

F.No: 27-1/PPP/TSM/2009
Andaman & Nicobar Administration
Directorate of Tourism

CORRIGENDUM

Port Blair dated 14th January 2011

Reference: Request for Proposals published by this Directorate in Times of India , Economic Times (All India editions) and The Daily Telegrams (Port Blair) dated 29.10.2010 for **“Renovation , Operation, Maintenance of Guest houses in A & N Islands”** . As the last date for submission of proposals which was fixed as **15th January 2011** falls on a Government holiday , proposals will be accepted till the next working day i.e. **17th January 2011**.The time and venue of submission remains unchanged i.e. 1600 hrs. at Directorate of Tourism, A&N Administration , Port Blair.

Director(Tourism)

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Andaman & Nicobar Administration
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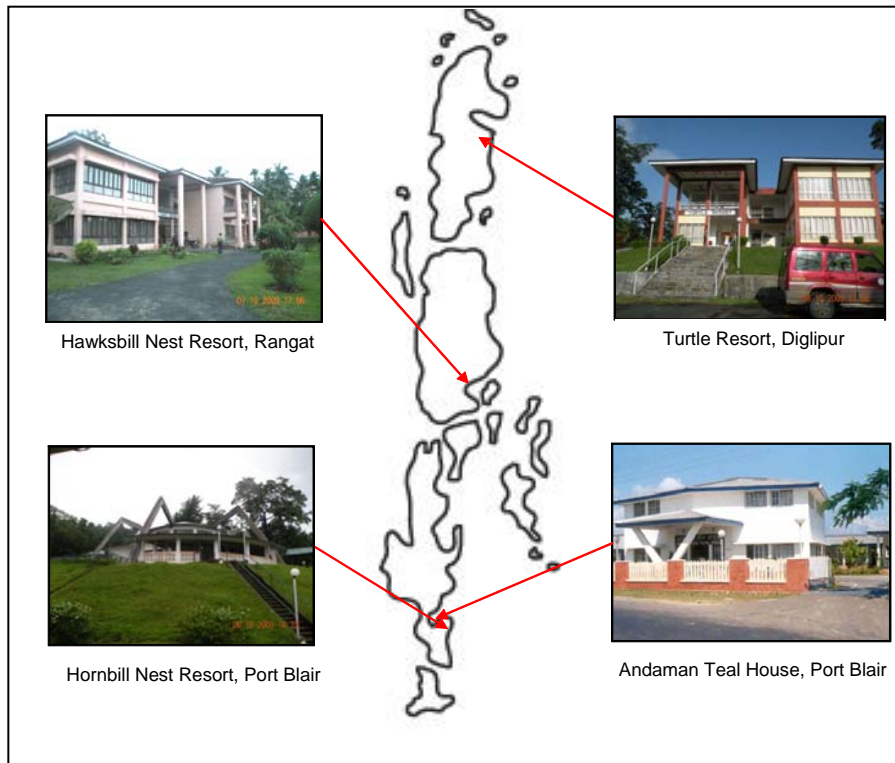
CORRIGENDUM

Port Blair dated 27th December 2010

Reference: Request for Proposals published by this Directorate in Times of India and Economic Times dated 29.10.2010 for “**Renovation , Operation, Maintenance of Guest houses in A & N Islands**” . The last date for submission of proposals has been further extended up to **15th January 2011**. The time and venue of submission remains unchanged. The responses to pre-bid queries can be seen on website www.and.nic.in.

Director(Tourism)

Directorate of Tourism,
Andaman and Nicobar Administration



Request for Qualification (RFQ)

for

Renovation, Operation and Maintenance of Guest
Houses at various locations in Andaman & Nicobar
Islands

Dated: October 27, 2010

TABLE OF CONTENTS

Sl. No.	Contents	Page No.
	Glossary	
	Disclaimer	
1	Introduction	1
1.1	Background	1
1.2	Brief description of Bidding Process	2
1.3	Schedule of Bidding Process	4
2	Instructions to Applicants	5
2A	General	5
2.1	Scope of Application	5
2.2	Eligibility of Applicants	5
2.3	Change in composition of the Consortium/ Formation of a consortium by a sole Applicant	12
2.4	Number of Applications and costs thereof	12
2.5	Site visit and verification of information	13
2.6	Acknowledgement by Applicant	13
2.7	Right to accept or reject any or all Applications/ Bids	13
2B	Documents	14
2.8	Contents of the RFQ	14
2.9	Pre-Application Queries and Clarifications	15
2.10	Amendment of RFQ	15
2C	Preparation and Submission of Application	15
2.11	Language	15
2.12	Format and signing of Application	16
2.13	Sealing and marking of Applications	16
2.14	Application Due Date	18
2.15	Late Applications	18
2.16	Modifications/ substitution/ withdrawal of Applications	18
2D	Evaluation Process	18
2.17	Opening and Evaluation of Applications	18
2.18	Confidentiality	19
2.19	Tests of responsiveness	19

2.20	Clarifications	20
2E	Qualification and Bidding	20
2.21	Pre-qualification and notification	20
2.22	Submission of Bids	21
2.23	Proprietary data	21
2.24	Correspondence with the Applicant	21
3	Fraud and Corrupt Practices	22
4	Pre-Application Conference	24
5	Miscellaneous	25

Appendices

I	Letter Comprising the Application for Pre-Qualification	26
	Annex – I Details of Applicant	30
	Annex – II Technical Capacity of Applicant	32
	Annex – III Financial Capacity of Applicant	34
	Annex – IV Statement of Legal Capacity	36
II	Format for Power of Attorney for signing of Application	37
III	Format for Power of Attorney for Lead Member of Consortium	39
IV	Format for Joint Bidding Agreement for Consortium	42
V	Guidelines of the Department of Disinvestment	48

GLOSSARY

Annual Rent	As defined in Clause 1.2.8
Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Associate	As defined in Clause 2.2.9
Authority	As defined in the Disclaimer
Bids	As defined in Clause 1.2.4
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.4
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
Concession Agreement	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
Cr.	Crores
DFBOT	As defined in Clause 1.1.1
Estimated Project Cost	As defined in Clause 1.1.4.
Financial Capacity	As defined in Clause 2.2.2
Government	Government of India
Highest Bidder	As defined in Clause 1.2.8
Joint (Jt.) Bidding Agreement	As defined in Clause 2.2.6 (g)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award
Member	Member of a Consortium
Networth	As defined in Clause 2.2.2
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in Clause 1.2.1
RFQ	As defined in the Disclaimer
SPV	As defined in Clause 2.2.6
Subject Person	As defined in Clause 2.2.1(c)(i)
Technical Capacity	As defined in Clause 2.2.2 (A)

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

DISCLAIMER

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

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

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

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

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

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

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

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

1. INTRODUCTION

1.1 Background

1.1.1 The Directorate of Tourism, Andaman and Nicobar Administration (the “**Authority**”) is instrumental in planning and providing the basic tourist infrastructure and other tourist facilities/amenities in the Union Territory. It is responsible for promoting Andaman and Nicobar Islands as a round the year tourist destination by participating in various tourist related events in India and overseas and through tourist publicity literature and other publications. As part of this endeavour it has selected 5 of its existing guest house properties at Port Blair (2 nos.), Rangat, Diglipur and Karmatang for Renovation, Operation and Maintenance (the “**Projects**”). Brief details of the properties have been provided in Exhibit 1.1 below.

Exhibit 1.1: Brief Details of the Properties

Sr. No	Name of the Guest House/ Property	Total Area	Built-up Area	Total No. of Rooms	No. of A/C Rooms	No. of Non A/C Rooms	Dormitory	Estimated Project Cost (Rs. Lakhs)
1.	Hornbill Nest Resort, Port Blair	2.50 ha.	2.50 ha.	20	17	3	-	75.48
2.	Andaman Teal House, Port Blair	2.00 ha.	3,000 sq. m.	30	12	18	-	256.52
3.	Turtle Resort, Diglipur	1.73 ha.	800 sq. m.	10	4	4	2	56.94
4.	Hawksbill Nest Resort, Rangat	0.30 ha.	565.54 sq. m.	10	4	4	2	66.33
5.	Swiftlet Nest Resort, Karmatang	2 ha.	--	8	--	--	--	112.08

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

1.1.2 The selected Bidders, who are either a company incorporated under the Companies Act, 1956 or undertake to incorporate as such prior to execution of the concession agreement (the “**Concessionaire**”), shall be responsible for renovating, operating and maintaining the above mentioned properties under and in accordance with the provisions of long-term concession agreements (the “**Concession Agreement**”) to be entered into between the Concessionaires and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.3 The scope of work for each project would broadly include renovation, operation and maintenance of the various Tourism Department owned guest house properties across the

Andaman Islands.

- 1.1.4 The indicative capital cost of the Projects (the “**Estimated Project Cost**”) will be specified in the Bidding Document of the Project. The assessment of the actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”). Interested Bidders shall be permitted to bid for one or more Projects. The specific Projects for which the Bidder is submitting its Application should be specified in the Letter Comprising the Application for Pre-Qualification (Appendix I).

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a two-stage process (collectively referred to as the “**Bidding Process**”) for selection of the bidder for award of the Projects. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ (the “**Applicant**”, which expression shall, unless repugnant to the context, include Members of the Consortium”). Prior to or at the time of making an Application, the applicant shall pay to the Authority a sum of Rs. 5,000(Rupees Five Thousand) as the cost of RFQ process, irrespective of the number of Projects applied for. At the end of this stage, the Authority expects to announce suitable pre-qualified Applicants, who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).

Government of India has issued guidelines (see Appendix-V) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants who are pre-qualified by the Authority shall be invited to submit their Bids for the Projects. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Projects. The Applicants are, therefore, advised to visit the sites and familiarize themselves with the Projects.
- 1.2.3 In the Bid Stage, the Pre-qualified Bidders will be called upon to submit their financial offers (the

"Bids") in accordance with the RFP and other documents to be provided by the Authority (collectively the "**Bidding Documents**"). The Bidding Documents for the Projects will be provided to every Bidder on payment of Rs. 5,000(Rupees Five Thousand)] The Bid shall be valid for a period of not less than 120 days from the date specified for submission of bids (the "**Bid Due Date**").

- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security as specified in Exhibit 1.2 (the "**Bid Security**"), refundable no later than 60 (sixty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

Exhibit 1.2 – Bid Security Amount

Guest House/ Property	Bid Security (Rs. Lakhs)
Hornbill Nest Resort, Port Blair	1.52
Andaman Teal House, Port Blair	5.14
Turtle Nest, Diglipur	1.14
Hawksbill Nest Resort, Rangat	1.34
Swiftlet Nest Resort, Karmatang	2.24

- 1.2.5 Generally, the Highest Bidder shall be the selected Bidder for the respective Projects. The selected bidders shall be declared for each project separately. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, invite fresh Bids from the remaining Bidders for the respective Projects or annul the Bidding Process, as the case may be.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Projects 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 Projects.
- 1.2.7 As part of the Bidding Documents, the Authority will provide a Draft Concession Agreement and feasibility report prepared by the Authority/ its consultants and other information pertaining/ relevant to the Projects available with it.
- 1.2.8 Bids will be invited for the Projects on the basis of the annual rent (the "Annual Rent") offered by

the Bidder for award of the concession. The concession period for each project shall be pre-determined, and will be indicated in the draft Concession Agreement forming part of the Bidding Documents. The Annual Rent shall constitute the sole criteria for evaluation of Bids. The Projects shall be awarded to the Bidder quoting the highest Annual Rent.

In this RFQ, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Annual Rent.

Details regarding the Concessionaire’s rights and entitlements shall be provided at the Bid Stage.

1.2.9 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

1.2.10 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFQ for Renovation, Operation and Maintenance of Guest Houses at various locations in Andaman & Nicobar Islands”.

1.3 **Schedule of Bidding Process**

The Authority shall endeavor to adhere to the following schedule:

	Event Description	Date
	<u>Qualification Stage</u>	
1.	Last date for receiving queries	November 11, 2010
2.	Pre-Application Conference	November 11, 2010 at 11:00 a.m at Directorate of Tourism, Port Blair.
3.	Authority response to queries latest by	November 25, 2010
4.	Application Due Date and time	December 10, 2010, 1600 hrs.

2. INSTRUCTIONS TO APPLICANTS

A GENERAL

2.1 Scope of Application

- 2.1.1 The Authority wishes to receive Applications for Qualification in order to pre-qualify Applicants for the Bid Stage.
- 2.1.2 Pre-qualified Applicants may be subsequently invited to submit the Bids for the Projects.

2.2 Eligibility of Applicants

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

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

(b) An Applicant may be a natural person, private entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

(c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than five percent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5 percent of the subscribed and paid up subscribe share capital thereof: provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.2.1 (c), indirect

shareholding held through one or more intermediate persons shall be computed as follows: (aa) 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 (bb) subject always to sub-clause (aa) 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 (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
 - (iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
 - (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (v) such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others’ information about, or to influence the Application of either or each other; or
 - (vi) such Applicant, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Projects.
- (d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Projects is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the applicant, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFQ. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the commercial operation of the Project.

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

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

(A) Technical Qualification Criteria (the “Technical Capacity”)

- The Applicant should have experience of owning and/or operating hotel property meeting the criteria specified in Exhibit 2.1 for a period of at least 3 years during the past 5 financial years.

Exhibit 2.1: Hotel Property Criteria

Guest House/ Property	Criteria
Hornbill Nest Resort, Port Blair	Hotel Property with at least 30 rooms of size equal to or more than the requirement for 3 star hotel properties as prescribed by the Ministry of Tourism, Government of India, i.e., bedroom excluding bath room of 140 sq. ft. and bathroom of 36 sq. ft.
Andaman Teal House, Port Blair	
Turtle Nest, Diglipur	Hotel Property with at least 10 rooms of size equal to or more than the requirement for 2 star hotel properties as prescribed by the Ministry of Tourism, Government of India, i.e., bedroom excluding bath room of 120 sq. ft. and bathroom of 30 sq. ft.
Hawksbill Nest Resort, Rangat	
Swiftlet Nest Resort, Karmatang	

(B) Financial Qualification Criteria (the “Financial Capacity”)

- Minimum Networth as specified in Exhibit 2.2 for the respective projects, as per the latest audited annual accounts of not earlier than March 31, 2009.

Exhibit 2.2: Networth Requirement

Guest House/ Property	Minimum Networth of (Rs. in Lakhs)
Hornbill Nest Resort, Port Blair	20
Andaman Teal House, Port Blair	65
Turtle Nest, Diglipur	15
Hawksbill Nest Resort, Rangat	17
Swiftlet Nest Resort, Karmatang	29

In case of a Consortium bid: (1) the combined financials of those Members, who have an equity stake of at least 26% each in such Consortium should satisfy the above Financial

Qualification Criteria and (2) the Technical Qualification Criteria should be met by any one of the Consortium Members who has an equity share of at least 26% in such Consortium.

In case of Bidder bidding for more than one Project, the same experience can be claimed under Technical Capacity for qualifying for each Project. However, in respect of Financial Capacity, the Bidders shall meet the sum total of the Financial Capacity prescribed against each of the Projects for which they want to Bid.

For the purposes of this RFQ, Networth (the “**Networth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves (if included in the reserves), miscellaneous expenditure not written off.

- 2.2.3 **O&M Experience:** The Applicant shall, in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 26% (Twenty six per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project, and has either by itself or through its Associate, experience of 3 (three) years or more in the past five financial years in operation and maintenance (O&M) of category of project(s) specified in Clause 2.2.2 A (i). In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience of its own.
- 2.2.4 The Applicants shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, certificate(s) in respect of the Technical Qualifications and Financial Qualifications (specifying the Networth of the Applicant for the preceding three financial years), and also specifying that the methodology adopted for calculating the Net Worth conforms to the provisions of RFQ.
- 2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant. In the case of Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix – III. The Lead Member in turn should submit a duly notarized power of attorney as per the format at Appendix – II, authorizing the signatory of the application to commit the Consortium.
- 2.2.6 Where the Applicant is a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”) to execute the Concession Agreement and implement the Project(s). In addition to forming an SPV, the Consortium shall comply with the following additional requirements:
- (a) Number of members in a consortium should be limited to 3 (three);
 - (b) subject to the provisions of clause (a) above, the Application should contain the information required for each member of the Consortium;
 - (c) members of the Consortium shall nominate one member as the lead member (the “**Lead**”

Member”), who shall have an equity share holding of at least 51% (fifty one per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;

- (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project(s) if awarded to the Consortium; and
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Jt. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project(s) is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that the Lead Member shall hold at least 51% of the subscribed and paid up equity of the SPV for the entire Concession Period and the other Consortium Members whose Technical and/ or Financial experience has been used for the purpose of qualifying for the Project(s) would not dilute their respective agreed holdings during the period of at least 5 (five) years from the date of commercial operation of the Project(s); and
 - (v) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession

Agreement; and

(h) except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

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

2.2.8 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, 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 Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Applicant, Consortium Member or Associate.

2.2.9 In computing the Technical Capacity and Networth of the Applicant/ Consortium members under Clauses 2.2.2 and 2.2.3, the Technical Capacity and Networth of their respective Associates would also be eligible hereunder.

For purposes of this RFQ, Associate means, in relation to the Applicant/ Consortium member, a person who controls or is controlled by such Applicant/ Consortium member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or by contract or otherwise. The Applicant shall submit the details of the shareholding structure describing the relationship with the Associate as per the definition. This submission shall be certified by the Applicant’s Statutory Auditor.

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

(a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;

(b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation

to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;

- (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 2.2.2 above; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 While Qualification is open to persons from any country, the following provisions shall be applicable:

- (a) Where, on the date of the Application, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Application, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Applicant.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Applicant shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purpose of its Application and furnish all its information and certification with reference to the appropriate period, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the

accounting year followed by the Applicant in the course of its normal business.

2.3 Change in composition of the Consortium/ Formation of a consortium by a sole Applicant

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

2.3.2 Where the Bidder is a Consortium or a sole Applicant, change in the composition of a Consortium or formation of Consortium in case of sole Applicant respectively may be permitted by the Authority during the Bid Stage, only where:

(a) The application for such change is made no later than 30 (thirty) days prior to the Bid Due Date;

(b) the sole Applicant/ Lead Member continues to be the Lead Member of the Consortium;

(c) the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants; and

(d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium/ sole Applicant as if it were a party to it originally, and is not an Applicant/ Member/ Associate of any other Consortium bidding for the Project(s).

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

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

2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4 Number of Applications and costs thereof

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

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

2.5 Site visit and verification of information

Applicants are encouraged to submit their respective Applications after visiting the Project sites and ascertaining for themselves the site conditions, 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.

2.6 Acknowledgement by Applicant

2.6.1 It shall be deemed that by submitting the Application, the Applicant has:

- (a) made a complete and careful examination of the RFQ;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

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

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

2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:

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

If the Applicant/ Bidder is a Consortium, then the entire Consortium shall 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 match the Highest Bidder/ submit their Bids in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant/ SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFQ, the Bidding Documents, the Concession Agreement or under applicable law.

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

B DOCUMENTS

2.8 Contents of the RFQ

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

Invitation for Qualification

Section 1	Introduction
Section 2	Instructions to Applicants
Section 3	Fraud & Corrupt Practices
Section 4	Pre Application Conference
Section 5	Miscellaneous

Appendices

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium
- V. Guidelines of the Department of Disinvestment

2.9 Pre-Application Queries and Clarifications

- 2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.11. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavor to respond to the queries within the period specified therein. The responses will be sent by fax or e-mail. The Authority will forward all the queries and its responses thereto, to all purchasers of the RFQ without identifying the source of queries.
- 2.9.2 The Authority shall endeavor to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFQ. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFQ

- 2.10.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFQ or be published on the website of the Authority.
- 2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Application Due Date.

C PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The Application and all related correspondence and documents in relation to the Bidding

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

2.12 Format and signing of Application

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

2.13 Sealing and Marking of Applications

- 2.13.1 The Applicant shall submit the signed Application in the format specified at Appendix-I, together with the document specified in the Clause 2.13.2, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant shall seal the original and each copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPIES". The envelopes shall then be sealed in an **outer** envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3. A Demand Draft of Rs. 5,000/- (Rupees Five Thousand Only) drawn in favour of Sr. Account Officer (IP&T) payable at Port Blair towards cost of the RFQ document, if not already paid, in the outer envelope.
- 2.13.2 Each envelope shall contain:
- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting

documents;

- (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix IV;
- (v) copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) copies of Applicant's duly audited balance sheet and profit and loss account for the preceding three years; and
- (vii) any other document as relevant and as detailed in this RFQ.

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: Renovation, Operation and Maintenance of Guest Houses at various locations in Andaman & Nicobar Islands”

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

2.13.3 Each of the envelopes shall be addressed to:

ATTN. OF: Mr. Binay Bhushan
DESIGNATION: Director
ADDRESS: Directorate of Tourism
Andaman and Nicobar Administration
Port Blair – 744 101.
FAX NO: 03192-230933
E-MAIL ADDRESS: andaman_tourism@rediffmail.com

2.13.4 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant

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

2.14 Application Due Date

- 2.14.1 Applications should be submitted before 1600 hours IST on the Application Due Date at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ. A receipt thereof should be obtained from the person specified in Clause 2.13.3.
- 2.14.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

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

2.16 Modifications/ substitution/ withdrawal of Applications

- 2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.
- 2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority shall be disregarded.

D EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

- 2.17.1 The Authority shall open the Applications at 1430 hours IST on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.
- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in the RFQ.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or

justification on any aspect of the Bidding Process or selection will be given.

- 2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project(s) are subsequently awarded to it under the Bidding Process on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for the purpose of pre-qualification.
- 2.17.8 In the event that an Applicant claims credit for a project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same for the purpose of prequalification. Where any information is found to be patently false or amounting to a material representation, the Authority reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

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

2.19 Tests of responsiveness

- 2.19.1 Prior to evaluation of Applications, the Authority shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive only if:
 - (a) it is received as per format at Appendix-I
 - (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;

- (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5 and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains the information and documents as requested in this RFQ;
- (f) it contains information in formats as specified in this RFQ;
- (g) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Projects, as stipulated in Clause 2.2.6 (g);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

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

2.20 Clarifications

2.20.1 To facilitate evaluation of Applications, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) submitted to the Authority shall be in writing and signed by the respective authorized signatory.

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

E QUALIFICATION AND BIDDING

2.21 Pre-qualification and notification

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

2.22 Submission of Bids

2.22.1 The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

2.22.2 Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Projects. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Projects. The Applicants are therefore advised to visit the site and familiarize themselves with the Projects by the time of submission of the Application. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Authority.

2.23 Proprietary data

All documents and other information supplied by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Authority will not return any Application or any information provided along therewith.

2.24 Correspondence with the Applicant

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

3. FRAUD AND CORRUPT PRACTICES

- 3.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 3.2 Without prejudice to the rights of the Authority under Clause 3.1 hereinabove, if an Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 3.3 For the purposes of this Clause 3, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising 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 Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub Clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Projects or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Projects;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;

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

4. PRE-APPLICATION CONFERENCE AND SITE VISIT

- 4.1 A Pre-application conference of the interested parties shall be convened at, Port Blair at the venue indicated below:

Conference Hall, Directorate of Tourism, A&N Administration, Port Blair – 744101 at 11:00 a.m on November 11,2010.

A maximum of 3 (three) representatives of each Applicant shall be allowed to participate on production of Authority letter from the Applicant.

- 4.2 During the course of Pre-application conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

5. MISCELLANEOUS

- 5.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Port Blair shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 5.2. The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 5.3. It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

APPENDIX I

Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To,

Sub: Application for pre-qualification for Renovation, Operation and Maintenance of Guest Houses at various locations in Andaman & Nicobar Islands

Dear Sir,

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

Exhibit 1: List of Projects applied for

Sr. No.	Project Name	Projects Applied (Yes/No)
1.	Hornbill Nest Resort, Port Blair	
2.	Andaman Teal House, Port Blair	
3.	Turtle Resort, Diglipur	
4.	Hawksbill Nest Resort, Rangat	
5.	Swiftlet Nest Resort, Karmatang	

- 2 I/ We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid Project(s), and we certify that all information provided in the Application and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
- 3 This statement is made for the express purpose of qualifying as a Bidder for the renovation, operation and maintenance of the aforesaid Project(s).
- 4 I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
- 5 I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
- 6 I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority.
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document;
 - (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 3.3 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 3 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Projects, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Network criteria and meet(s) all the requirements as specified in the RFQ document and are/ is qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory Company which could cast a doubt on our ability to undertake the Project(s) or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFQ at Appendix-V thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ; we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.
17. I/ We understand that the selected Bidder shall either be an existing Authority incorporated under the Indian Companies Act, 1956, or shall incorporate itself as such prior to execution of the Concession Agreement.
18. I/ We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3.
19. I/We, hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project(s) and the terms and implementation thereof.
20. I/we agree and undertake to abide by all the terms and conditions of the RFQ document.

21. I/ We certify that in terms of the RFQ, my/our Networth is INR _____ (in words).
- {22. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}§

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

Yours faithfully,

Date: (Signature of the Authorized Signatory)

Place: (Name and designation of the Authorized Signatory) Name
and seal of the Applicant/ Lead Firm

§ Omit if the Applicant is not a Consortium.

ANNEX-I

Details of Applicant

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project(s):

3. Details of individual(s) who will serve as the point of contact/ communication for the Company:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:

4. Particulars of the Authorized Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.

- (c) Information regarding role of each member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)}	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a), (c) & (g)}
1.			
2.			
3.			
4.			

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

Name of Applicant/ member of Consortium:

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

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

Annex II Technical Capacity of the Applicant @

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

Name of the Hotel Property for which experience in claimed	Name of the relevant Sole Applicant / Member of Consortium/ Associate	No. of Rooms (of greater than or equal to the prescribed size)	Details of other facilities	Year of commencement of operation of the hotel	Remarks - List the relevant proofs attached

Certificate:

We declare that all information stated in the table above and all details/ documents attachment are complete and absolutely correct and any error or omission therein, accidental or otherwise, will be sufficient for the Authority to reject our application.

Dated this _____ day of _____ 200

(Name & Signature of Authorised Signatory)_____

In the capacity of _____ (position) duly authorized to sign this application for and behalf of _____ (name of sole Applicant / Lead Member of the Consortium)
_____ (Address)

Instruction 1:

The Applicants must showcase relevant experience in the development/operation of project to fulfill the Technical Eligibility Criteria. For this purpose, the Applicants must present relevant information in the above format. These should be supported by appropriate evidence, viz., Completion Certificate / Provisional Completion Certificate from a concessioning authority / development authority / municipal body or any other competent Government agency/ Independent Practicing Architect/ Statutory Auditor certificate along with project photographs, etc.

Instruction 2:

In case a firm is drawing any experience of its Associate, the name of such Associate and relationship with the Applicant shall also be clearly mentioned in the 'Remarks' column against the particular project. In such case, this format for Technical Capacity should also be counter signed by Company Secretary and one of the Directors of the Associate certifying the information provided in respect of such Associate is true and correct.

Instruction 3:

In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

Appendix I

ANNEX-III

Financial Capacity of the Applicant

(Refer to Clauses 2.2.2 (B) of the RFQ)

Name of Applicant / Member of Consortium:

Networth

Particulars	Amount (Rs. In Cr.) - As on -----
Equity Share Capital - Issued, Subscribed and Paid –up	
Add Reserves and Surplus	
Less :	
Revaluation Reserve	
Debit balance of Profit & Loss Account	
Miscellaneous expenditure to the extent not written off	
Total	

In case of a Consortium, the aggregate networth of the Consortium shall be submitted in the following table along with individual networth calculations for each Member (as shown above).

S. No.	Name of Consortium Member	Networth (Rs. in Cr.) - As on -----
	(Name of Lead Member)	
	(Name of Consortium Member 1)	
	Aggregate Networth of Consortium	

Name & address of Applicant's Bankers:

Instruction 1:

Please provide the above Statement of Networth as per the above format, duly certified by the Statutory Auditors of the sole Applicant / Lead Member of the Consortium.

Instruction 2:

The Networth must be considered based on the respective unconsolidated Financial Statements.

Instruction 3:

The copies of the relevant audited annual accounts for last 3 (Three) years of the sole Applicant/ Members of the Consortium must be submitted along with the Statutory Auditor's certificate.

Instruction 4:

In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

Instruction 5:

In case the Applicant / Member of the Consortium has drawn the Financial credentials of its Associates, kindly provide the name of the Associate, along with name of the related Applicant / Member of the Consortium and their audited annual accounts for the last three years.

In such case, this format for Financial Capacity should also be counter signed by Company Secretary and one of the Whole Time Directors of the Associate certifying the information provided in respect of such Associate is true and correct.

Instruction 6:

Where the financial statement is expressed in currency other than Indian Rupee, the conversion to Indian Rupees shall be considered as the corresponding TT buying rate specified by the State Bank of India seven days before the Application Due Date. In all cases where the original figure is in foreign currency, such original figures in the relevant foreign currency and the INR equivalent thereof must be given. The exchange rate(s) applied should be clearly stated in the Application.

Instruction 7:

Networth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off).

Appendix I

ANNEX-IV

Statement of Legal Capacity[@]

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

Ref.

Date:

To,

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

Signature, name and designation of the
Authorized Signatory
For and on behalf of

**Please strike out whichever is not applicable*

[@]Statement of Legal Capacity shall be provided by the sole Bidder/ each Member of the Consortium separately.

Appendix II

Power of Attorney for signing of Application

(Refer Clause 2.2.5)

Know all men by these presents, We _____
(name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms (name) _____
son/daughter/wife of _____ and presently residing at _____
who is presently employed with us/ the Lead Member of our Consortium and holding the position of _____, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the Renovation, Operation and Maintenance of Guest Houses at various locations in Andaman & Nicobar Islands developed by the Directorate of Tourism, Andaman & Nicobar Administration (the "**Authority**") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Application and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

IN WITNESS WHEREOF WE, _____, THE ABOVE NAMED
PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ____
DAY OF _____, 20____

For -----

(Signature)

(Name, Title and Address)

Witnesses:

(Notarized)

1.

2.

Accepted

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

Appendix III

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.2.5)

Whereas Directorate of Tourism, Andaman & Nicobar Administration (the “**Authority**”) has invited applications from interested parties for the Renovation, Operation and Maintenance of Guest Houses at various locations in Andaman & Nicobar Islands (“the **Projects**”).

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, _____ having our registered office at _____, M/s. _____ having our registered office at _____, M/s. _____ having our registered office at _____, and _____ having our registered office at _____, [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S _____ having its registered office at _____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorize the Attorney (with power to sub- delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and

other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 20____

For _____
(Signature)

(Name & Title)

For _____
(Signature)

(Name & Title)

For _____
(Signature)

(Name & Title)

Witnesses:

(Notarized)

- 1.
- 2.

(Executants)

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

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

Appendix IV

Joint Bidding Agreement

(Refer Clause 2.13.2)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

AND

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

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the “Parties” and each is individually referred to as a “Party”.

WHEREAS,

- (A) Directorate of Tourism, Andaman & Nicobar Administration represented by its Director and having its principal office at Directorate of Tourism, Andaman and Nicobar Administration, Port Blair – 744 101 (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the Applications”) by its Request for Qualification No. dated(the “RFQ”) for pre-qualification of bidders for Renovation, Operation and Maintenance of Guest Houses at various locations in Andaman & Nicobar Islands (the “Project”) through public private partnership.

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

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

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

3. Covenants

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

4. Role of the Parties

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

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

(b) Party of the Second Part shall be {the Technical Member of the Consortium; and}

{(c) Party of the Third Part shall be the Financial Member of the Consortium}

5. Joint and Several Liability

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

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that the Lead Member shall hold at least 51% of the subscribed and paid up equity of the SPV for the entire Concession Period and the other Consortium Members would not dilute their respective agreed holdings during the period of at least 5 (five) years from the date of commercial operation of the Project(s).

6.3 Blank

6.4 Blank

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

{6.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV in terms of the Concession Agreement.}

7. **Representation of the Parties**

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

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

9. Miscellaneous

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED
For and on behalf of
SECOND PART

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THIRD PART

SIGNED, SEALED AND DELIVERED
For and on behalf of
FOURTH PART

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

Notes:

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

Appendix V[#]

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.2)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi
Dated 13th July, 2001

OFFICE MEMORANDUM

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

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

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory Company that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the

[#] These guidelines may be modified or substituted by the Government from time to time.

bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India