by the Corporation, the complaint is found to be with substantial merit.

### **2.9.2 By the IE**

The IE may, by not less than 30 (thirty) days' written notice to the Corporation, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- a) the Corporation fails to pay any money due to the IE pursuant to this Agreement and not subject to dispute pursuant to Section 9 hereof within 60 (sixty) days after receiving written notice from the IE that such payment is overdue;
- b) the Corporation is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 60 (sixty) days (or such longer period as the IE may have subsequently granted in writing) following the receipt by the Corporation of the IE's notice specifying such breach;
- c) as the result of Force Majeure, the IE is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- d) the Corporation fails to comply with any final decision reached as a result of arbitration pursuant to Section 9 hereof.

### **2.9.3 Cessation of rights and obligations**

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the IE's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the IE's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

### **2.9.4 Cessation of Services**

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the IE shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner. With respect to documents prepared by the IE and equipment and materials furnished by the Corporation, the IE shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

**2.9.5 Payment upon Termination**

- a. Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Corporation shall forfeit the Performance security of the Independent Engineer.
- b. The Corporation shall make the payments for Fees pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination after offsetting against these payments any amount that may be due from the IE to the Corporation.

**2.9.6 Disputes about Events of Termination**

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.



### **3. OBLIGATIONS OF THE IE**

#### **3.1 General**

##### **3.1.1 Standards of Performance**

The IE shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The IE shall always act in the interest of the Project and legitimate interests of the corporation

##### **3.1.2 Terms of Reference**

The scope of services to be performed by the IE is specified in the Terms of Reference **(the “TOR”)** at Annex-1 of this Agreement. The IE shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

##### **3.1.3 Applicable Laws**

The IE shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that the Personnel and agents of the IE comply with the Applicable Laws.

#### **3.2 Conflict of Interest**

**3.2.1** The IE shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

##### **3.2.2 IE and Affiliates not to be otherwise interested in the Project**

The IE agrees that, during the term of this Agreement and after its termination, the IE or any Associate thereof and any entity affiliated with the IE, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Corporation in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Corporation in accordance with the rules of the Corporation. For the avoidance of doubt, an entity affiliated with the IE shall include a partner in the IE’s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the IE, as the case may be, and any Associate thereof.

### **3.2.3 Prohibition of conflicting activities**

Neither the IE nor its Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

### **3.2.4 IE not to benefit from commissions discounts, etc.**

The fees of the IE pursuant to Section 6 hereof shall constitute the IE's sole fees in connection with this Agreement or the Services and the IE shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the IE shall use its best efforts to ensure that the Personnel and agents, similarly shall not receive any such additional fees.

**3.2.5** The IE and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the Corporation shall be entitled to terminate this Agreement forthwith by a communication in writing to the IE, without being liable in any manner whatsoever to the IE, if it determines that the IE has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Corporation shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Corporation towards, inter alia, the time, cost and effort of the Corporation, without prejudice to the Corporation's any other rights or remedy hereunder or in law.

**3.2.6** Without prejudice to the rights of the Corporation under Clause 3.2.5 above and the other rights and remedies which the Corporation may have under this Agreement, if the IE is found by the Corporation to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the IE shall not be eligible to participate in any tender or RFP issued during a period of 5 (five) years from the date the IE is found by the Corporation to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

**3.2.7** For the purposes of **Clauses 3.2.5 and 3.2.6**, 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 Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Corporation who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement 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 Corporation, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Corporation in relation to any matter concerning the Project;
- b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection 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 Selection Process or the exercise of its rights or performance of its obligations by the Corporation under this Agreement;
- d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Corporation with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- e) **“Restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

### 3.3 Confidentiality

The IE and its Personnel shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Corporation to the IE and its Personnel; any information provided by or relating to the Corporation, its technology, technical processes, business affairs or finances or any information relating to the Corporation’s employees, officers or other professionals or suppliers, customers, or contractors of the Corporation; and any other information which the IE is under an obligation to keep confidential in relation to

the Project, the Services or this Agreement (“**Confidential Information**”), without the prior written consent of the Corporation.

Notwithstanding the aforesaid, the IE and its Personnel may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the IE and its Personnel or becomes a part of the public knowledge from a source other than the IE and its Personnel;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the IE and its Personnel shall give the Corporation, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the IE or its Personnel, as is reasonable under the circumstances; provided, however, that the IE or its Personnel, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

### **3.4 Liability of the IE**

**3.4.1** The IE’s liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

#### **3.4.2 IE’s liability towards the Corporation**

The IE shall, subject to the limitation specified in Clause 3.4.3, be liable to the Corporation for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

**3.4.3** The Parties hereto agree that in case of negligence or willful misconduct on the part of the IE or on the part of any person or firm acting on behalf of the IE in carrying out the Services, the IE, with respect to damage caused to the Corporation’s property, shall not be liable to the Corporation:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.1 of this Agreement, or (b) the proceeds the IE may be entitled to receive from any insurance maintained by the IE to cover such a liability in accordance with Clause 3.5.1, whichever of (a) or (b) is higher.

**3.4.4** This limitation of liability specified in Clause 3.4.3 shall not affect the IE’s liability, if any, for damage to Third Parties caused by the IE or any person or firm acting on behalf of the IE in carrying out the Services.

### 3.5 Insurance to be taken out by the IE

- a) The IE shall, for the duration of this Agreement, take out and maintain, , at own cost, but on terms and conditions approved by the Corporation, insurance against the risks, and for the coverage, as specified in the Agreement and in accordance with good industry practice.
- b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the IE shall furnish to the Corporation, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premium have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.
- c) If the IE fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Corporation shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the IE, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premium and recover the costs thereof from the IE, and the IE shall be liable to pay such amounts on demand by the Corporation.
- d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Corporation as the beneficiary of the IE and the IE shall procure an undertaking from the insurance company to this effect; provided that in the event the IE has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Corporation as the sole beneficiary of the IE or require an undertaking to that effect.

#### 3.5.1 The Parties agree that the risks and coverage shall include but not be limited to the following:

- a) Third Party liability insurance as required under Applicable Laws;
- b) employer's liability and workers' compensation insurance in respect of the Personnel of the IE in accordance with Applicable Laws; and
- c) Professional liability insurance for an amount no less than the Agreement Value.

The indemnity limit in terms of “**Any One Accident**” (AOA) and “Aggregate limit on the policy period” (AOP) should not be less than the amount stated in Clause 6.1.1 of the Agreement.

### 3.6 Accounting, inspection and auditing

The IE shall:

- a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant

time charges and cost, and the basis thereof (including the basis of the IE's costs and charges); and

- b) Permit the Corporation or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Corporation.

### **3.7 IE's actions requiring the Corporation's prior approval**

The IE shall obtain the Corporation's prior approval in writing before taking any of the following actions:

- a) Appointing such members of the Professional Personnel as are not listed in the Annex-2 to this Agreement.
- b) Entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the Corporation prior to the execution of the subcontract, and (ii) that the IE shall remain fully liable for the performance of the Services by the Sub-Consultant and its personnel pursuant to this Agreement; or
- c) any other action that is specified in this Agreement.

### **3.8 Reporting obligations**

The IE shall submit to the Corporation the reports specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

### **3.9 Documents prepared by the IE to be property of the Corporation**

**3.9.1** All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the IE (or by any Third Party) in performing the Services shall become and remain the property of the Corporation, and all intellectual property rights in such Consultancy Documents shall vest with the Corporation. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Corporation under law, shall automatically stand assigned to the Corporation as and when such Consultancy Document is created and the IE agrees to execute all papers and to perform such other acts as the Corporation may deem necessary to secure its rights herein assigned by the IE.

**3.9.2** The IE shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Corporation, together with a detailed inventory thereof. The IE may retain a copy of such Consultancy Documents. The IE or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Corporation.

**3.9.3** The IE shall hold the Corporation harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as 'claims') which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the IE or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Corporation.

**3.9.4** The IE shall have no objection to third-party audit of the Consultancy Documents prepared and submitted by the IE and construction activities related to this assignment. The IE shall facilitate the execution of such third-party audit by provision of relevant data as required. The cost of such third-party audit shall be borne by the Corporation.

**3.10 Equipment and materials furnished by the Corporation**

Equipment and materials made available to the IE by the Corporation shall be the property of the Corporation and shall be marked accordingly. Upon termination or expiration of this Agreement, the IE shall furnish forthwith to the Corporation, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Corporation. While in possession of such equipment and materials, the IE shall, unless otherwise instructed by the Corporation in writing, insure them in an amount equal to their full replacement value.

**3.11 Providing access to Project Office and Personnel**

The IE shall ensure that the Corporation and officials of the Corporation having Corporation from the Corporation are provided unrestricted access to the Project Office and to all Personnel during office hours. The Corporation's official, who has been authorized by the Corporation in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the IE and verify the records relating to the Services for his satisfaction.

**3.12 Accuracy of Documents**

The IE shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Corporation against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the IE or arises out of its failure to conform to good industry practice. The IE shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

#### **4. IE'S PERSONNEL**

##### **4.1 General**

The IE shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

##### **4.2 Deployment of Personnel**

**4.2.1** The designations, names and the estimated periods of engagement in carrying out the Services by each of the IE's Personnel are attached as per the proposal submitted by the IE. The fees are specified in Annex-2 of this Agreement.

**4.2.2** If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between the Corporation and the IE, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.1.

##### **4.3 Approval of Personnel**

**4.3.1** The Professional Personnel listed in the proposal of the IE are hereby approved by the Corporation. No other Professional Personnel shall be engaged without prior approval of the Corporation.

**4.3.2** If the IE hereafter proposes to engage any person as Professional Personnel, it shall submit to the Corporation its proposal along with a CV of such person in the form provided at Appendix-II (Form-8) of the RFP. The Corporation may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the IE may propose an alternative person for the Corporation's consideration. In the event the Corporation does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Corporation.

##### **4.4 Substitution of Key Personnel**

The Corporation expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Corporation will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the IE and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Corporation. In case of absence of one Key Personnel during the course of the assignment due to substitution, there will be a reduction of fees equal to 20% (twenty per cent) of the total monthly fees to be payable



to the IE for that particular month and every subsequent month till the time a suitable replacement is made. In case of absence due to second substitution, such reduction shall be equal to 50% (fifty per cent) of the total monthly fees specified.

#### **4.5 Working hours, overtime, leave, etc.**

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the IE's fees shall be deemed to cover these items. Any taking of leave by any Personnel shall be subject to the prior approval of the Corporation, and the IE shall ensure that any absence on leave will not delay the progress and quality of the Services.

#### **4.6 Resident Team Leader and Project Manager**

The person designated as the Team Leader of the IE's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the IE shall designate a suitable person as Project Manager (**the "Project Manager"**) who shall be responsible for day to day performance of the Services. The Civil Engineer shall be the project manager during the construction phase, while the Team leader will take over the role of the Project Manager during the operation phase.

## **5. OBLIGATIONS OF THE CORPORATION**

### **5.1 Assistance in clearances etc.**

Unless otherwise specified in the Agreement, the Corporation shall make best efforts to ensure that the Government shall:

- a) provide the IE and its Personnel with work permits and such other documents as may be necessary to enable the IE and its Personnel to perform the Services;
- b) facilitate prompt clearance through customs of any property required for the Services; and
- c) Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

### **5.2 Access to land and property**

The Corporation warrants that the IE shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the IE as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the IE as a result thereof pursuant to Clause 6.1.2.

### **5.3 Change in Applicable Law**

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost and expenses incurred by the IE in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.1, then the fee otherwise payable to the IE under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

### **5.4 Payment**

In consideration of the Services performed by the IE under this Agreement, the Corporation shall make to the IE such payments and in such manner as is provided in Clause 6 of this Agreement.

## 6. PAYMENT TO THE IE

### 6.1 Cost estimates and Agreement Value

6.1.1 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.2, the payments under this Agreement shall not exceed the fees quoted by the Independent Engineer (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

6.1.2 Notwithstanding anything to the contrary contained in Clause 6.1.1, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the IE in order to cover any additional expenditures not envisaged in the fee mentioned in Annexure-2, the monthly quoted fee by the Independent engineer set forth in Clause 6.1.1 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

### 6.2 Currency of payment

All payments shall be made in Indian Rupees. The IE shall be free to convert Rupees into any foreign currency as per Applicable Laws.

### 6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:-

- a) The IE shall be paid for its services as per the Payment Schedule at Annex-3 of this Agreement, subject to the IE fulfilling the following conditions:
  - (i) No payment shall be due for the next stage till the IE completes, to the satisfaction of the Corporation, the work pertaining to the preceding stage.
  - (ii) The Corporation shall pay to the IE, only the undisputed amount.
- b) The Corporation shall cause the payment due to the IE to be made within 30 (thirty) days after the receipt by the Corporation of duly completed bills with necessary particulars (the “**Due Date**”). Interest at the rate of 10% (ten per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date. Any amount which the Corporation has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be deducted by the Corporation from the next payment due to the IE.
- c) The final payment under this Clause shall be made only after the final report at the end of the 3 years and a final statement, identified as such, shall have been submitted by the IE and approved as satisfactory by the Corporation. The Services shall be deemed completed and finally accepted by the Corporation and the final deliverable shall be deemed approved by the Corporation as satisfactory upon expiry of 90

(ninety) days after receipt of the final deliverable by the Corporation unless the Corporation, within such 90 (ninety) day period, gives written notice to the IE specifying in detail, the deficiencies in the Services. The IE shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Corporation shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Corporation.

- d) Any amount which the Corporation has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the IE to the Corporation within 30 (thirty) days after receipt by the IE of notice thereof. Any such claim by the Corporation for reimbursement must be made within 1 (one) year after receipt by the Corporation of a final report and a final statement in accordance with Clause 6.3 (d). Any delay by the IE in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- e) All payments under this Agreement shall be made to the account of the IE as may be notified to the Corporation by the IE.

## **7. LIQUIDATED DAMAGES AND PENALTIES**

### **7.1 Performance Security**

**7.1.1** The Performance Security will be provided by the IE to the Corporation as on Date of this Agreement. The Performance Security shall be at the rate of 2.5% (two and a half percent) of the Agreement Value.

**7.1.2** The Corporation shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the IE in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2. If any amount is recovered through an appropriation from the Performance Security as per the provisions of this agreement then the same shall be replenished by the IE within 5 (five) days failing which the balance amount of the Performance Security will be appropriated by the Corporation and the IE will need to provide the entire quantum of the Performance Security within 5 (five) working days, failure to do so shall lead to be Termination of this Agreement and the process mentioned in Clause 2.9 will apply.

### **7.2 Liquidated Damages**

#### **7.2.1 Liquidated Damages for error/variation**

In case any error or variation is detected in the reports submitted by the IE and such error or variation is the result of negligence or lack of due diligence on the part of the IE, the consequential damages thereof shall be quantified by the Corporation in a reasonable manner and recovered from the IE by way of deemed liquidated damages, subject to a maximum of 50% (fifty per cent) of the Agreement Value. In case such penalty is levied more than 2 (two) times in a span of 12 consecutive months and more than 4 (four) times during the tenure of the IE Agreement, then the same shall lead to Termination of the Agreement as per process laid down in Clause 2.9 and encashment of the Performance Security.

#### **7.2.2 Liquidated Damages for delay**

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 2% (two per cent) of the Monthly Fee per day, subject to a maximum of 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the IE, suitable extension of time shall be granted.

#### **7.2.3 Encashment and appropriation of Performance Security**

The Corporation shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the IE in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

### **7.3 Penalty for deficiency in Services**

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the IE for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Corporation, such as poor quality of audits, surveys and tests, inadequate assessment of reports and the tipping fee statement submitted by the Concessionaire and failure to deploy personnel as required by the contract, other penal action including debaring for a specified period may also be initiated as per policy of the Corporation.

## **8. FAIRNESS AND GOOD FAITH**

### **8.1 Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

### **8.2 Operation of the Agreement**

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute subject to arbitration in accordance with Section 9 hereof.

## **9. SETTLEMENT OF DISPUTES**

### **9.1 Amicable settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

### **9.2 Dispute resolution**

**9.2.1** Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the **“Dispute”**) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

**9.2.2** The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### **9.3 Conciliation**

In the event of any Dispute between the Parties, either Party may call upon The Municipal Commissioner, Bhubaneswar Municipal Corporation, and the Chairman of the Board of Directors of the IE or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

### **9.4 Arbitration**

**9.4.1** Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (**the “Rules”**), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Bhubaneswar and the language of arbitration proceedings shall be English.



**9.4.2** There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

**9.4.3** The arbitrators shall make a reasoned award (**the “Award”**). Any Award made in any arbitration held pursuant to this Section 9 shall be final and binding on the Parties as from the date it is made, and the IE and the Corporation agree and undertake to carry out such Award without delay.

**9.4.4** The IE and the Corporation agree that an Award may be enforced against the IE and/or the Corporation, as the case may be, and their respective assets wherever situated.

**9.4.5** This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

SIGNED,

SEALED AND DELIVERED

SIGNED,

SEALED AND DELIVERED

For and on behalf of for and on behalf of

IE: Corporation

(Signature)

(Signature) (Name)

(Name) (Designation)

(Designation) (Address) (Address) (Fax No.) (Fax No.)

In the presence of:

1.

2.

## **Annex -1 – Terms of Reference**

### **1. Scope**

- 1.1 The Terms of Reference for the IE (the "TOR") are, being specified pursuant to the Concession Agreements dated 29<sup>th</sup> May 2014 (the "Agreement"), which has been entered into between the Bhubaneswar Municipal Corporation and Essel Bhubaneswar MSW Limited (the "Concessionaire") and Cuttack Municipal Corporation and Essel Bhubaneswar MSW Limited for Development of Regional MSW Processing & Landfill Facility for Bhubaneswar and Cuttack, Odisha (the "Project").
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project. Whereas the TOR details out the scope of the IE, it is hereby clarified that the Concession Agreement shall govern the scope of the IE. In the event of any deviation in the scope of the IE in the TOR and the Concession Agreement, the scope of the IE as per the Concession Agreement shall be considered. The detailed TOR is provided in Annex -1 - Terms of Reference of the Agreement Providing Independent Engineering Consultancy Services.

### **2. Definitions and interpretation**

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.1 and 1.2 of the Concession Agreement shall apply, mutatis mutandis, to this TOR.

### **3. Role and functions of the IE**

- a. Review of Project drawings and milestones submitted by the Concessionaire in conformance with Schedule 5 and 6 of the Concession Agreement.
- b. Review, inspection and monitoring of construction works as set out in Schedule 9 of the Concession Agreement.
- c. Conducting tests on completion of construction and issuing Completion/Provisional Certificate as set forth in Schedule 8 of the Concession Agreement.

- d. Review, inspection and monitoring of operations and maintenance as set out in Schedule 10 of the Concession Agreement.
- e. Determining as required under the Agreement the cost of any works or services or their reasonableness
- f. Determining as required under the Agreement, the period or any extension thereof, for performing any duty or obligations
- g. Assisting the parties in case of any dispute
- h. Undertaking all other duties and functions in accordance with the Agreement.
- i. The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- j. During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings and Detailed Project Report to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments/observations to BMC / CMC and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- k. The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- l. The Independent Engineer shall undertake a detailed review of the Construction Milestones defined and submitted by the Concessionaire and send its comments/ observations to BMC / CMC and the Concessionaire within 15 (fifteen) days of receipt.
- m. Upon reference by BMC / CMC, the Independent Engineer shall review and comment on the contracts entered into by the Concessionaire for the purpose of execution of this Agreement.
- n. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to BMC and the Concessionaire within 7(seven) days of receipt.
- o. The Independent Engineer shall cross check the specifications of the machinery and equipment (including vehicles) with the specifications submitted by the manufacturer.
- p. The Independent Engineer shall inspect the Project Facilities twice in a month, preferably after receipt of the monthly progress report from the Concessionaire, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of construction works with the Scope of the Project and the Specifications and Standards.

- q. The Independent Engineer may inspect the Project Facilities more than 2 times in a month if any lapses, defects or deficiencies require such inspections.
- r. For determining that the construction conforms to construction requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance.
- s. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 10 (ten) days the steps proposed to be taken to expedite progress, and the period within which the Project construction would be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to BMC / CMC and the Concessionaire forthwith.
- t. Independent Engineer during operation period shall review the monthly report furnished by the Concessionaire, and shall submit its comments on the same to BMC / CMC and to the Concessionaire within 7 days of the receipt of the report.
- u. Independent Engineer during operation period shall inspect the Project Facilities and processes at least twice in a month and carry out tests as might be deemed necessary and furnish the observations of the inspection to the Concessionaire and to BMC / CMC within 7 days of such Inspection.
- v. Independent Engineer during operation period is authorized to conduct surprise checks on the Project Facilities and processes to ensure that they comply with the Project specifications.
- w. Independent Engineer during operation period shall report the results of surprise checks to BMC / CMC within 7 days of such checks.
- x. Independent Engineer during operation period is authorized to require the Concessionaire to carry out such tests/ arrange to carry out such tests as it deems necessary and present the result and inferences of the same to BMC / CMC.
- y. In case any deficiency or maintenance requirement is observed by the Independent Engineer during operation period during the inspection or tests, it shall report the same to BMC along with the possible impact on the Project Facilities and the cost of rectification of the same.
- z. Independent Engineer during operation period shall inspect the Project Facilities once the Concessionaire rectifies the defect and report the results of such inspection to BMC / CMC.
- aa. Independent Engineer during operation period shall audit and certify the weighbridges located at the Processing site at least once a month and submit the results of such review to BMC / CMC and the Concessionaire.

- bb. Independent Engineer during operation period shall audit the MSW quantity supply data recorded at the Processing site to ensure that the data reported by the Concessionaire for charging Tipping Fee is accurate and that the provisions of this agreement are conformed with. The Independent Engineer during operation period is authorized to conduct surprise checks and tests for this purpose.

**Annex – 2: IE Personnel list**

Sr. No	Name of the Key Personnel	Designation	Detailed job description
1.			
2.			
3.			
4.			
5.			



### Annex -3- Payment

<b>Milestone</b>	<b>Professional fee including out of pocket expenses and excluding service tax</b>
On Submission of Monthly Inspection Report at the end of the Month from the Effective Date to be paid every month	-



### Annex -4- Bank Guarantee for Performance Security

To

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In consideration of The Municipal Commissioner, acting on behalf of the Bhubaneswar Municipal Corporation, (hereinafter referred as the “Corporation”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s ....., having its office at..... (Hereinafter referred as the “Independent Engineer” or “IE” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Corporation’s Agreement no. .... dated ..... valued at Rs. .... (Rupees.....), (hereinafter referred to as the “**Agreement**”) a consultancy services for Appointment of Independent Engineer for development of Regional MSW Processing & Landfill Facility for Bhubaneswar & Cuttack, Odisha by The Bhubaneswar Municipal Corporation, and the Independent Engineer having agreed to furnish a Bank Guarantee amounting to Rs..... (Rupees ..... ) to the Corporation for performance of the said Agreement.

1. We, ..... (hereinafter referred to as the “**Bank**”) at the request of the IE do hereby undertake to pay to the Corporation an amount not exceeding Rs. .... (Rupees ..... ) against any loss or damage caused to or suffered or would be caused to or suffered by the Corporation by reason of any breach by the said Independent Engineer of any of the terms or conditions contained in the said Agreement.
2. We, ..... (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Corporation stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Corporation by reason of breach by the said Independent Engineer of any of the terms or conditions contained in the said Agreement or by reason of the Independent Engineer’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. .... (Rupees ..... ).
3. We, ..... (indicate the name of Bank) undertake to pay to the Corporation any money so demanded notwithstanding any dispute or disputes raised by the Independent Engineer in any suit or proceeding pending before any court or tribunal 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 Independent Engineer shall have no claim against us for making such 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 Corporation under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Corporation certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Independent Engineer and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, ..... (indicate the name of Bank) further agree with the Corporation that the Corporation shall have the fullest liberty without our consent and without affecting 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 Independent Engineer from time to time or to postpone for any time or from time to time any of the powers exercisable by the Corporation against the said Independent Engineer and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Independent Engineer or for any forbearance, act or omission on the part of the Corporation or any indulgence by the Corporation to the said Independent Engineer or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.
6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Independent Engineer(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 Corporation in writing.
8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. \*\*\* (Rupees \*\*\*\*\*) only. The Bank shall be liable to pay the said amount or any part thereof only if the Corporation serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before \*\*\* (indicate date falling 180 days after the period mentioned in clause 7.1 of this agreement).

Dated, the ..... day of ..... 20

For ..... (Name of Bank)

**Dr. Krishan Kumar, IAS**  
The Municipal Commissioner,  
Bhubaneswar Municipal  
Corporation,

Seal of the Bank:

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.