



**The Federal Government of Nigeria
(Represented by the Bureau of Public Enterprises)
in compliance with the
Infrastructure Concession Regulatory Commission (Est.) Act 2005 and the
National Policy on Public Private Partnership (N4P)**

**REQUEST FOR QUALIFICATION (RFQ) PACKAGE FOR
DEVELOPMENT OF CALABAR FREE TRADE ZONE**

Reference No: BPE/TIC/CFTZRFQ/2022/13/M4.2

April 2022

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DISCLAIMER

The information contained herein (or subsequently provided) to the Respondents, whether Orally or written or any other form, by or on behalf of the Sponsors or any of its employees or advisors is provided to Respondent(s) on the terms and conditions set out in this RFQ Package and such other terms and conditions subject to which such information is provided.

This RFQ Package is not an agreement and is neither an offer nor invitation by the Sponsors (as hereinafter defined) to the prospective Respondents or any other person. The purpose of this RFQ Package 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 Package (the “**Application**”). This RFQ Package includes statements, which reflect various assumptions and assessments arrived at by the Sponsors in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Respondent may require. This RFQ Package may not be appropriate for all persons, and it is not possible for the Sponsors, its agencies or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ Package. Accordingly, neither the Sponsors, Agencies or Advisers make any representation or warranty or give any undertaking, express or implied, or accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated herein or any other written or oral information made available in connection with this process and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future. Each Bidder may 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 Package and obtain independent advice from appropriate sources.

Information provided in this RFQ Package to the Respondents 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 Sponsors accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Sponsors, their agencies and advisors make no representation or warranty and shall have no liability to any person, including any Respondent 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 Package or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ Package and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ Package or arising in any way with qualification of Respondents for participation in the qualification process.

The Sponsors also accept no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Respondent upon the statements contained in this RFQ Package. The Sponsors may, in their absolute discretion but without being under any obligation to do so,

update, amend or supplement the information, assessment or assumptions contained in this RFQ Package. The issue of this RFQ Package does not imply that the Sponsors are bound to select, and short-list qualified Applications for the Project and the Sponsors reserve the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Respondent shall bear all its costs associated with or relating to the preparation and submission of its Application and the Sponsors shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Respondent in preparation or submission of the Application.

GLOSSARY OF TERMS

Respondent	An interested party or Consortium who submits an Application in accordance with the provisions of this Request for Qualification.
Authorized Representative	A natural person designated by the Respondent or Consortium who has the legal authority to represent the Respondent or Consortium for all matters relating to the Request for Qualification.
Bid Documents	Request for Proposal and other documents to be provided by the TIC.
Bid Stage	The second stage of the Bidding Process where the Bidders are invited to submit their technical and financial offers
Bidder	A qualified and shortlisted Respondent.
Bidding Process	The two-stage process adopted by the TIC with the approval of the ICRC, involving the Qualification Stage followed by the Bid Stage.
Bids	Technical and financial offers to be submitted by bidders.
BROT	Build, Rehabilitate, Operate and Transfer
CFTZ	Calabar Free Trade Zone
Concession	The Build, Rehabilitate, Operate and Transfer arrangement to be granted by the Bureau of Public Enterprises (BPE), in collaboration with the Ministry of Industry, Trade & Investment (FMITI), to the preferred bidder through a competitive tendering Process for a period that will be determined based on the viability of the project.
Consortium	A group of companies submitting application as a single entity (which must include a company acting as the lead member)
BPE	This means the Bureau of Public Enterprises (BPE)

EBIT	Earnings Before Interest and Tax
Eligible Projects	means those projects undertaken by the Respondent that qualify as eligible in terms of Section 5.3.1;
Evaluation Criteria	means the evaluation criteria to be applied by Transaction Implementation Committee in the evaluation of the RFQ Responses;
Evaluation Committee	means the committee referred to in Section 5;
Exclusive Member	A member of a Consortium holding or intending to hold at least 10% interest in the Consortium.
FGN	Federal Government of Nigeria.
Form	Any form included in Section C of this RFQ Package.
Grantor	The Federal Government of Nigeria (FGN), represented by the Nigeria Export Processing Zones Authority (NEPZA) or its successor
ICRC	Infrastructure Concession Regulatory Commission.
IM	Information Memorandum
JV	Joint Venture
Lead Member	A Member of a Consortium holding or intending to hold at least 30% interest in the Consortium as well as have management and control of the Project.
N4P	National Policy on Public Private Partnership.
NDA	Non-Disclosure Agreement to be signed by an Respondent prior to being issued the Bidding Document.
NEPZA	Nigeria Export Processing Zones Authority, which assumes the role of the Concession grantor and lessor.
NGN	Nigerian Naira

O&M	Operation and maintenance of the Calabar Free Trade Zone (CFTZ)
PPP	Public Private Partnership.
Principal Contact Person	A natural person designated by the Respondent or Consortium who acts as the contact person of the Respondent or Consortium for all matters relating to the RFQ.
Project	The concession of the Calabar Free Trade Zone via a Public Private Partnership (PPP) arrangement on a Build, Rehabilitate, Operate and Transfer (BROT) basis. The private entity would also be responsible for financing the project.
Proponent	A party or Consortium interested in or contemplating submitting an Application in response to this RFQ.
Qualification Stage	The first stage of the Bidding Process.
Respondent	means a party or Consortium that submits an RFQ Response
Relevant organization	means any member of the Respondent or Pre-Qualified Bidder which acquired or is committed to acquire Equity in the Private Party;
RFP	Request for Proposals.
RFQ	Request for Qualification.
Sponsors	Joint reference to the Federal Government of Nigeria (FGN) and the Bureau of Public Enterprise
RFQ Response	means the response to be submitted by Respondents with regard to the RFQ;
SPV	Special purpose vehicle established by a Consortium.
TIC	Transaction Implementation Committee for the Project.
TSC	Technical Sub-Committee of the TIC

Transaction Advisors

Ernst & Young as financial adviser and lead consultant; Ajumogobia & Okeke as legal adviser; Knight Frank as real estate valuer and AquaEarth Consulting Limited as environmental consultant.

SECTION 1: INTRODUCTION

1.1 Purpose of RFQ and Procurement Process

1.1.1 Issuance of the RFQ

The National Council on Privatization/Bureau of Public Enterprises (NCP/BPE) in collaboration with the Federal Ministry of Industry, Trade & Investment (FMITI) is undertaking the concession of Calabar Free Trade Zone (CFTZ) via a Public Private Partnership (PPP) arrangement.

In 2020, the NCP approved the change in strategy from partial privatization to concession. Consequently, BPE is desirous of procuring a Concessionaire/Developer to build, rehabilitate, operate and transfer CFTZ via a Build-Rehabilitate -Operate-Transfer (“BROT”) model. The FTZ would subsequently be transferred back to the Federal Government of Nigeria (FGN) at the end of the proposed concession period, during which the Concessionaire would have recouped its investment as may be agreed.

A solicited PPP process for the procurement of the concessionaire will be used to fulfil this objective in compliance with the Infrastructure Concession Regulatory Commission (ICRC) Act 2005. Therefore, BPE issues this Request for Qualification (RFQ) as the first formal step in the procurement process to ultimately procure services of a private party to develop and operate the FTZ. Interested bidders are welcomed to submit their proposals under a competitive bidding process. These proposals will be competitively and transparently assessed to select the best proposal that meets the Value for Money criterion.

The Project will be approved by the Federal Executive Council and a No Objection Certificate issued by the ICRC in accordance with the ICRC (Est.) Act 2005 and the National Policy on Public Private Partnership (“N4P”).

1.1.2 Objectives and Purpose of the RFQ

(a) The objective of this RFQ is to provide prospective Respondents with sufficient background information in relation to the Project:

(i) to allow them to take an informed decision as to whether to continue with the procurement process; and

(ii) for those who wish to proceed to allow them to submit a full and informative Response which will allow the Transaction Implementation Committee (TIC) to gain an understanding of the legal, financial and technical status and previous experience of Respondents.

(b) The purpose of this RFQ is to allow the TIC to establish a shortlist of Prequalified Bidders who are adjudged to be sufficiently experienced and committed organizations which meet the technical, financial, economic, social, environmental and other requirements of the BPE.

(c) The TIC therefore seeks Responses from experienced and committed Consortia and/or organizations who wish to be pre-qualified and in due course given the opportunity to bid to undertake the project.

1.1.3 Outline of the procurement process

The Bureau of Public Enterprises has elected to employ a two-stage procurement process namely a prequalification stage to be followed by a pre-qualified bidder proposal submission stage. It is accordingly envisaged that:

- i. Responses to this RFQ unless rejected in accordance with section 5.3.1.2. (g) (Respondent Disqualification) will be evaluated in accordance with the process described in Section 5 (The Evaluation Process) to produce a shortlist of prequalified Respondents currently expected to be ten (10) based on their technical, financial and legal capability.
- ii. Only Pre-qualified bidders will be invited to submit a Proposal to the RFP that will be issued in due course.
- iii. A Preferred Bidder will then be selected, who will negotiate a PPP Concession Agreement with the BPE. see Section 3 (The Procurement Process) below for more details of the procurement process.

1.1.4 Outline of the RFQ

This RFQ provides an overview of the Project, including its background, the facility and service requirements and the proposed commercial arrangements. This RFQ also details the procurement process applicable and the timelines guiding such process. Further, this RFQ provides information on the pertinent considerations to be considered by the Bureau of Public Enterprises in evaluating the Responses to this RFQ.

1.1.5 Interpretation

In this RFQ, unless inconsistent with or otherwise indicated by the context -

- i. headings have been inserted for convenience only and should not be taken into account in interpreting the RFQ;
- ii. any reference to one gender shall include the other gender;
- iii. words in the singular shall include the plural and vice versa; (iv) any reference to natural persons shall include legal persons and vice versa;
- iv. words defined in a specific clause have the same meaning in all other clauses of the RFQ, unless the contrary is specifically indicated;
- v. any reference to the RFQ, schedule or appendix, shall be construed as including a reference to any RFQ, schedule or appendix amending or substituting that RFQ, schedule or appendix;
- vi. the schedules, appendices and Briefing Notes issued pursuant to this RFQ, form an indivisible part of the RFQ and together with further clarifying and amending information provided by the BPE, constitute the body of RFQ documentation which must be complied with by Respondents;
- vii. in the event of any inconsistency between this RFQ or other earlier information published with regards to the Project, the information in this RFQ shall prevail; and
- viii. This RFQ shall be governed by and applied in accordance with the laws of the Federal Government of Nigeria.

SECTION 2: THE PROJECT

2.1 Project Background

The idea of establishing free zone enterprises in Nigeria was initiated in 1992 as a policy thrust to drive Nigeria on the path of industrialization and economic development. Currently, there are over thirty (30) Special Economic Zones (SEZs) in the country, with Calabar FTZs being the one of the wholly owned SEZs by the Federal Government of Nigeria (FGN). However, Nigeria is yet to fully realise the expected economic benefits from the operations of the Calabar FTZs in terms of employment generation, promotion of exports, and boost in FDIs.

In line with the aforementioned, the BPE seeks to concession the CFTZ to achieve the overall strategic plan of accelerating Nigeria's Industrialization program through SEZs.

The concession approach is considered most suitable as it allows the FGN to focus on its regulatory oversight duties of the FTZs while leveraging on the financial capacity and technical expertise of private sector partners to develop and operate the CFTZ.

The implementation of the concession of CFTZ is planned to be in line with the Infrastructure Concession Regulatory Commission (ICRC) Solicited PPP Procurement Process to procure concessionaires that will develop, operate and manage the FTZ to meet world-class standards.

2.2 Description of the project

The BPE, having identified the infrastructure deficit at the CFTZ, intends to create an avenue for private sector investments through a concession arrangement.

The BPE intends to adopt a two-tier structure for the concession approach which will see the FGN retain ownership of the FTZs through a property holding company (PropCo), while the proposed concessionaire will operate as the operating company and management company (OpCo-ManCo).

- ▶ **Property holding company (PropCo):** This entity will represent the FGN as the legal owner/landlord of the FTZ's landed property and will be responsible for the development of the external infrastructure of the FTZ such as the roads, water, power, etc. The PropCo will lease or grant concessions of the property to the Operating and Management Company/Concessionaire (OpCo-ManCo) for the development of the FTZs.
- ▶ **Operating and Management company (OpCo-ManCo)/Concessionaire:** This entity will consist of private sector investors that may or may not form a consortium solely to develop the internal infrastructure and manage the operations of the FTZs. The OpCo-ManCo will be responsible for sub-leasing the developed plots to interested enterprises and carrying out investment promotions to attract reputable businesses to the FTZs.

2.3 Overview of Calabar Free Trade Zone

Calabar Free Trade Zone (CFTZ) formerly known as Calabar Export Processing Zone (CEPZ) was established in 1992 after the promulgation of the NEPZA Act No. 63 of 1992. CFTZ was completed in 1999 and commissioned in 2001.

The CFTZ is located along the North of the Port of Calabar, Esuk Utan Community, Cross Rivers State, Nigeria with geographic coordinates of N5.0161, E8.3216. The land is owned by the Cross Rivers State

Government (CRSG) and leased to NEPZA who is responsible for the development of the zone and sub-leases to investors operating within the zone.

At inception, activities in CFTZ were mainly focused on exporting over 75% of goods produced in the zone. However, based on economic realities, CEPZ was modified and rebranded as Calabar Free Trade Zone on November 21, 2001, to allow for domestic sales within the customs territory.

The prominent sectors of enterprises operating at the CFTZ are manufacturing, services, trading and oil & gas sector. CFTZ has cumulatively licensed over 250 companies; although most of the companies have gone moribund. Presently, only about 37 of these licensed companies are active, 29 are inactive while others have exited the FTZ.

Figure 1: Internal Infrastructure in CFTZ

Total land area	The CFTZ has total landmass of 152 hectares,
Electricity supply	The Port Harcourt Electricity Distribution Company (PHEDC) is the provider of electricity to the CFTZ.
Warehouses	The CFTZ currently has operational warehouses within the zone.
Water supply & fire service station	The CFTZ currently has a water pumping station with an overhead tank capacity of 912,000m ³ and 465,000m ³ surface tank reservoir. (This is currently being upgraded to 1,000,000m ³). CFTZ also has a fire service station equipped with four fire trucks, one rapid intervention van, and one water tanker.
Police station & Government related agencies	The CFTZ has a police station set up within the FTZ and allocation of office spaces for Government related departments and agencies like the Nigerian Immigration Service (NIS), National Drug Law Enforcement Agency (NDLEA), Department of State Services (DSS) etc.

2.4 Expected outcome of the concession

The outcome of the proposed concession is expected to bridge the gap between the current state of the CFTZ and global standard FTZs as seen in countries such as China, India, and the United Arab Emirates. The proposed concession seeks to address the following current challenges faced by CFTZ:

- ▶ **Funding:** Historically, lack of funding has impeded the optimal functioning of CFTZ. However, the proposed concession will transfer the obligation of funding the internal infrastructure to the concessionaire who will be required to build new internal infrastructure, rehabilitate worn-out facilities as well as provide the working capital requirements for the FTZ. The concessionaire will also be required to use modern techniques to promote the FTZ and attract more enterprises. In line with the aforementioned, the concessionaire, at the barest minimum, will be required to meet the following three funding criteria:

- Demonstrate both financial and economic capacity to fund or access required financing to meet the investment requirements of the FTZ. Furthermore, the prospective bidders must provide evidence of financing (through debt or equity) of similar projects and similar amounts.
 - Demonstrate the ability to finance the working capital requirements of the concession through cash or line of credit.
 - Provide high-level details on its plan to upgrade the FTZ to standards that meet the needs and aspirations of the public.
- ▶ **Technical expertise:** There is currently a significant gap in the technical expertise and technological know-how of operating and managing FTZs in Nigeria compared to international counterparts. The concessionaire will be saddled with the operational and managerial responsibilities within the FTZ. This is expected to result in increased operational efficiency within the FTZ and consequently stimulate growth and industrialization in Nigeria. To drive the utmost value, the Concessionaire either as a single entity or a consortium will be required to provide evidence of experience in operating and managing FTZs or any similar projects within a minimum of five years.
 - ▶ **Rehabilitation, operation and maintenance of the FTZ:** The concessionaire will undertake the development of the required internal infrastructure, rehabilitation of worn-out facilities, daily operations, and maintenance within the FTZ. The concessionaire will be responsible for sub-leasing the landed property to interested investors. This will result in the transformation of the FTZ into global facilities that will attract both foreign and local investors.
 - ▶ **Remittances to the FGN:** The concessionaire will be required to remit a portion of their revenue to the FGN as concession fees based on pre-agreed terms.
 - **Development of host communities:** The concessionaires will be expected to develop initiatives that will positively impact the host communities, this includes job creation, provision of social amenities etc. To ensure this expected outcome is fully actualized, the concessionaires, at the barest minimum, will be required to meet the following criteria:
 - Provide details of planned Corporate Social Responsibility (CSR) activities in the host communities of the FTZs. This will include local content development through the employment of semi-skilled workers or manual labor from these communities.
 - Provide a strategy to conduct environmental-friendly operations at the FTZs upon award of the concession. This will include their plans to protect and enhance the natural.

2.5 Risk Transfer

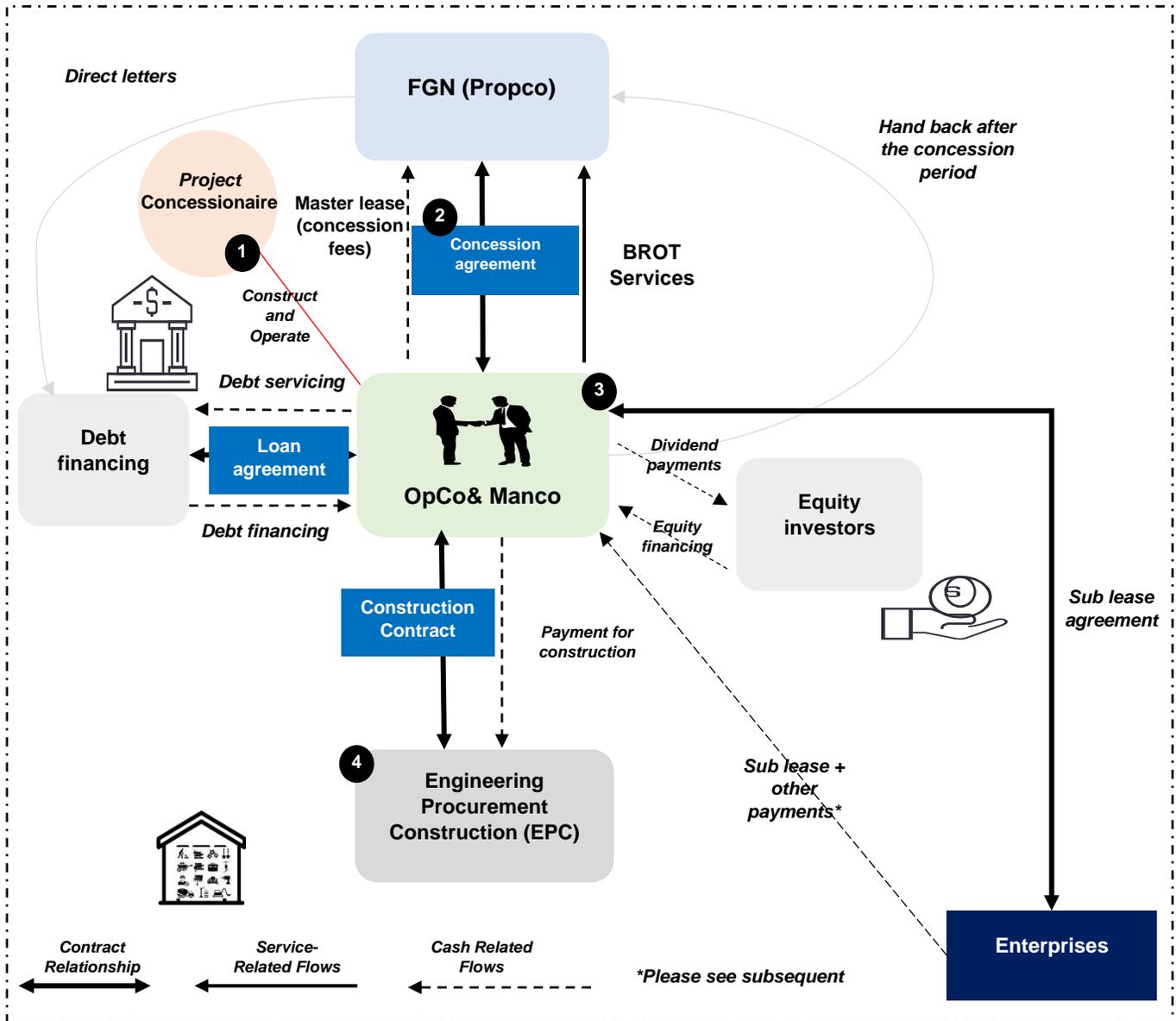
- (a) Transfer of risk forms an important consideration for both the Private Party and the FGN, with both parties seeking to ensure that risk is allocated to the party best placed to manage or mitigate against that risk.

- (b) The Private Party will be required to assume a substantial portion of all forms of project life-cycle risk including demolition of existing structures, design, construction, financing, operation and maintenance risks of both new and existing structures during construction and when in operation.

2.6 Funding Mechanism

- (a) The Project is proposed to be financed through the Project Finance model. Under this model, the Private Party selected will incorporate a Special Purpose Vehicle (SPV) for the sole purpose of executing the requirements of the Project. It is anticipated that substantial funding for the Project will be provided by limited-recourse debt made available by Lenders (banks and financial institutions in the Nigeria and/or international banks and financial institutions) who will look primarily to the cash flows generated from the Project to service the debt.
- (b) The Private Party selected shall contribute some equity in the SPV to partially finance the development and/or capital costs estimated to be incurred for the Project.
- (c) The financial commitments in the PPP Concession Agreement shall be denominated in Nigerian Naira or in a freely convertible currency acceptable to the BPE. The Private Party will be responsible for and take the risk of currency, interest rate, and other fluctuations and will to that extent make provision within its costs to the BPE for any hedging arrangements which the Private Party may require in relation to its obligations under the PPP Concession Agreement.

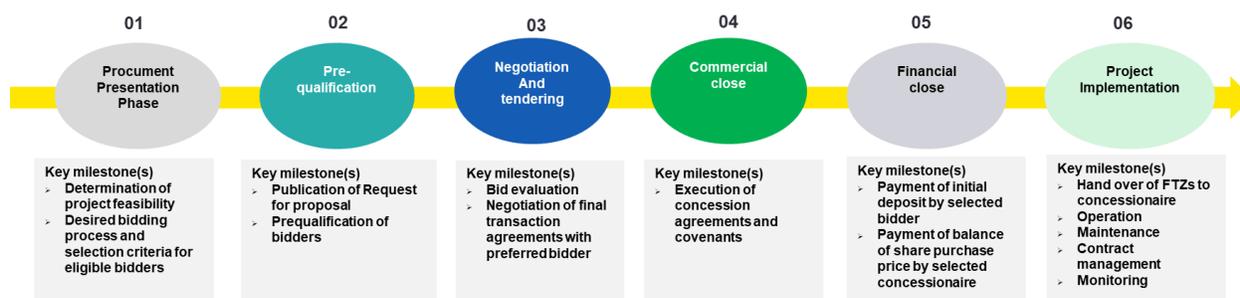
- a. (d) The BPE envisages the following structure for the implementation of the proposed project. However, Respondents are encouraged to come up with a project structure that will provide maximum value to the FGN.



SECTION 3: THE PROCUREMENT PROCESS

3.1 Process Overview

- (a) The purpose of the RFQ is to determine if a Respondent is capable of delivering the Project in terms of its business, financial standing and technical capacity and experience.
- (b) In conducting the procurement process the Bureau of Public Enterprises will follow the procedures established by Public-Private Partnership Act No.14 of 2009 and seek competition between Respondents without stifling innovation through the open exchange of information and allowance of ideas by Respondents.
- (c) The diagram below represents the procurement process for the Project



3.2 RFQ REQUIREMENTS

3.2.1 RFQ Timetable

Key Milestone	Date
Issue Request for Qualification (RFQ)	13 April 2022
Opening date for clarification request	14 April 2022
Closing date for Clarification requests and queries	13 May 2022
Submission of RFQ Responses	25 May 2022

The BPE retains the right in its sole discretion to amend any of the milestone dates indicated in the above timeline. Respondents shall be informed timely of any amendments to the timeline through the issue of Briefing Notes.

3.3 Information on Subsequent Stages of the Procurement Process

Details of the procurement process from issuance of the RFQ are set out in the RFQ Timetable

3.4 General/Legal Requirements

3.4.1 Consortium Changes

If exceptional circumstances should arise in response to which a Respondent, after the submission of its Response, requires that a new Sponsor or Subcontractor be introduced or a key Sponsor or Subcontractor substituted, the following process shall be applied by the BPE:

- (a) The Respondent must notify the BPE in writing of the proposed changes supported by complete details of the material reasons for the changes, the parties impacted by the changes and the impact on the Respondent.
- (b) The BPE shall evaluate the reasons advanced by the Respondent for the requested changes to the Consortium structure and where the BPE is not satisfied that the reasons advanced are reasonable or material, refuse to accept the change and disqualify the Respondent, or notify the Respondent in writing of its non-acceptance of the changes and require the Respondent to propose a suitable alternative to the BPE within 10 (Ten) days of its receipt of the decision of the BPE, upon receipt of which the BPE shall -
 - i. evaluate the alternative proposed for suitability to the BPE, and where the alternative is accepted by the BPE, inform the Respondent in writing of such acceptance and the BPE shall reassess the Respondent against the RFQ requirements and criteria; or
 - ii. where the alternative is not accepted by the BPE, inform the Respondent in writing of such non-acceptance as well as its disqualification from the RFQ Process.
- (c) Where the BPE is satisfied that the changes requested under (i) above are reasonable and material, the Respondent, shall be allowed to effect the required changes and the BPE shall reassess the Respondent against the RFQ requirements and criteria.
- (d) Where the Respondent has been pre-qualified as a Bidder and requests changes to its Consortium structure which changes are accepted by the BPE, and the Bidder after re-evaluation by the BPE, scores less than its initial RFQ evaluation scoring, the BPE shall -
 - i. determine whether the Bidder is still eligible for pre-qualification, failing which the Bidder shall be disqualified; and
 - ii. determine whether the reduced score by the Bidder has any impact on the order of Bidders, and where the order is affected to the degree that a Respondent who was not previously pre-qualified now becomes eligible for pre-qualification, the BPE shall pre-qualify such Respondent and disqualify the Bidder who affected the changes to its structure.

3.4.2 Conflict of Interest

- (a) No Sponsor, Subcontractor or advisor of the Respondent may be a member of or in any other way participate or be involved, either directly or indirectly in more than one Response or Respondent during any stage of the Project procurement process, but excluding specialist suppliers of systems and equipment, non-core service providers or financial or commercial institutions whose role is limited purely to lending money or advancing credit to the Respondent. Respondents are to sign the declaration of interest form which is contained in the Tender Forms of Appendix 2

- (b) In order to prevent the conflict or potential conflict of interest between Lenders and Respondent, no advisors or consultant to any Respondent, Sponsor or Subcontractor may fulfill the role of arranger, underwriter and/or lead bank to the Respondent. The BPE may disqualify the Respondent from further participation in the event of a failure to comply with this provision. The BPE views the potential conflict of interest so great as to warrant the reduction of competition for advisory services.

SECTION 4: INSTRUCTIONS TO RESPONDENTS

4.1 Respondent Eligibility

The following shall be used to determine the eligibility of Respondents in terms of their structure for their pre-qualification.

- (a) The Respondent for pre-qualification may be a single entity or a group of entities, coming together to implement the Project. However, no Respondent applying individually or as a member of a Consortium, as the case may be, can be member of another Respondent.
- (b) A Respondent 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 below.
- (c) Where the Respondent is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act, to execute the Concession Agreement and implement the Project. In case the Respondent is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- i. Number of members in a consortium shall not exceed 6 (six), but information sought in the Response may be restricted to 4 (four) members in the order of their equity contribution;
 - ii. Members of the Consortium shall nominate one member as the lead member, who shall have an equity share holding of at least twenty-five per cent (25%) of the SPV as agreed in the Memorandum of Understanding (MOU) executed by the members. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix 2, signed by all the other members of the Consortium;
 - iii. An individual Respondent cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Respondent Consortium cannot be member of any other Respondent Consortium applying for pre-qualification;
 - iv. The members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
 - v. Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix 2, for the purpose of making the Response and submitting a Bid in the event of being pre-qualified. The Joint Bidding Agreement is to be submitted along with the Response.
- (d) The Respondent shall engage an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the project in conformity with the provisions of the Concession Agreement.

4.2 Requirements with Respect to Response Form Completion

4.2.1 Requirements in Relation to Response Forms

- (a) The purpose of the Pre-Qualification Response Form (see Appendix 1) is to enable the Respondents, who are interested in the opportunity described in the RFQ, to provide the BPE with sufficient information to assess their capability and suitability to be selected as Pre-Qualified Bidders, who will be invited to submit Proposals in response to the RFP to be issued in respect of the Project.
- (b) Respondents must provide the required level of detail (if one is required) by completing the Appendix 1 Response Forms.
- (c) Respondents are required to include the tender forms set forth in Appendix 2.

4.2.2 Respondent Details

- (a) The Respondent should provide all information required for each member of the Consortium as per the format of Annexure I Appendix 2.
- (b) The Respondent should provide a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations as per format at Annexure I of Appendix 2.

4.2.3 Technical Information

- (a) The Respondent should furnish the details of Eligible Experience (as defined in section 5.3.1.1) for the last 3 (three) financial years immediately preceding the Response submission deadline.
- (b) The Respondents must provide the necessary information relating to Technical Capacity as per the format at Annexure II of Appendix 2. In computing the Technical Capacity, the Respondent/ Consortium Members, the Technical Capacity of their respective Associates would also be eligible hereunder.
- (c) The Respondent should furnish the required Project specific information and evidence in support of its claim of Technical Capacity, as per format at Annexure II of Appendix 2.

4.2.4 Financial Information

- (a) The Respondent must provide evidence of meeting the minimum Net Worth as specified in Section 5.3.2 and provide details as per format at Annexure III of Appendix 2.
- (b) The Respondent shall enclose with its Response certificate(s) from its statutory auditors specifying the net worth of the Respondent, as at the close of the preceding financial year, and specifying that the methodology adopted for calculating such net worth conforms to the definition given. For the purposes of this RFQ, net worth shall mean the sum of subscribed and paid-up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders. In computing the Net Worth of

the Respondent/ Consortium Members the Net Worth of their respective Associates would also be eligible hereunder.

- (c) The Response must be accompanied by the Audited Annual Reports of the Respondent (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Response is made. In case the annual accounts for the latest financial year are not audited and therefore the Respondent cannot make it available, the Respondent shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Respondent shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.

4.3 Requirements with Respect to Response Form Completion

Respondents must ensure that all Tender Forms attached to this RFQ in Appendix 5 are completed or complied with as the case may be.

4.3.1 Declaration of interest

To ensure the transparency and fairness of the RFQ Process, each Sponsor, Subcontractor or advisor of the Respondent must complete and sign the Declaration of Interest form attached hereto in the Tender Forms in Appendix 2 and submit such signed forms with its Response. Failure to do so may result in the invalidation of the Response. **Power of Attorney**

The Respondent should submit a Power of Attorney as per the format at Appendix 2, authorizing the signatory of the Response to commit the Respondent. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format in Appendix 2.

4.3.2 Tax clearance

- (a) Each Respondent, Relevant Organization, Key Contractor and Designated Member (if any) which is registered (or incorporated) in Nigeria is liable for payment of tax in Nigeria and is required to furnish a tax clearance certificate. Certified Tax Clearance Certificate(s) must be submitted together with the bid. Failure to submit a valid Tax Clearance Certificate may result in disqualification of the bid. A Response form for such tax clearance certificate is provided in Appendix 2.
- (b) Where the Respondent, Relevant organization, Key Contractor or Designated Member is not yet operating in Nigeria, it must submit proof of "good standing" with the relevant taxation authority in its country of origin.

4.3.3 Indemnity to Government

Respondents and any of their respective Members who wish to furnish Government with an indemnity for non-disclosure by the BPE of Respondent confidential information, trade secrets or other proprietary information, as contemplated in section 4.10 of the RFQ, are requested to provide an appropriate binding indemnity headed "Indemnity to Government" to be included with the Tender Forms contained in Appendix 2.

4.4 Submission of RFQ Responses

(a) Responses must be delivered to:

The Director General
Bureau of Public Enterprises
No 11 Osun Crescent
Off IBB Way
P.M.B 442, Maitama
Abuja
Nigeria

CLOSING DATE FOR ACCEPTANCE OF RESPONSES:

To be received not later than:

14:00 HOURS

On 25th May, 2022

ENVELOPES CLEARLY MARKED

Response to Request for Qualification for the Concession of the Calabar Free Trade Zone

- (b) Responses forwarded by telegraphic, facsimile or electronic mail will not be considered as Responses to this RFQ.
- (c) The BPE may, at its sole discretion extend the closing date and time for the submission of Responses. Any extension granted will be notified by a Briefing Note and granted to all Respondents.

4.5 Format and Composition of Responses

- (a) All responses to the information requested in the Response Form (see Appendix 1) of this RFQ must be submitted in the manner requested and provided for in these forms. The Appendix 1 Response Forms will be issued in machine-readable form as a Microsoft Office file as part of this RFQ. The respondents must meet the requirements, as specified in Section 4.1-4.3 above, by completing the Appendix 4 Response Forms in full and providing the required level of detail (where specified). The tender forms contained in Appendix 2 (Tender Forms) must be completed, or complied with, as the case may be. All bids should be submitted on the official forms provided. The forms should not be retyped.
- (b) All Responses must be submitted in a sealed envelope/package clearly and visibly containing the following demarcation on each envelope/package

Table 1: ENVELOPE/PACKAGE MARKING INFORMATION

<i>For the attention of</i>	The Director General Bureau of Public Enterprises No 11 Osun Crescent Off IBB Way P.M.B 442, Maitama Abuja Nigeria
<i>Reference number:</i>	[insert ref code]
<i>Description:</i>	Submission of Response to the Request for Qualification for the concession of Calabar Free Trade Zone
<i>Respondent/Consortium name:</i>	[please indicate name]
<i>No. of envelope/package:</i>	One endorsed original submission, five hard copies and one digital copy in PDF format stored on a readable digital media
<i>Authorized Representative:</i>	[please indicate name]
<i>Contact details:</i>	[please provide complete contact details and postal address of Authorized Representative]

(c) Responses must be delivered no later than the time and date referred to in Section 4.4. No electronic submissions are permitted without accompanying physical documents, and the BPE will not accept any Response(s) sought to be submitted in electronic format only.

(d) All Responses must be submitted in the format as prescribed below:

- I. 1 (one) original master Response, clearly marked as such, and 5 (five) complete hard copies thereof printed and bound in volumes as required (clearly marked as Hard Copy 1 through 6 as required). All original documents in colour must be reproduced in colour for the copies. Any documents forming part of the original response but which are not original in nature must be certified as a true copy by a Commissioner of Oaths or Notary Public;
- II. One complete electronic copy on readable digital media (in complete correspondence with the printed hard copies). This should be clearly marked as Electronic Copy and should be in electronic PDF format). Submissions must be in English, typed in A4 format, vertically bound or filed in loose leaf and set out as follows:

- i. Volume 1 - Completed letter of response as per Appendix 1;
 - ii. Volume 2 - Other Documentation as listed below:
 - iii. Declaration of Interest as per the format at Appendix 2
 - iv. Power of Attorney for signing the Response as per the format at Appendix 2;
 - v. If applicable, the Power of Attorney for the lead member of the Consortium as per the format at Appendix 2;
 - vi. Copy of the Joint Bidding Agreement/Consortium Agreement, in case of a Consortium, substantially in the format at Appendix 2;
 - vii. Copy of Memorandum and Articles of Association, if the Respondent is a body corporate, and if a partnership then a copy of its partnership deed;
 - viii. Copies of Respondent's duly audited balance sheet and profit and loss account for the preceding three years; and
 - ix. Tax clearance certificate
- (f) All Responses must be signed on behalf of the Respondent and each Relevant Organization by a duly authorized person (see Power of Attorney as per Appendix 5). By signing the Response, the signatory warrants that all information supplied by it in its Response is true and correct and that the Respondent and each party whom the Respondent signatory represents, considers themselves subject to and bound by the terms and conditions of this RFQ.

4.6 Validity Period/ Respondent Warranty

Respondents must provide a warranty as part of their Responses that their Responses are true and correct in all respects, that it does not contain a misrepresentation of any kind and that the taxes of all members of the Consortium are in order and none of the members are undergoing corruption or any criminal-related investigations or have any past convictions for fraud or corruption.

4.7 Late Submission

A Response shall be late if it is received by the BPE at any time after the closing date and time indicated in Section 4.4 above.

A late submission shall be rejected.

Briefing Notes

The BPE may issue Briefing Notes from time to time during the RFQ Process to disseminate further instructions, clarifications, programme changes and information updates to Respondents. Briefing Notes will be sequentially numbered to facilitate easy referencing and will form part of the RFQ body of documentation. Any future reference to 'RFQ' shall be a reference to all RFQ documentation as amended, varied or updated by any Briefing Notes, and Respondents must ensure that their Responses are prepared taking into account all such Briefing Notes.

Briefing Notes will be issued to all Respondents utilizing the contact details provided at receipt of the RFQ documentation, and after submission, to the Authorized Representative. Respondents are requested to promptly confirm receipt of Briefing Notes within 48 hours of receipt thereof.

4.8 Communication Structure and No Contact Policy

4.8.1 Communication Structure

During the RFQ Process Respondents must strictly adhere to the Communication Structure laid out below.

4.8.1.1 Communication Structure

Respondent Questions

- (a) Respondents are encouraged to communicate with the BPE regarding the Project and the preparation of their Responses, but all communication should be structured and transparent.
- (b) Any request for clarifications, queries, questions or comments as well as all requests for communication or interaction with the BPE must be directed in WRITING to:

The Director General
Bureau of Public Enterprises
No 11 Osun Crescent
Off IBB Way
P.M.B 442, Maitama
Abuja
Nigeria
Tel: +234 9 460 4401
e-mail: info@bpe.gov.ng

Respondents may direct written general queries and questions to the BPE at any time during the RFQ Process, until 17:00 hours WAT on 13th May 2022. This is the cutoff date for clarification questions, after which the BPE will not accept, consider or respond to any queries or questions from Respondents.

- (c) The BPE will endeavor to answer all general requests for clarifying information as quickly as possible but cannot guarantee a response within a fixed time period. The BPE also reserves the right not to respond to any particular query or question.
- (d) All clarifications will be issued as Briefing Notes and circulated to all Respondents.

4.8.1.2 Questions from the BPE

- (a) The BPE reserves the right after the closing date for submissions of Responses to seek such further information or clarification from Respondents, Relevant Organizations, Key Contractors or Members as it determines is required in its absolute and sole discretion.
- (b) Questions will be directed to the Authorized Representative of the Respondent and must be answered in writing within 48 working hours from receipt by the Authorized Representative of the written query from the BPE, unless the BPE approves a request from the Respondent for an extension of time.

4.8.2 No Contact Policy

Apart from the conditions outlined in the Communication Structure established above by this RFQ, Respondents may not contact the BPE or any of its officials, except in the case of pre-existing commercial relationships, in which case contact may be maintained only with respect thereto and, in making such contact, no party may make reference to the Project or this RFQ.

4.9 Respondent Confidentiality

- (a) Respondents must clearly indicate whether any information conveyed to or requested by the BPE is confidential or should be treated confidentially by the BPE. In the absence of any such clear indication in writing from a Respondent, the BPE shall deem the Respondent to have waived any right to confidentiality and treat such information as public in nature.
- (b) Where a Respondent at any stage during the RFQ Process indicates to the BPE that information or any response requested from the BPE is or shall treat such information or response confidentially, the BPE shall treat such information or response confidentially, unless the BPE believes that to ensure the transparency and competitiveness of the RFQ Process the content of the information or response should be conveyed to all Respondents.
- (c) The above procedures regarding confidentiality shall not apply to any information which is already public knowledge or available in the public domain or in the hands of the BPE or is required to be disclosed by any legal or regulatory requirements or order of any competent court, tribunal or forum.

4.10 Respondent Disqualification

- (a) Responses which do not comply with the obligatory Response formalities and Respondent conduct which fails to adhere to the requirements and terms and conditions prescribed by this RFQ may be disqualified by the Contracting Authority from further participation in the RFQ Process.
- (b) In particular (but without prejudice to the generality of the foregoing) the BPE may disqualify, at its sole discretion and without prejudice to any other remedy it may have, a Respondent where the Respondent, or any of its Sponsors, Subcontractors or advisors have committed any act of misrepresentation, bad faith or dishonest conduct in any of its dealings with or information provided to the BPE.

4.11 Independent Submission

Any Respondent shall, without prejudice to any other remedy available to the BPE, be disqualified, where the Respondent –

- (a) communicates to a person other than persons nominated by the BPE a material part of its Response;
or
- (b) enters into any agreement or arrangement with any other person or entity that it shall refrain from submitting a Response to this RFQ or as to any material part of its Response to this RFQ; or
- (c) offers or agrees to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done, or causing, or having caused to be done any act or

omission in relation to the RFQ Process or any proposed Response (provided nothing contained in this paragraph shall prevent a Bidder from paying any market-related commission or bonus to its employees or contractors within the agreed terms of their employment or contract)

SECTION 5: THE EVALUATION PROCESS

5.1 The Opening of Responses

- (a) All submitted Responses shall be kept in safe custody by the BPE until the closing time for submission and all Responses shall be treated as commercially sensitive. The original copy of a Response shall be archived for record purposes.
- (b) Responses shall be opened as soon as possible after the closing time. Upon request to the BPE, the BPE may arrange for Respondents who submitted Responses to attend only the opening of the Responses, at which opening only the names of Respondents who submitted Responses shall be read aloud upon being opened. No further information regarding submitted Responses shall be provided to attending Respondents at the opening of the Responses.
- (c) After opening, Responses shall be distributed to the Evaluation Committee for evaluation.

5.2 Evaluation parameters

- (a) The evaluation of Responses will be based on the information contained in the Responses to the RFQ received, which may be further supplemented by presentations and clarification information provided.
- (b) Only those Respondents who meet the Respondent structure eligibility criteria laid out in Section 4.1 shall qualify for evaluation under this Section 5. Responses of firms/ consortia who do not meet these criteria shall be rejected. The Respondent's competence and capability shall be established by the following parameters:
 - i. adequate professional and technical qualifications, human resources and equipment and other physical facilities as may be necessary to carry out all the phases of the project;
 - ii. appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar infrastructure facilities;
 - iii. demonstrate economic proficiency and/or financial capacity to undertake the works or to secure financing for the investments required under the concession; and
 - iv. Socio-economic considerations demonstrated in the pre-qualification submission.

5.3 Evaluation Process and Scoring Methodology

The Bidder's competence and capability is proposed to be established by the following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity.

5.3.1 Technical Capacity Evaluation

5.3.1.1 Eligible Projects and Eligible Project Experience

For the purpose of this RFQ the following categories of experience would qualify as Technical Capacity and Eligible Experience in relation to Eligible Projects as stipulated:

- (a) Core sector would be deemed to include Free trade zones, industrial parks, or similar infrastructure. and;
- (b) Subsidiary sector would be deemed to include power, ports, airports, railways, metro rail, or other similar facilities.
- (c) For a project to qualify as an Eligible Project under Categories 1 and 2, it should have been undertaken as a PPP project on DFBOM, BOT, BOLT, BROT, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or a port should be included in Category 2 even if it is not based on a long-term agreement with a public entity (PPP project), as long as it is used as a public facility;
- (d) For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the ten (10) financial years immediately preceding the Bid Submission Date, and only the payments (gross) actually made or received, as the case may be, during such ten (10) financial years shall qualify for purposes of computing the Experience Score. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract or EPC contract for the project. Further, the cost of land shall not be included thereunder.
- (e) Eligible Experience in respect of each category shall be measured only for Eligible Projects.
 - i. The entity claiming experience should have held, in the company owing to the Eligible Project, a minimum of twenty-five percent (25%) equity during the entire year for which Eligible Experience is being claimed;
 - ii. the capital cost for eligible project should not be less than USD 10, 000,000.00; and
 - iii. the entity claiming experience shall, during the last five (5) financial years preceding the Bid Submission Date, have (i) paid for development of the project (excluding the cost of land), and/or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from Eligible Projects, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fares/freight revenues and other incomes of the company owning the Project.

Note: Eligible Experience in respect of each category shall be measured only for Eligible Projects.

Category 1

Project experience on Eligible Projects in a core sector that qualify under Clause 5.3.1.1(c)

Category 2

Project experience on Eligible Projects in a subsidiary sector that qualify under Clause 5.3.1.1(c)

Category 3

Construction experience on Eligible Projects in a core sector that qualify under Clause 5.3.1.1(d)

Category 4

Construction experience on Eligible Projects in a subsidiary sector that qualify under Clause 5.3.1.1(d)

(f) For the purpose of this RFQ the required FTZ facilities would be deemed to include:

- Warehouses/ Factory building
- A power generating station
- Office complex
- Waste incinerators
- Industrial clinic and hospital
- Fire service station.
- Investor suites
- Boreholes and Solar panel
- Steel water tanks

(g) The Respondent shall quote experience in respect of a particular Eligible Project under any one category only. Double counting for a particular Eligible Project shall not be permitted

5.3.1.2 Experience Score

(a) In order to demonstrate technical capacity and experience, the Respondent shall, over the past ten (10) financial years preceding the Response submission date, have:

(i) paid for, or received payments for, construction of Eligible Project(s); and/ or

(ii) paid for development of Eligible Project(s) in Category 1; and/ or

(iii) Collected and appropriated revenues from Eligible Project(s) in Categories 1 and/or 2, such that the sum total of the above is more or equal to the project cost (the threshold technical capability).

(b) Provided that at least one quarter of the threshold technical capability shall be from the Eligible Projects in Category 1 and 2.

(c) In case of a Consortium, the combined technical capability of those Members, who have and shall continue to have an equity share of at least twenty-five per cent (25%) each in the SPV, should satisfy the above conditions, provided that each such Member shall, for a period of two (2) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) twenty-five per cent (25%) of the subscribed and paid up equity of the SPV; and/or (ii) five percent (5%) of the total project cost specified in the Concession Agreement.

(d) Only those Respondents who meet the minimum technical criteria above shall qualify to have their experience score calculated. Responses of firms/ consortia who do not meet these criteria shall be rejected.

(e) Respondent's experience shall be measured and stated in terms of a score. The experience score for an Eligible Project in a given category would be the eligible payments and/or receipts specified above, (divided by 10 million Nigerian Naira) and then multiplied by the applicable factor in the Table below. In

case the Respondent has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its experience score.

Table 2: Factors for Experience across Categories

Categories	Factor
Category 1	1.25
Category 2	1.00
Category 3	0.75
Category 4	0.50

Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

5.3.2 Financial Capacity Requirements

- (a) The Respondent must establish the minimum Net worth of \$US200,000,000.00 at the close of the preceding financial year, and provide details as per format at [Annexure III of Appendix 2](#).
- (b) In case of a Consortium, the combined Net Worth capability of those Members, who have and shall continue to have an equity share of at least twenty-five per cent (25%) each in the SPV, should satisfy the above minimum requirement; provided that each such Member shall, for a period of two (2) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) twenty-five per cent (25%) of the subscribed and paid up equity of the SPV; and (ii) five per cent (5%) of the total project cost specified in the Concession Agreement

5.3.3 Pre-qualification of Respondents

The credentials of eligible Respondents shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the 'Aggregate Experience Score' of a particular Respondent. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium. The Respondents who satisfy the minimum net worth requirement, fulfill the conditions of eligibility specified in this RFQ (see Section 4.1) and obtain the 6 highest experience scores shall be pre-qualified. Respondents will be notified if they have been prequalified on the date specified for short-listing in Clause 3.2.1. (a) The Contracting Authority will not entertain any query or clarification from Respondents who fail to qualify.

5.3.4 Bid Evaluation Committee

- (a) The Bid Evaluation Committee will be comprised of members of the TIC, assisted by the TA to the Project and any other consultants it may procure from time to time.
- (b) The Bid Evaluation Committee, assisted by the Transaction Adviser to the Project will assess the Responses and provide professional advice and input regarding the technical, financial, legal and socio-

economic aspects of the Responses. The Bid Evaluation Committee will score the RFQ Response, compile their evaluation report and pass on their recommendations to the PPP Department.

5.3.5 Fairness and Transparency

(a) BPE views fairness and transparency during the RFQ Process as an absolute on which the Contracting Authority will not compromise. The BPE will ensure that all members of evaluation committees declare any conflicting or undue interest in the process and provide confidentiality undertakings to the Contracting Authority.

(b) The evaluation process will be tightly monitored and controlled by the BPE and its advisors to assure integrity and transparency throughout, with all processes and decisions taken being approved and auditable.

SECTION 6: FRAUD AND CORRUPT PRACTICES

(a) The Respondents 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 BPE may reject an Application without being liable in any manner whatsoever to the Respondent if it determines that the Respondent 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.

(b) Without prejudice to the rights of the BPE under Section 6(a). hereinabove, if a Respondent is found by the BPE 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 Respondent shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of two (2) years from the date such Respondent is found by the BPE 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.

(c) For the purposes of this Section 6, the following terms shall have the meaning hereinafter respectively assigned to them:

1. **“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 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 Contracting Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the Letter of Award or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project

or the Letter of Award or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

2. **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
3. **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
4. **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Contracting 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

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

SECTION 7: MISCELLANEOUS

1. The Bidding Process shall be governed by, and construed in accordance with, the laws of the Federal Republic of Nigeria and the Courts in Abuja district of jurisdiction shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
2. The BPE, 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 Respondent in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Respondent and/ or to consult with any Respondent 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 Respondent; 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 Respondent.
3. It shall be deemed that by submitting the Application, the Respondent agrees and releases the BPE, 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 in future.

SECTION 8: APPENDICES

Appendix 1: Letter of Response

[Date]

The Transaction Adviser
Calabar Free Trade Zone Project,
Esuk Utan Community
Cross River State

Dear Sir,

RE: Request for Qualification to in case of a Concession of the Calabar Free Trade Zone, Calabar Nigeria.

1. I/We, the undersigned are duly authorized to represent and act on behalf of [_____] (“**Respondent**”), and having reviewed and fully understood all information provided in the Request for Qualification Package (“**RFQ Package**”), hereby apply to be qualified as a proponent for the above-mentioned Project. The Application is unconditional and unqualified.

2. I/We hereby submit our qualification Application, which comprise the following:
 - (a) Appendix 1 – Letter of Response
 - (b) Annexure I of Appendix 2 – Details of Respondent (Business Information and Experience)
 - (c) Annexure II of Appendix 2 – Investment, Development, Management and Operating Experience:
 - (d) Annexure III of Appendix 2 – Financial Capacity
 - (e) Annexure IV of Appendix 2 – Certificate from Statutory Auditor/ Company Secretary regarding Associate
 - (f) Annexure V of Appendix 2– Statement of Legal Capacity
 - (g) Annexure VI of Appendix 2 – Power of Attorney for Signing of the Response
 - (h) Annexure VI of Appendix 2– Development, Financing and Investment Experience;
 - (i) Power of Attorney for Lead Member of Consortium
 - (j) Joint Bidding Agreement
 - (k) Declaration of Interest

We acknowledge that hard copy submissions of our Application are required in accordance with the Instruction to Respondents.

3. *[Applicable in case of a Consortium]* The Lead Member of the Consortium Respondent is [_____].

4. I/We confirm that the Transaction Adviser and its authorized representatives are hereby authorized to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this Application, and to seek clarification from our bankers and clients regarding any financial and technical aspects.

This Letter of Response will also serve as authorization to any individual or authorized representative of any entity referred to in the supporting information, to provide such information deemed necessary and requested by yourself to verify statements and information provided in this Application, or with regard to the resources, experience, and competence of the Respondent.

5. I/We declare that:

- (a) none of the director(s) of the Respondent has/have ever been convicted by any court of law
- (b) none of the officers of TIC or any agencies of the FGN is presently a director/staff of the Respondent [or any Member of the Consortium]
- (c) the Respondent [and each Member of the Consortium] is not in receivership or under any other bankruptcy proceedings before any court of law.

6. I/We understand that:

- (a) All information submitted in this Application shall remain binding upon us at the time of submission
- (b) The Transaction Adviser and/or the Sponsor(s) may in their absolute discretion accept or reject my/our Application, and cancel the prequalification process at any time before the execution of definitive/ project agreements without any liability to us
- (c) Whilst every effort will be made to protect the confidentiality of the information submitted by the Respondent, the Transaction Adviser and its authorized representatives cannot be held liable for any breach of confidentiality
- (d) The Sponsors have the right 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

7. I/We understand and agree that prospective proponents who are shortlisted must execute a Non-Disclosure Agreement and submit payment of any applicable administrative fees as advised by the Transaction Adviser before receiving a copy of the Request for Proposal (“RFP”) documents.
8. I/We declare that all statements made by us and all the information pursuant to this Application are complete, true and accurate to the best our knowledge and beliefs and nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.

For and on behalf of (name of Respondent or Lead Member of a Consortium Respondent)

Signed [_____]

Name [_____]

Designation [_____]

Date [_____]

For a Consortium, where only the lead member signs, the power(s) of attorney/letter of intent/consortium agreement/document(s) authorising the lead member to sign on behalf of the respective members shall be attached.

Appendix 2: Annexures

Annexure I

Respondent details

All boxes must be filled. Where not applicable it shall be so stated

An application can be rejected if an Respondent does not include the following information or if it is incomplete.

All prospective proponents and each Member of a Consortium wishing to participate in the Bidding Process must complete the following:

Please use a separate sheet for each member of a Consortium or Joint Venture (JV).

Name of Respondent (or Member of a Consortium or JV)	
Nature of Entity	
Business No./ Company No./ Other Identification No.	
Certificate of Incorporation / Registration: <i>[Evidence of Certificate of Incorporation/Registration or any other equivalent document evidencing registration of the company or companies (for a Consortium) in country of registration]</i>	
Registered Office Address	
Company Profile	
Website Address	

List of Major Shareholders			
Telephone		Name of Authorised Representative	
Fax		Email	
Place of Incorporation / Registration		Year of Incorporation / Registration	
Number of Staff			
Organisational Structure <i>[To attach that of the Company and, if a Consortium, then that of each member of the Consortium]</i>			
Company background and business history <i>[Brief statement of company's background and history, and, if a Consortium, then also the background and history each member of the Consortium.]</i>			
Resolution of the Board of Directors or any other equivalent governing body of the company or companies (for a Consortium) evidencing			

<p>approval/authority to submit an application</p>	
<p>Letter of Confirmation issued by the Respondent disclosing that the company does not have any director who has been convicted in any country for any criminal offence relating to fraud of financial impropriety or criminal misrepresentation or falsification of acts relating to any matter</p>	
<p>Letter of Confirmation issued by the Respondent disclosing whether or not any official of the FGN, TIC or any of its agencies is a former or present director, shareholder or has any pecuniary interest in the bidder and confirmation that all information presented in the bid are true and correct.</p>	
<p>The requirements set out below shall not apply to non-Nigerian companies and consortia.</p>	
<p>Certified true copies of the current Form CAC 2A (Return of Allotment – Post Incorporation); Form 7A (Notice of Change of Directors etc.) and Memorandum and Articles of Association of the company or companies (for a Consortium)</p>	

<p>Evidence of Current Pension Clearance from the National Pension Commission (PENCOM)</p>	
<p>Evidence of Current Certificate of Compliance in respect of the Industrial Training Fund Act CAP 19, LFN 2004 (the "IDTF Act") (as amended by the Industrial Training Fund Amendment Act, 2011)</p>	
<p>Evidence of Current Nigeria Social Insurance Trust Fund (NSITF) Compliance Certificate valid till 31 December 2021</p>	
<p>Evidence of Registration on the National Database of Federal contractors, Consultants and Service Providers by submission of Interim Registration Report (IRR) expiring on 31 December 2022</p>	

Annexure II
Technical Capacity of the Respondent
(Refer to Clauses 4.2.3 and 5.3.1 (a) of the RFQ)

Respondents or in the case of a Consortium, all Members nominated to provide the development, management and operating capacity for the Project must provide Free Trade Zone, industrial parks or similar facilities investment, development, management and operating experience to demonstrate that they meet the requirements stated in this RFQ Package.

Name of Respondent (or Member of a Consortium or JV)	
Investment Experience	
Company has experience in Free Trade Zone or industrial park investment	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Project Name
	(1)
	(2)
	(3)
	(4)

		(5)	
Details of Project (1)	Type of project		
	Project commencement date		
	Project completion date (or ongoing)		
	Location		
	Project value		
	Name of Partner(s) if applicable		
	Funding share (Company %: Partners' %)		
	Supporting documents	<i>Please list documents here and attach them in application</i>	
Details of Project (2)	Type of project		
	Project commencement date		
	Project completion date (or ongoing)		
	Location		
	Project value		
	Name of Partner(s) if applicable		
	Funding share		

	(Company %: Partners' %)	
	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (3)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Project value	
	Name of Partner(s) if applicable	
	Funding share	
	(Company %: Partners' %)	
	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (4)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Project value	
	Name of Partner(s) if applicable	
	Funding share	
	(Company %: Partners' %)	
	Supporting documents	<i>Please list documents here and attach them in application</i>

Details of Project (5)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Project value	
	Funding share (Company %: Partners' %)	
	Supporting documents	<i>Please list documents here and attach them in application</i>

Development Experience

Company has experience in Free Trade Zone or industrial park development	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Project Name
	(1)	
	(2)	
	(3)	
	(4)	
	(5)	

Details of Project (1)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	

	Project value	
	Name of Partner(s) if applicable	
	Company's role in the development	
	Experience in Conceptual design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Detail design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Construction	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Brownfield project	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (2)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Project value	
	Name of Partner(s) if applicable	
	Company's role in the development	
	Experience in Conceptual design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:

	Experience in Detail design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Construction	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Brownfield project	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (3)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Project value	
	Name of Partner(s) if applicable	
	Company's role in the development	
	Experience in Conceptual design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Detail design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Construction	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
Experience in Brownfield project	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:	

	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (4)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Project value	
	Name of Partner(s) if applicable	
	Company's role in the development	
	Experience in Conceptual design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Detail design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Construction	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Brownfield project	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Supporting documents	<i>Please list documents here and attach them in application</i>
	Type of project	

Details of Project (5)	Project commencement date	
	Project completion date (or ongoing)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Location	
	Project value	
	Name of Partner(s) if applicable	
	Company's role in the development	
	Experience in Conceptual design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Detail design	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Construction	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in Brownfield project	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Supporting documents	<i>Please list documents here and attach them in application</i>
Management and Operating Experience		
Company has experience in Free Trade Zone or industrial park management	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Project Name
	(1)	
	(2)	
	(3)	
(4)		

		(5)		
Details of Project (1)	Type of project			
	Project commencement date			
	Project completion date (or ongoing)			
	Location			
	Brief description of management and operating experience			
	Experience in operating Free Trade Zones	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:		
	Experience in warehouse operations	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:		
	Experience in investment promotions in international markets	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:		
	Experience with business linkages for enterprises operating within the Free Trade Zones	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:		
	Relevant recognition, accolades and rankings on size of operations and performance	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:		
	Supporting documents	<i>Please list documents here and attach them in application</i>		
Type of project				

Details of Project (2)	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Brief description of management and operating experience	
	Experience in operating in free trade zones	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in warehouse operations	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in investment promotions international markets	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience with business linkages for enterprises operating within the Free Trade Zone	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Relevant recognition, accolades and rankings on size of operations and performance	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (3)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	

	Brief description of management and operating experience	
	Experience in operating in free trade zones	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in warehouse operations	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in investment promotions in international markets	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience with business linkages for enterprises operating within the Free Trade Zone	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Relevant recognition, accolades and rankings on size of operations and performance	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (4)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Brief description of management and operating experience	

	Experience in operating in free trade zones	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in warehouse operations	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience in investment promotions in international markets	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Experience with business linkages for enterprises operating within the Free Trade Zone	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Relevant recognition, accolades and rankings on size of operations and performance	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
	Supporting documents	<i>Please list documents here and attach them in application</i>
Details of Project (5)	Type of project	
	Project commencement date	
	Project completion date (or ongoing)	
	Location	
	Brief description of management and operating experience	
	Experience in operating in free trade zones	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:

Experience in warehouse operations	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
Experience in investment promotions in international markets	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
Experience with business linkages for enterprises operating within the Free Trade Zone	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
Relevant recognition, accolades and rankings on size of operations and performance	<input type="checkbox"/> Yes <input type="checkbox"/> No Description:
Supporting documents	<i>Please list documents here and attach them in application</i>

ANNEXURE III

Financial Capacity of the Respondent

(Refer to Clauses 4.2.4 and 5.3.2 of the RFQ)

All boxes must be filled. Required certificates and/or forms must be attached.

The Respondent shall be in a good financial position at the close of the preceding financial year and/or provide a letter of financial support from a credible financial institution that supports its ability to provide equity funding and raise debt capital for the Project.

In case of a Consortium, the Member(s) nominated to be the financier of the Project, must provide financial information to demonstrate that they meet the requirements of good financial standing. Alternatively, the Lead Consortium and the Exclusive Members shall provide evidence of financial good standing and/or provide a letter of financial support from a credible financial institution that supports their proportional minimum holding threshold in the Consortium.

Please attach detailed audited financial statement for the past three (3) years.

Name of Respondent (or Member of a Consortium or JV)	
--	--

Audited account and Tax Clearance Certificates for the last three (3) years (2020, 2019 & 2018) of the company or companies (for a Consortium)	[Attach the required information to this FORM]
--	---

Name of Banker		
Address of Banker		
Telephone		Contact Name and Position
Fax		
Email		

Summarize Profit & Loss, actual assets and liabilities in reported currency for the latest three (3) years.

Financial Information (₦)	Formula	Last Financial Year 3 – 2018	Last Financial Year 2 – 2019	Last Financial Year 1 – 2020	Average for the last 3 financial years for all items except Revenue Growth (average of 2 years)
Total Capital	Short-Term Debt + Long-Term Debt + Equity				

Financial Information (₺)	Formula	Last Financial Year 3 – 2018	Last Financial Year 2 – 2019	Last Financial Year 1 – 2020	Average for the last 3 financial years for all items except Revenue Growth (average of 2 years)
Annual Net Worth	Total Assets – Short Term Liabilities – Long Term Liabilities				
Annual Revenue	Revenue (Yr1+Yr2+Yr3)/3				
Revenue Growth (%)	Current Year Revenue - Previous Year Revenue / Previous Year Revenue				
EBIT	EBIT (Yr1+Yr2+Yr3)/3				
EBIT Margin	[Sum (3 years' EBIT) / Sum (3 years' Revenue)]*100				
Current Assets	-				
Inventory	-				
Current Liabilities	-				

Financial Information (₦)	Formula	Last Financial Year 3 – 2018	Last Financial Year 2 – 2019	Last Financial Year 1 – 2020	Average for the last 3 financial years for all items except Revenue Growth (average of 2 years)
Long Term Liabilities	-				
Interest	-				
Cash Ratio	Current Assets-Inventory/ Current Liabilities				
Current Ratio	Current Assets/ Current Liabilities				
EBIT Interest Coverage	EBIT/Interest				
Total Fund	(Fixed Assets + Current Assets) or (Capital and Reserves + Long Term Liabilities + Short Term Liabilities)				
Debt Ratio - Debt to Total Fund	(Long Term Liabilities + Current Liabilities)/ Total Fund				

Summarize Profit & Loss, actual assets and liabilities in Nigerian naira (₦) for the latest three years.

Financial Information (#)	Formula	Last Financial Year 3 – 2018	Last Financial Year 2 – 2019	Last Financial Year 1 – 2020	Average for the last 3 financial years for all items except Revenue Growth (average of 2 years)
Total Capital	Short-Term Debt + Long-Term Debt + Equity				
Annual Net Worth	Total Assets – Short Term Liabilities – Long Term Liabilities				
Annual Revenue	Revenue (Yr1+Yr2+Yr3)/3				
Revenue Growth (%)	Current Year Revenue - Previous Year Revenue/ Previous Year Revenue				
EBIT	EBIT (Yr1+Yr2+Yr3)/3				
EBIT Margin	[Sum (3 years' EBIT)/ Sum (3 years' Revenue)]*100				
Current Assets	-				
Inventory	-				
Current Liabilities	-				

Financial Information (₦)	Formula	Last Financial Year 3 – 2018	Last Financial Year 2 – 2019	Last Financial Year 1 – 2020	Average for the last 3 financial years for all items except Revenue Growth (average of 2 years)
Long Term Liabilities	-				
Interest	-				
Cash Ratio	Current Assets-Inventory/ Current Liabilities				
Current Ratio	Current Assets/ Current Liabilities				
EBIT Interest Coverage	EBIT/Interest				
Total Fund	(Fixed Assets + Current Assets) or (Capital and Reserves + Long Term Liabilities + Short Term Liabilities)				
Debt Ratio - Debt to Total Fund	(Long Term Liabilities + Current Liabilities)/ Total Fund				

Note: To state Exchange Rate applied for conversion to Nigerian naira (₦)

Evidence of financial	Name of Financing Institution
------------------------------	-------------------------------

<p>capability, support and line of credit from credible financing institutions in support of your ability to develop the CFTZ in conjunction with the Sponsors</p>		
<p>Address of Banker</p>		
<p>Telephone</p>		<p>Contact Name and Position</p>
<p>Fax</p>		
<p>Email</p>		

ANNEXURE IV

Certificate from Statutory Auditor/ Company Secretary regarding Associate

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Associate) is held, directly or indirectly, by (name of Respondent/Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate as defined in the Glossary of the RFQ.

A brief description of the said equity held, directly or indirectly, is given below:

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorized signatory).

In the event that the Respondent/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken.

It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of experience score. Refer clauses 5.3.1.3 (g) of the RFQ.

ANNEXURE V

Statement of Legal Capacity

(To be forwarded on the letterhead of the Respondent/ Lead 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 authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thank you,

Yours faithfully,

(Signature, name and designation of the authorised signatory) For and on behalf of.....

*Please strike out which is not applicable.

ANNEXURE VI

Power of Attorney for Signing of the Response

(Refer to Clause 4.3.2)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of ,as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our response for pre-qualification and submission of our bid for the [Insert Project Name] Project proposed or being developed by the Bureau of Public Enterprises of the Government of the Federal Republic of Nigeria (the “Contracting Authority”) including but not limited to signing and submission of all response forms, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Contracting Authority, representing us in all matters before the Contracting Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Bureau of Public Enterprises 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 Institution.

AND we 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.

IN WITNESS WHEREOF WE, , THE ABOVE NAMED PRINCIPAL HAVE

EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF xxx

For
(Signature.....,
Name.....,
Designation.....
and address)
Witnesses:

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 Respondent 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 Respondent.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the [Insert country] Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Respondents from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the [Insert country] Embassy if it carries a conforming Apostille certificate.

Power of Attorney for Lead Member of Consortium

(Refer Clause 4.3.2)

Whereas the Bureau of Public Enterprises of the Government of the Federal Republic of Nigeria (“the Contracting Authority”) has invited applications from interested parties for the Build, Rehabilitate, Operate and Transfer of the Calabar Free Trade Zone (the “Project”).

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, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S..... having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is 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 the bid of the Consortium and generally to represent the Consortium in all its dealings with Bureau of Public Enterprises 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 Contracting 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 2

For
(Signature)
(Name & Title)

For
(Signature)
(Name & Title)

For
(Signature)
(Name & Title)

Witnesses:

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 Respondent 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 Respondent.

For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Nigerian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Respondents from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Nigerian Embassy if it carries a conforming Apostille certificate.

Joint Bidding Agreement

(Refer Clause 4.1(c)(V) and 4.5 (e)(ii))

(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, 1967} 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, 1967} 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, 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)}¹

AND

4. {..... Limited, a company incorporated under the Companies Act, 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)}¹

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) The Bureau of Public Enterprises of the Government of the Federal Republic of Nigeria (hereinafter referred to as the “Contracting Authority”) which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited responses (the “RFQ

Responses”) by its Request for Qualification No. dated (the “RFQ”) for pre-qualification and short-listing of bidders for development and maintenance of the Calabar free trade zone, Calabar (the “Project”) through a public-private Partnership arrangement.

(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 Response. ⁱ

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalized 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 Companies and Allied Matters Act 2020 for entering into a Concession Agreement with the Bureau for Public Enterprises 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;

(c) Party of the Third Part shall be the Financial Member of the Consortium; and

(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other 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:}

{Fourth Party:}

6.2 The Parties undertake that a minimum of twenty-five per cent (25%) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and net worth have been reckoned for the purposes of qualification and short listing of Respondents for the Project in terms of the RFQ.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least five per cent (5%) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.

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 organized, 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 authorized 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 organizational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other governmental authorization, 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 pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Respondent is not pre-qualified.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of the Federal Republic of Nigeria.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Contracting 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

SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by:
(Signature)
(Name)
(Designation)
(Address)

SECOND PART
(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of THIRD PART:
(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of FOURTH PART:
(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of FIFTH PART:
(Signature)
(Name)
(Designation)
(Address)

For and on behalf of SIXTH PART:
(Signature)
(Name)
(Designation)
(Address)

In the presence of:

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 legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.
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Declaration of Interest

1. Any legal person, including persons employed by the principal, or persons having a kinship with persons employed by the principal, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the principal, or to persons connected with or related to them, it is required that the bidder or his/her authorized representative declare his/her position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest, where-
 - i. the bidder is employed by the principal; and/or
 - ii. the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

- 2.1 Full Name of Bidder or his Or her representative:
- 2.2 Identity Number:
- 2.3 Position occupied in the Company (director, shareholder, etc):.....
- 2.4 Company Registration Number:.....
- 2.5 Tax Reference Number:.....
- 2.6 VAT Reference Number:.....
- 2.7 Are you or any person connected with the bidder, employed by the Principal? YES / NO
- 2.7.1 If so, state particulars.
- 2.8 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the principal and who may be involved with the evaluation and or adjudication of this bid? YES / NO
- 2.8.1 If so, state particulars.
- 2.9 Are you, or any person connected with the bidder, aware of any relationship ((family, friend, other) between the bidder and any person employed by the principal who may be involved with the evaluation and or adjudication of this bid? YES / NO
- 2.9.1 If so, state particulars

DECLARATION

I, THE UNDERSIGNED (NAME)
CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2.1 TO 2.3.1 ABOVE IS CORRECT.
I ACCEPT THAT THE PRINCIPAL MAY ACT AGAINST ME IN ACCORDANCE WITH THE TERMS AND
CONDITIONS OF THE RFQ SHOULD THIS DECLARATION PROVE TO BE FALSE.

Signature: _____ Date: _____

Position of bidder: _____