

**Uttar Pradesh State Road Transport Corporation (UPSRTC)**



**Volume-1: Request for Proposal (RFP)**

**Development of bus terminal in Gorakhpur, Uttar Pradesh on Design Build Finance Operate and Transfer (DBFOT) basis**

**Project Proponent**  
**The Managing Director**  
**Uttar Pradesh State Road Transport Corporation (UPSRTC)**  
**Parivahan Bhavan, Tehri Kothi, M.G. Marg**  
**Lucnow-226001**  
**Phone: +91 522 262 2363**  
**Fax: +91 522 262 3578**  
**Website: www.upsrtc.com**

<b>Sr. No</b>	<b>Event Description</b>	<b>Date</b>
1	Date of uploading of document	02/03/2019 on <a href="https://etender.up.nic.in">https://etender.up.nic.in</a>
2	Last date of receiving clarifications	13/03/2019 (at 15:00 hrs) at email address: <a href="mailto:ppp.busstationup2017@gmail.com">ppp.busstationup2017@gmail.com</a>
3	Pre bid conference	16/03/2019 (at 15:00 hrs) at UP Housing Board, Conference Hall, MG Marg, Lucknow
4	Date of uploading of addendum/ corrigendum, if any	26/03/2019 on <a href="https://etender.up.nic.in">https://etender.up.nic.in</a>
5	Bid submission date & place	10/04/2019 (upto 15:00 hrs) on <a href="https://etender.up.nic.in">https://etender.up.nic.in</a>
6	Opening of financial bid	To be intimated later

*All the days shall be counted on working days basis.*

## DISCLAIMER

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

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

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

UPSRTC, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, Damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

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

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

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

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

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## GLOSSARY

**Annual Concession Fee** shall have the same meaning as assigned to the term in Clause 3.4.2

**Bid** shall mean the RFP application along with financial proposals for individual Project site

**Bid Due Date** shall mean the Bid submission date as mentioned in the schedule of bidding process in Clause 1.3

**Bid Security** shall have the same meaning as assigned to the term in Clause 1.2.5

**Circle Rate** shall have the meaning as defined in the RFQ Document

**CAGR** shall mean minimum value of land per Acre/ per square meter fixed by Collector under Uttar Pradesh Stamp Evaluation of Property Rules 1999 and as will be applicable at the time of signing of Concession Agreement.

**Commercial Operation Date or COD** shall have the same meaning as assigned to the term in the Concession Agreement.

**Damages** As defined in Clause 2.1.11

**Demand Draft** shall have the same meaning as assigned to the term in Clause 2.19.1

**Estimated Cost of Construction** shall mean the costs mentioned in the fourth column of Table 1-1, under Clause 1.1.2

**FAR or Floor Area Ratio** shall mean the Floor Area Ratio pertaining to the Project

**Government/ GoUP** shall mean the Government of Uttar Pradesh

**HUPD** shall mean the Housing & Urban Planning Department, Government of Uttar Pradesh

**LOI or Letter of Intent** shall have the same meaning as assigned to the term in Clause 3.6.5

**Performance Guarantee** shall have the same meaning as assigned to the term in Clause 2.21

**Performance Security** shall have the same meaning as assigned to the term in Clause 2.210

**Project Site** shall mean the site on which the Project is to be developed by the Concessionaire

**Re. or Rs. or INR** shall mean the currency of India/ Indian Rupee

**Commercial Complex** shall have the same meaning as assigned to the term in the Concession Agreement

**RFP or Request for Proposal** shall mean this Request for Proposal

**Selected Bidder or Successful Bidder** shall mean the selected Bidder in terms of Clause 3.6.1

**Upfront Premium** shall have the same meaning as assigned to the term in Clause 3.5.1.

Unless the context otherwise requires, the terms not defined in this RFP, but defined in the RFQ for the Project shall have the meaning assigned thereto in the RFQ.

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## 1. INTRODUCTION

### 1.1 Background

1.1.1 Uttar Pradesh State Road Transport Corporation (“**UPSRTC**”) is a corporation established under the Road Transport Corporation Act 1950.

1.1.2 UPSRTC intends to develop and manage the bus terminal cum commercial complex in the Gorakhpur city of the state of Uttar Pradesh on the basis of DBFOT (Design, Build, Finance, Operate and Transfer) for operating it’s owned, controlled, regulated or obligatory bus services under an arrangement or agreement (“**Project**”). It is further envisaged that the bus station space may be combined with permitted commercial development to make the Project commercially viable for development. It shall involve development of Project facilities at the Project Site including design, financing, construction, implementation, completion, commissioning, management of the facilities, (including bus station management) execution of works and all activities incidental thereto, and transfer of the Project/ Project facilities by the Successful Bidder to UPSRTC or its nominated agency at the end of the Concession Period free of cost. The Selected Bidder shall have to develop the bus station upto the desired level of services as defined in schedules to the Concession Agreement as a whole, for immediate operation as per the specifications given herein.

Project name	City details	Site areas in sq mts	Estimated Cost of Construction (in INR crores)
Gorakhpur		20,000	128

**Table 1-1**

1.1.3 The Selected Bidder, shall furnish an undertaking to the effect that it shall incorporate SPV in the form of company registered under Companies Act 1956/ 2013, at least 45 days prior to execution of the Concession Agreement (the “**Concessionaire**”) and such company shall be responsible for designing, engineering, financing, procurement, construction, management (including bus station management) operation, maintenance and transfer of the Project under and in accordance with the provisions of the Concession Agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and UPSRTC in the form provided by UPSRTC (being provided as Volume II). The Scope of Work (“**SoW**”) will broadly include Design, Build, Finance, Operate and Transfer (“**DBFOT**”) of the Project. The construction of the Project shall have to be compliant to the governing bye laws, zoning regulations of H&UPD, GoUP and related statutory provisions and regulations applicable for similar projects.



1.1.4 The model building bye laws as provided by H&UPD, GoUP with support of basic FAR of **250%** shall be applicable.

1.1.5 In lines with the model building bye laws as provided by H&UPD, GoUP has proposed zoning regulation providing commercial FAR upto 112.50% without any impact fee as special support to the Project. The Concessionaire will also be allowed to use non-commercial FAR for commercial usage but only after meeting the technical requirements of UPSRTC for its bus terminal and/ or workshop requirement and on obtaining permission from the appropriate authority by making payments of levies, fees, impact fees, charges etc. Additionally, in case of futuristic requirement wherein the Concessionaire will apply for additional purchasable FAR (beyond basic admissible FAR / 250% FAR) through UPSRTC only, the Authority will issue a no objection against a pro rata payment of the quoted Upfront Premium as mentioned in Clause 26.2.1 of the Draft of Concession Agreement. However, if the request of the Concessionaire is rejected by the Authority or any other government agency after payment of such pro rata payment of the quoted Upfront Premium, UPSRTC shall endeavor to refund the same without any additional liability pending towards it, within a period of 30 days from the receipt of such application by the Concessionaire.

1.1.6 The Successful Bidder has to develop the passenger amenities, chargeable facilities on the priority basis in the bus station premises within a period of 18 months from the date of signing of Concession Agreement and in case of the commercial complex, within a period of 60 months.

1.1.7 With regards to the Project Site, the land ownership will remain with UPSRTC and the land will be licensed to the Successful Bidder for a period of 60 years from the date of signing of the Concession Agreement. After the Concession Period is over, the Project, all on site facilities, infrastructure, all equipment's erected or installed as part of the Project as well as the land comprising the Project Site shall stand transferred to UPSRTC, free from all encumbrances and in accordance with good industry practices. For avoidance of doubt, Successful Bidder shall execute separate deed for transfer of the aforesaid after completion of the Concession Period or its sooner termination by UPSRTC.

1.1.8 The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the SoW and obligations of the Concessionaire set forth in the Concession Agreement or UPSRTC's rights to amend, alter, change, supplement or clarify the SoW, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by UPSRTC.

1.1.9 UPSRTC shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by UPSRTC pursuant to this RFP, as modified, altered, amended and clarified from time to time by UPSRTC (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in clause 1.3 for submission of Bids.

## **1.2 Brief description of Bidding Process**

1.21 UPSRTC has adopted a two envelope, single stage process (collectively referred to as the "**Bidding Process**") for selection of the Selected Bidder for award of the Project. The first stage (the "**Qualification Stage**") of the process involves pre-qualification of interested Applicants / Consortia in accordance with the provisions of the Request for Qualifications for all the projects. At the end of the Qualification Stage, UPSRTC shall shortlist pre-qualified Applicants who stand eligible for participation in the Request for Proposal stage involving financial bids for the project as per the Bidding Process prescribed herein and in the prescribed format.

1.22 The details of the Bidding Process are mentioned in the Clause 2.9 – Sealing and Marking of Bids.

1.23 The Bid shall be valid for a period of not less than 180 days from the Bid Due Date.

1.24 The Bidding Documents include the Request for Proposal (RFP) as Volume I and the Draft Concession Agreement for the Project as Volume II. Subject to the provisions of Clause 2.5 & 2.6, any corrigendum or addenda issued subsequent to this RFP document and/or the Concession Agreement, but before the Bid Due Date, will be deemed to form part of the Bidding Documents.

1.25 A Bidder is required to deposit, along with its Bid, a bid security of an amount as mentioned in Annexure – II of the RFQ (the "**Bid Security**"), refundable after 180 days from the Bid Due Date except in the case of the Selected Bidder, and as per the normal procedure for this, outlined by UPSRTC. The Bidders will deposit the Bid Security in the form of unconditional, irrevocable and unequivocal bank guarantee issued by any nationalized bank or scheduled bank drawn in favor of Uttar Pradesh State Road Transport Corporation with a validity of 180 days. The Bid Security may also be furnished in the form of demand draft issued by any nationalized bank or scheduled bank drawn in favor of "Uttar Pradesh State Road Transport Corporation" payable at Lucknow. The validity of Bid Security may be extended subject to a maximum of 60 days, at the request of UPSRTC. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.26 The Selected Bidder shall be the Bidder being selected through the process described in Section 3. The remaining Bidders shall be kept in reserve and may in accordance with the process specified in section 3 of this RFP, be considered in case such Selected Bidder withdraws or is not selected for any reason.

1.27 During the Bid Stage, Bidders are invited to examine the Project in greater detail and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.

1.28 The Concessionaire will be entitled to build, develop, maintain and transfer the Project in accordance with the terms and conditions of the draft for Concession Agreement.

1.29 Any queries or request for additional information concerning this RFP shall be submitted in writing by e-mail at [pppbsm@gmail.com](mailto:pppbsm@gmail.com) but not later than the date as mentioned in Clause 1.3 (schedule of bidding process) of this document. No query violating the bidding schedule will be responded to, or entertained.

### 1.3 Schedule of bidding process

UPSRTC shall endeavor to adhere to the following schedule:

**TABLE 1-2: – Proposed schedule of bidding process**

Sr. No	Event description	Date
1	Date of uploading of document	02/03/2019 on <a href="https://etender.up.nic.in">https://etender.up.nic.in</a>
2	Last date of receiving clarifications	13/03/2019 (at 15:00 hrs) at email address: <a href="mailto:ppp.busstationup2017@gmail.com">ppp.busstationup2017@gmail.com</a>
3	Pre bid conference	16/03/2019 (at 15:00 hrs) at UP Housing Board, Conference Hall, MG Marg, Lucknow

<b>Sr. No</b>	<b>Event description</b>	<b>Date</b>
4	Date of uploading of addendum/ corrigendum, if any	26/03/2019 on <a href="https://etender.up.nic.in">https://etender.up.nic.in</a>
5	Bid submission date & place	10/04/2019 (upto 15:00 hrs) on <a href="https://etender.up.nic.in">https://etender.up.nic.in</a>
6	Opening of financial bid	To be intimated later
7	Letter of Intent (LOI)	To be intimated later
8	Signing of Concession Agreement	Within 30 days of award of LOI

### **Project Proponent**

The Managing Director  
Uttar Pradesh State Road Transport Corporation (UPSRTC)  
Parivahan Bhavan,  
Tehri Kothi,  
M.G. Marg,  
Lucknow-226001  
Phone: +91 522 2622363  
Fax:  
Website: [www.upsrtc.com](http://www.upsrtc.com)

### **1.4 Pre-bid conference**

The date, time and venue of the Pre-bid conference shall be:

Date: 16/03/2019

Time: 1500 hrs

**VENUE:** UP Housing Board, Conference Hall, MG Marg, Lucknow

## 2. INSTRUCTIONS TO BIDDERS

### A. General

#### 2.1 General terms of bidding

2.1.1 No Bidder shall submit more than one Bid for the Project as per the format given in Appendix I. A Bidder bidding individually or as a Member of a Consortium shall not be entitled to submit another bid either individually or as a Member of any Consortium, as the case may be.

2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the RFQ for the Project shall have the meaning assigned thereto in the RFQ.

2.1.3 This RFP is being provided only as preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination before submitting their Bids. Nothing contained in the RFP shall be binding on UPSRTC nor confer any right on the Bidders, UPSRTC, its consultants, agencies, employees shall have no liability whatsoever in relation to or arising out of any or all contents of the RFP.

2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect, provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

2.1.5 The Bid should be furnished in the format at Appendix-I, clearly indicating the bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.6 The Bidder has to provide the Bid Security as mentioned in Clause 1.2.5 in the form of either demand draft or bank guarantee acceptable to the Authority, as per format at Appendix-II. Bid Security in any other form will not be accepted.

2.1.7 The validity period of the Bid Security shall not be less than 90 days from the Bid Due Date, and may be extended by the Bidder subject to 90 days at the request of the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not later than 180 days from the Bid Due Date except in the case of the Selected Bidder. In case of the Selected Bidder, the Bid Security shall be refunded within **60 (Sixty)** days of receipt of the Performance Security.

2.1.8 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.9 The Bid and all communications in relation to or concerning the RFP and the Bid shall be in English language. Any printed literature furnished by the Bidder written in another language must be accompanied by its translation in the English language duly authenticated by the Bidder, in which case, for purposes of interpretation of the application, the translation shall govern.

2.1.10 The Bidding Documents including this RFP and all attached documents are and shall remain or become the property of UPSRTC and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.10 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.11 A Bidder shall not have a Conflict of Interest that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder's proposal ("Damages"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.1.12 UPSRTC, its employee and advisors would treat the Bids and supporting information submitted by the Bidders in a reciprocating confidentiality and would use it for the purpose of this Bidding Process alone. However, if the information / document submitted by the Bidder is needed to be reproduced under any statutory provision, such as Right to Information or litigations, UPSRTC would do so, with an information to the Bidder and any expenses related to the same would be charged to the bidder.

2.1.13 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOI or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOI or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOI or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the



LOI or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Application Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.1.14 This RFP is not transferable.

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

## **2.2 Change in ownership**

2.2.1 By submitting the Bid, the Bidder shall be deemed to have acknowledged that it was prequalified and short-listed on the basis of its Technical Capacity and Financial Capacity and in case of a Consortium, the Technical Capacity and Financial Capacity of its Members. In case of a Consortium, Member with the highest equity stake in the Consortium, subject to a minimum of **26%** shall be the nominated as the Lead Member to act on behalf of the others as their representative for Bidding and implementation of the Project and all the other Members of the Consortium shall have to hold at least **10%** equity for the entire Concession Period, in accordance with the provisions of the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such there-under. For the avoidance of doubt, the provisions of this Clause 2.2.1 shall apply only when the Bidder is a Consortium.

2.2.2 In case the Successful Bidder is a Consortium, change in the Lead Member shall not be allowed under any circumstances during the Bidding Process. In case Successful Bidder is a Consortium, Lead Member shall not be allowed to change during the entire period of Concession.

2.2.3 In case the Successful Bidder is a Consortium, its Lead Member shall not be allowed to reduce its Equity contribution in the Project till 5 years from the Commercial Operation Date. However, at all times the Equity contribution of the Lead Member shall not be less than **26%** over the entire Concession Period.

2.2.4 No change in the composition of the Consortium shall be allowed between the Bidding Process and the execution of the Concession Agreement and thereafter shall be as

per the terms and conditions specified in the Concession Agreement.

2.2.5 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, the Bidder shall inform UPSRTC forthwith along with all relevant particulars about the same and UPSRTC may, in its sole discretion, disqualify the Bidder or withdraw the Letter of Intent (“LoI”) from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach thereof, and the Concession Agreement shall be liable to be terminated without UPSRTC being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, UPSRTC shall be entitled to appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to UPSRTC under the Bidding Documents and/ or the Concession Agreement or otherwise.

### **2.3 Cost of bidding**

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

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

2.4.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

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

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.4.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.4.1 hereinabove necessary and required for submitting



an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.4.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

## **2.5 Verification and Disqualification**

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

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

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

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

- (i) invite the remaining Bidders to submit their Bids in accordance with clause 3.6; or
- (ii) take any such measure as may be deemed fit in the sole discretion of

the Authority, including annulment of the Bidding Process.

- 2.5.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOI or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOI or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

## **B. Documents**

### **2.6 RFP documents**

- 2.6.1 RFP documents shall comprise of two volumes: Request for Proposal: Volume-I and Concession Agreement: Volume- II.

### **Contents of the RFP**

- 2.6.2 This RFP comprises the Letter of Invitation; Disclaimer set forth hereinabove and following Chapters and Appendices.

### **Chapters**

Introduction  
Instructions to Bidders  
Evaluation of Bids  
Fraud and Corrupt Practices  
Miscellaneous

### **Appendices**

Appendix - I: Financial bid Form  
Appendix – II: Bank Guarantee for Bid Security  
Annexure – I: Financial Obligations

2.6.3 In addition, it would also include any addenda issued in accordance with Clause 2.6

## **2.7 Clarifications**

2.7.1 Bidders requiring any clarification on the RFP may notify UPSRTC by e-mail in accordance with Clause 1.2.9. They should send in their queries before the date mentioned in the schedule of bidding process specified in Clause 1.3. The clarifications will be communicated through the following website: [www.upsrtc.com](http://www.upsrtc.com)

2.7.2 UPSRTC shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, UPSRTC reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring UPSRTC to respond to any question or to provide any clarification.

2.7.3 UPSRTC may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by UPSRTC shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by UPSRTC or its employees or representatives shall not in any way or manner be binding on UPSRTC.

## **2.8 Amendment of RFP**

2.8.1 At any time prior to the Bid Due Date, UPSRTC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addendum or a corrigendum.

2.8.2 Any addendum or a corrigendum thus issued will be uploaded of the website: [www.upsrtc.com](http://www.upsrtc.com)

2.8.3 In order to accord the Bidders a reasonable time for taking an addendum into account, or for any other reason, UPSRTC may, at its own discretion, extend the Bid Due Date.

## **2.9 Proprietary Data**

All documents and other information supplied by UPSRTC or submitted by a Bidder to UPSRTC shall remain or become the property of UPSRTC. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. UPSRTC shall not return any Bid or any information provided therewith.

## **C. Preparation and Submission of Bids**

### **2.10 Language, format and signing of Bid**

2.10.1 The Bid, as well as all correspondence and documents relating to the Bid, exchanged between UPSRTC and the Bidder shall be written in English language. Any printed literature furnished by the Bidder written in another language must be accompanied by a translation in the English Language duly authenticated by the Bidder, in which case, for purposes of interpretation of the Bid, the translation shall govern.

2.10.2 The Bidder shall provide all the information sought under this RFP. UPSRTC will evaluate only those Bids that are received in the required formats and complete in all respects.

2.10.3 Financial bids of only those bidders who are shortlisted as prequalified Applicants at Qualification Stage, shall be opened.

2.10.4 The financial bid is to be submitted as per the format given in **Appendix I**.

2.10.5 The Bid shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The authorized signatory shall initial all pages of the Bid.

2.10.6 The Bidder shall submit a general power of attorney issued by a resolution passed by the board of directors of the Bidder or Lead Member (in case of Consortium) duly authenticated by affixing a common seal and further duly notarized, in favor of the authorized signatory of the Bidder, indicating that the specified person has the authority to sign the Bid and confirming that the Bid is binding upon the Bidder during the full period of its validity.

2.10.7 Bidders shall furnish the required information on their Bid in the enclosed formats only. Any deviations with respect to this may make their Bid liable for rejection.

2.10.8 Please refer to clause 4.3.7 of RFQ for details of submission of Bid.

### **2.11 Sealing and marking of Bids**

2.11.1 Please refer to clause 4.3.7 of RFQ for details of submission of Bid.

2.11.2 The Bidders shall submit the Bid as per the following:

2.11.2.1 Both the sealed, signed RFP and RFQ submission (as specified in the RFQ document) shall be placed in an outer envelope titled Bid for Development of Bus Stations in the State on PPP Model.

2.11.2.2 Each of the envelopes shall be addressed to the following:

**The Managing Director**

Uttar Pradesh State Road Transport Corporation (UPSRTC), Parivahan Bhavan  
Tehri Kothi, M.G. Marg  
Lucknow-226001

2.11.3 If the envelopes are not sealed and marked as instructed above, UPSRTC assumes no responsibility for the misplacement or premature opening of the contents of the submitted Bid.

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

2.11.5 The Bid submission shall be made only in person, at the designated box placed at the Committee Room, UPSRTC HQs, Parivahan Bhavan, Tehri Kothi, M.G. Marg, Lucknow-226001.

**2.12 Bid Due Date**

2.12.1 Bids should be submitted before 1500 hours IST on the date specified in Clause 1.3, at the address provided in Clause 2.11.2.2 in the manner and form as detailed in this RFP.

2.12.2 UPSRTC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.6 uniformly for all Bidders.

**2.13 Late Bids**

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

**2.14 Modifications/ Substitution/ Withdrawal of Bids**

Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by UPSRTC, shall be

disregarded.

## **2.15 Rejection of Bids**

2.15.1 UPSRTC reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for UPSRTC to accept any Bid or to give any reasons for their decision.

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

## **2.16 Validity of Bids**

2.16.1 The Bids shall be valid for a period of not less than 180 days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and UPSRTC.

## **2.17 Confidentiality**

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

## **2.18 Correspondence with the Bidder**

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

## **D. Bid Security**

### **2.19 Bid Security**

2.19.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.5 in the form of a demand draft issued by any scheduled bank in India, drawn in favor

of “Uttar Pradesh State Road Transport Corporation” and payable at Lucknow (the “Demand Draft”) UPSRTC shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free. Bid Security may also be furnished in the form of bank guarantee issued by any nationalized bank or scheduled bank drawn in favor of “Uttar Pradesh State Road Transport Corporation” valid for a period of 180 days.

2.19.2 Any Bid not accompanied by the Bid Security shall be rejected by UPSRTC as non-responsive.

2.19.3 Save as provided in Clause 2.1.6, the Bid Security of unsuccessful Bidders will be returned by UPSRTC, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding Process is cancelled by UPSRTC. Bidders may by specific instructions in writing to UPSRTC give the name and address of the person in whose favor the said Demand Draft shall be drawn by UPSRTC for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.19.4 The Selected Bidder’s Bid Security will be returned, without any interest, upon such Selected Bidder signing the Concession Agreement and furnishing the Performance Security and the Performance Guarantee in accordance with the provisions thereof. UPSRTC may, at the Selected Bidder’s option, adjust the amount of Bid Security in the amount of Performance Security and the Performance Guarantee to be provided by him in accordance with the provisions of the Concession Agreement.

2.19.5 UPSRTC shall be entitled to appropriate the Bid Security as mutually agreed genuine pre-estimated compensation/ Damages to UPSRTC in any of the events specified in Clause 2.19.6. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that UPSRTC will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.19.6 The Bid Security shall be forfeited and appropriated by UPSRTC as mutually agreed genuine pre-estimated compensation and Damages payable to UPSRTC for, inter alia, time, cost and effort of UPSRTC without prejudice to any other right or remedy that may be available to UPSRTC hereunder or otherwise, under the following conditions:

2.19.6.1 If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;

2.19.6.2 If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;



2.19.6.3 In the case of Selected Bidder, if it fails within the specified time limit –

- 2.19.6.3.1 to sign the Concession Agreement and/or
- 2.19.6.3.2 to furnish the Performance Security and/or the Performance Guarantee within the period prescribed in the Concession Agreement;

2.19.6.4 In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security and/or the Performance Guarantee.

## **2.20 Performance Security**

a) The Concessionaire shall ensure that for the entire Construction Period of the bus terminal, it will maintain Performance Security. The Performance Security shall be in the format mentioned in Schedule – F of Volume – II: Concession Agreement and Performance Security shall remain valid for six months beyond the construction period of the bus terminal or any extension thereof. Concessionaire shall furnish Performance Security before execution of Concession Agreement.

b) The Performance Security in the form of an unconditional and irrevocable bank guarantee shall be from a nationalized bank or scheduled bank approved by the concessioning Authority. Amount of Performance Security shall be as per provisions of annexure – I of the RFP document.

c) Upon occurrence of a Concessionaire event of default, the concessioning Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke, encash and appropriate relevant amounts from the Performance Security as damages. Upon such invocation, encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the concessioning Authority a fresh Performance Security as aforesaid, failing which the concessioning Authority shall be entitled to terminate the Concession Agreement.

## **2.21 Performance Guarantee**

a) The Concessionaire shall ensure that for the entire Concession Period starting from the date of issue of the completion certificate and within 90 days of expiry of the Performance Security, it will maintain Performance Guarantee in the format as given in schedule – FF of Volume – II: Concession Agreement of the value as specified in the annexure – I of the RFP which shall remain valid at all times during the period of Concession.



b) The Performance Guarantee shall be in the form of an unconditional and irrevocable bank guarantee. It shall be from a nationalized bank or scheduled bank approved by the concessioning Authority.

c) Upon occurrence of a Concessionaire event of default, the concessioning Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke, encash and appropriate relevant amounts from the Performance Guarantee as damages. Upon such invocation, encashment and appropriation from the Performance Guarantee, the Concessionaire shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Guarantee and in case of appropriation of entire Performance Guarantee to provide a fresh Performance Guarantee and the Concessionaire shall, within the time so granted replenish or furnish to the concessioning Authority a fresh Performance Guarantee as aforesaid, failing which the concessioning Authority shall be entitled to terminate this Agreement.

d) The Concessionaire shall furnish Performance Guarantee before the expiry of the Performance Security which shall remain valid throughout the period of Concession.

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view version not for application

### 3 EVALUATION OF BIDS

#### 3.1 Opening and evaluation of Bids

3.1.1 UPSRTC will open the financial bids of only those Bidders who are qualified as per the RFQ and whose Bids have been received as per the terms and conditions specified in this RFP at the place specified in clause 2.11.2.2 and in presence of the Bidders who choose to attend.

3.1.2 UPSRTC will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3 and as per the terms and conditions of the RFP document.

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

3.1.4 Any information contained in the Bid shall not in any way be construed as binding on UPSRTC, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it under the Bidding Process on the basis of such information.

3.1.5 UPSRTC reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any Bid without assigning any reasons.

#### 3.2 Tests of Responsiveness

3.2.1 Prior to evaluation of financial bid, UPSRTC shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- a) it is received by the Bid Due Date including any extension thereof pursuant to clause 1.3;
- b) it is signed, sealed and marked as stipulated in Clauses 2.11;
- c) it contains all the information (complete in all respects) as requested in this RFP and/ or Bidding Documents (in formats same as those specified);
- d) the financial bid is in manner specified Appendix I;
- e) mentions the validity period as specified in clause 2.16
- f) it does not contain any condition or qualification; and
- g) it is not non-responsive in terms hereof.

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

### 3.3 Clarifications

3.3.1 To facilitate the evaluation of the Bid, UPSRTC may at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarifications shall be provided by the Bidder within the time specified by UPSRTC for this purpose. All clarifications shall be in writing.

3.3.2 If any Bidder does not provide clarifications sought as above, within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, UPSRTC may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding and the Bidder shall be barred from subsequently questioning such interpretation by UPSRTC.

### 3.4 The Annual Concession Fee

3.4.1 The Project is proposed to be implemented on a DBFOT basis for a Concession Period on an Upfront Fee cum Annual Concession Fee model.

3.4.2 Annual Concession Fee for the first year at the rate of **2%** of the prevailing Circle Rate of the land which is the Project Site shall be paid by the Selected Bidder in advance on the date of execution of the Concession Agreement. Further, this will be realized on subsequent anniversaries of such a date with escalation at CAGR of **5%** for the entire Concession Period. Any defaults/delays in payment of the Annual Concession fees shall be dealt with as per the provisions of the Concession Agreement.

### 3.5 Bidding Parameter

3.5.1 Qualified Bidder quoting the highest Upfront Premium and whose bid has been received as per the terms and conditions of this RFP shall be the Successful Bidder.

3.5.2 Successful Bidder and/or the Concessionaire, as the case may be, shall pay an Upfront Premium as per the following schedule:

Sr. No	Percentage of the Upfront Premium	Timelines
1.	30% of the quoted Upfront Premium	At the time of submitting acceptance against the LOI, by the Successful Bidder

2.	35% of the quoted Upfront Premium	Within 12 (twelve) months from the date of signing of Concession Agreement
3.	35% of the quoted Upfront Premium	Within 18 (Eighteen) months from the date of signing of Concession Agreement

For avoidance of doubt, in the event the Selected Bidder fails to pay an Upfront Premium, provisions of the Concession Agreement shall apply.

3.5.3 However, if the value of the 2nd & 3rd tranches is more than the Performance Security being paid by the Bidder, then the additional amount (i.e. the difference between the Performance Security amount & cumulative amount of 2nd & 3rd tranches of the Upfront Premium) shall have to be paid by the Bidder in the form of an additional, separate unconditional, irrevocable and unequivocal bank guarantee which shall be valid till the time of completion of bus terminal or 18 months from the date of signing of Concession Agreement, whichever is later. The bank guarantee for the second and third tranches shall remain in force and effect till the period for which the second and third tranches of Upfront Premium is paid in full by the Bidder and shall be released after 60 days of expiry after the payment of the second and third tranches of the Upfront Premium is paid by the Bidder.

3.5.4 The Successful Bidder shall specify the Upfront Premium in the financial bid in both numeric and alphabetical manner in the format provided for such financial bid in Appendix I. For avoidance of doubt, it is clarified that in the event of discrepancy in the Upfront Premium in numeric and alphabetical manner, the Upfront Premium in alphabetical manner shall be considered the Upfront Premium quoted by the Bidder.

3.5.5 In the event, the Successful Bidder and/ or the Concessionaire, as the case may be, fails to pay the Upfront Premium within time specified in clause 3.5.2, UPSRTC shall have the right to encash the bank guarantees submitted by the Successful Bidder.

### 3.6 Selection of Bidder

3.6.1 The Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the highest Upfront Premium, shall be declared as the Selected Bidder (the “**Selected Bidder**”).

3.6.2 In the event that two or more Bidders quote the same amount of Upfront Fee, (the “**Tie Bidders**”), the Selected Bidder will be the one who has obtained higher Technical Score.

3.6.3 In the event that the highest Bidder withdraws or is not selected for any reason

in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said highest Bidder in the second round of Bidding, then the Bidder whose Technical Score was the highest shall be the Selected Bidder. For example, if the third highest Bidder (with Technical Score of 75) and fifth highest Bidder (with Technical Score of 80) in the first round of Bidding offer to match the said highest Bidder in the second round of Bidding, the said fifth highest Bidder (with higher Technical Score) shall be the Selected Bidder.

3.6.4 In the event that no Bidder offers to match the highest Bidder in the second round of Bidding as specified in Clause 3.6.3, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the highest Bidder of the first round of Bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of Bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of Bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of Bidding.

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

3.6.6 After acknowledgement of the LoI as aforesaid by the Selected Bidder, the Concession Agreement shall be executed between UPSRTC and the Selected Bidder within 60 days from the date of issue of LoI.

3.6.7 The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

### **3.7 Contacts during Bid evaluation**

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

## 4 FRAUD AND CORRUPT PRACTICES

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

**42** Without prejudice to the rights of UPSRTC, if an Applicant is found by UPSRTC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOI or the execution of the Concession Agreement, such Applicant shall not be eligible to participate in any tender or RFQ issued by UPSRTC during a period of 2 (two) years from the date such Applicant is found by UPSRTC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

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

4.3.1 “corrupt practice” means

4.3.1.1 the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of UPSRTC who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOI or has dealt with matters concerning the Concession Agreement or arising there from, before or after the execution thereof, within three years after signing of the Concession Agreement, such official resigns or retires from or otherwise ceases to be in the service of UPSRTC, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.1.13 of this RFP, engaging in any

manner whatsoever, whether during the Bidding Process or after the issue of the LOI or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOI or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

4.3.2 “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

4.3.3 “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

4.3.4 “undesirable practice” means

4.3.4.1 establishing contact with any person connected with or employed or engaged by UPSRTC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or

4.3.4.2 having a Conflict of Interest; and

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



## 5 MISCELLANEOUS

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

**5.2** UPSRTC, in its discretion and without incurring any or liability, reserves the right, at any time, to:

- a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates other terms 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 UPSRTC 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.

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

**5.4** The Bidding Documents and RFQ are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:

- a) The Bidding Documents;
- b) The RFQ.

i.e. the Bidding Documents at (a) above shall prevail over the RFQ at (b) above.

**5.5** The single currency for evaluation is Indian Rupee (INR). The conversion rate of Foreign Currencies shall be the State Bank of India Bill Selling Rate of exchange as on the relevant date of the financial statements.



## APPENDIX I: FINANCIAL BID FORM

To be submitted on a letter head of the Bidder

To

**The Managing Director**

Uttar Pradesh State Road Transport Corporation  
(UPSRTC), Parivahan Bhavan,  
Tehri Kothi,  
M.G. Marg,  
Lucknow-226001

Date:

**Sub:** Development of Bus Terminal Cum Commercial Complex in Gorakhpur City, Uttar Pradesh

Sir,

Having visited the site, examined the local conditions, investigations and examined the Bid Documents, we the undersigned offer to construct new bus station with all infrastructures, and commercial complex proposed by you at the above location, in full conformity with the said Bid Documents and in accordance with the terms and conditions of the contract including bye laws and zoning regulations in place.

If our Bid is accepted, we undertake to commence the construction of bus station and the commercial complex and to ensure its completion within the time limit stated in the Bidding Documents.

We agree to abide by this Bid, which consists of this letter and attachments hereto, for a period 180 day from the last date fixed for submission of the Bid, and it shall remain binding on us and may be accepted by you any time before the expiration of that period.

Further we offer to pay Upfront Premium of Rs. \_\_\_\_\_) Rupees \_\_\_\_\_ only) to be paid as under:

1st installment (30% of the Upfront Premium)	At the time of submitting our acceptance to the Letter of Intent issued by UPSRTC
2nd installment (35% of the Upfront Premium)	Within twelve (12) months from the date of signing of Concession Agreement
3rd installment (35% of the Upfront Premium)	Within eighteen (18) months from the date of signing of Concession Agreement.

We are also willing and agree to furnish bank guarantees in the prescribed form for the amounts equal to the second, and third installments of the premium quoted by us to secure the foregoing obligation till the payment thereof is actually made by us.

We are further ready and agree to furnish bank guarantees as under within one month from the issue of letter of formal acceptance

i) INR \_\_\_\_\_ towards Performance Security in the form of a bank guarantee as prescribed by UPSRTC.

We further agree to pay all levies, taxes over and above the quoted Upfront Premium as shall be applicable from time to time.

We shall also pay to UPSRTC an Annual Concession Fee, equivalent to 2% of the Circle Rate value of the land plus applicable taxes for the first year at the time of signing of Concession Agreement and also agree to pay the Annual Concession Fee for the entire period of Concession evaluated at a Compounded Annual Growth Rate (CAGR) of 5% on the subsequent anniversaries of such a date of signing of Concession Agreement.

If UPSRTC does not accept our offer, the Bid Security paid by us shall be returned to us without interest. If our offer is accepted and we fail to pay the Upfront Premium in the manner specified in the Bid Documents the Bid Security shall stand absolutely forfeited to UPSRTC, which will then be free to proceed further in any manner it thinks fit.

Until final contract is prepared and executed between us, this Bid, shall constitute a binding contract between us.

I/We have gone through the RFP document, draft of "Concession Agreement". I/We agree to the terms and conditions specified therein and shall seek no further modifications thereto. We further agree to execute the Concession Agreement within six months from the issue of letter of formal acceptance and further we will market the space keeping in view of the contents of Concession Agreement.

Date this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

Signature \_\_\_\_\_

In the capacity of \_\_\_\_\_

Duly authorized to sign this bid for and on behalf of \_\_\_\_\_

(Name and Address of the Bidder) \_\_\_\_\_

## APPENDIX-II: Bank Guarantee for Bid Security

B.G. No. Dated:

1. In consideration of you, ....., having its office at ....., (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (a company registered under the Companies Act, 1956/2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... Project on [DBFOT] basis (hereinafter referred to as “the Project”) pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. .... (Rupees ..... only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive

as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR..... (Rupees ..... only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... crore (Rupees ..... crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by ..... Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

**Annexure – I: Financial Obligations****Table specifying Performance Security and Performance Guarantee for the Project**

<b>Sr. No</b>	<b>Project Site</b>	<b>Estimated cost of construction in INR Crores</b>	<b>Performance Security in the form of bank guarantee in INR Lacs</b>	<b>Performance Guarantee in the form of bank guarantee in INR Lacs</b>
1	Gorakhpur	128	640	320

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**Annexure – II: Proposed list of High-End Passenger Facilities/ Amenities**

- I. The developer at his cost and as his obligation under the Concession shall provide free of cost washroom/ toilets, urinals and passenger waiting hall/ spaces, purified drinking water to the passengers and all other users of the constructed facility under bus-terminal area.
- II. Besides above, the developer however shall be entitled to provide the following listed facilities as the “High End Passenger Facilities/Amenities” on 'Pay & Use' basis at rates decided by the Concessionaire
  1. AC waiting hall
  2. AC washrooms/ toilets
  3. Shower enclosures
  4. Dormitory (except for use by on-duty crew )
  5. Cloak room facility

Any other facility / development permissible as per the applicable building bylaws and zoning regulations issued by GoUP or any other policy like ToD policy adopted by the state of Uttar Pradesh would not be a part of amenities listed in (I) above.

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