



**Lagos State Government**

**Ministry of Works & Infrastructure  
Office of Public-Private Partnerships (OPPP)**

**Request  
for  
Qualification**

**4<sup>th</sup> Mainland Bridge (4MB) Project**

**February 2020**

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**DISCLAIMER**

This Request for Qualification (“RfQ”) was prepared by the Project Advisers and the information provided herein, or subsequently provided to the Applicants whether verbally or in documentary or any other form by or on behalf of the Contracting Authority, is provided to Applicants on the terms and conditions set out in this RfQ and such other terms and conditions subject to which such information is provided.

The purpose of this RfQ is to obtain information on the qualifications and experience of Applicants for the execution of the Project, in order to facilitate the selection of qualified Applicants. This RfQ is not an agreement and is neither an offer nor invitation by the Contracting Authority to the Applicants or any other person and is not intended to provide the basis of any credit, legal, financial, commercial or other evaluation in respect of the Project. Each Applicant shall make and shall be deemed to have made its own independent investigation, evaluation and assessment on the risks of the Project and any other matter it considers relevant to the Project.

The information, statements, forecasts, opinions, projections, and comments (collectively referred to as the “**Statements**”) contained in this RfQ Package may not be used, in whole or in part, nor be furnished to any person other than those to whom copies of this RfQ have been sent for the sole purpose of submitting their qualifications for the execution of this Project. The Statements reflect various assumptions and assessments arrived at by the Contracting Authority in relation to the Project. Such Statements do not purport to contain all the information that each Applicants may require and may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RfQ and obtain independent advice from appropriate sources. This RfQ may not be appropriate for all persons, and it is not possible for the Contracting Authority to consider the investment objectives, financial situation and needs of each Applicant who reads or responds to this RfQ.

This RfQ is distributed on the explicit understanding that the Statements contained herein are preliminary in nature, are subject to amendment and completion, have not been independently verified, and that no representation or warranty, expressed or implied, is made in respect of the Project. No agent, advisor or officer or employee of the Contracting Authority is authorized to make any such representation or warranty, nor is any responsibility accepted with respect to the authenticity, validity, completeness, accuracy or reasonableness of any Statements contained in this RfQ or in any accompanying documents or further documents supplied in connection with this RfQ or to any Statements contained in this RfQ being updated or remaining unchanged in any respect as of any date or dates after those stated in this RfQ or in any supplementary documents. The Contracting Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this RfQ.

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

The Contracting Authority shall not be responsible for any action or decision of any Applicant based on, reliant upon, or in reference to any Statements contained herein and is further not responsible for any costs, expenses, or losses of any sort whatsoever, or howsoever arising as a consequence of or in relation to any Statements contained herein or any actions or decisions taken based on, reliant upon or in reference to any such Statements. In this regard, the Applicant shall hold the Contracting Authority harmless against any liability.

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

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

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

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

The issuance of this RfQ does not imply that the Contracting Authority is bound to select any Applicant for the Project.

**GLOSSARY**

<b>Term</b>	<b>Definition</b>
Applicant	Any Firm, Company or Consortium invited by the Contracting Authority to respond to this RfQ.
Application(s)	A response in writing to this RfQ by an Applicant in the prescribed formats, demonstrating evidence of technical and financial capacity in relation to the Project qualifications to be submitted by Applicants.
Application Deadline	5:00pm on Friday, 20 March 2020
Associate	In relation to an Applicant/Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium. In this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.
Award	The award by the Contracting Authority of the Concession Agreement to the Preferred Bidder.
Bidder	A pre-qualified Applicant invited by the Contracting Authority to respond to the RFP.
Selection/Bidding Process	The six-stage process (from the publication of the EOI to the signing of the Concession Agreement) adopted by the Contracting Authority for the selection of a suitable concessionaire for delivery of the Project.
Bridge	The Fourth Mainland Bridge in Lagos State, being the 38-kilometre bridge that would connect Lagos Island by way of Lekki, Langbasa and Baiyeku towns and pass across the Lagos Lagoon to Itamaga in Ikorodu.
Business Day	A day (other than a Saturday or Sunday) on which banks are open for general business in Lagos, Nigeria.
BOO	Build – Own – Operate
BOT	Build – Operate – Transfer
BOLT	Build – Own – Lease – Transfer
BOOT	Build – Own – Operate – Transfer
City	Lagos, Nigeria
Coercive Practice	Impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

Term	Definition
Collusive Practice	An arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
Concession Agreement	The agreement to be entered between the Contracting Authority and the Preferred Bidder for the execution of the Project.
Consortium	Two or more firms, individuals or companies who jointly respond to this RfQ.
Consortium Lead Member	The entity designated and authorised as such by the Power of Attorney in the form of Annexure 3.
Consortium Member	A member firm, company or individual of a Consortium.
DBFOMT	Design, Build, Finance, Operate, Maintain and Transfer
Fraudulent Practice	Any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead a party to obtain financial or other benefit or to avoid an obligation.
Contracting Authority	Collectively, <ul style="list-style-type: none"> <li>i. the Lagos State Government;</li> <li>ii. the Lagos State Ministry of Works and Infrastructure; and</li> <li>iii. the Lagos State Public-Private Partnerships Office.</li> </ul>
Eligible Project	A project costing at least US\$1 billion, undertaken under a concession of a public private partnership agreement which the Applicant has executed fully or partially during the five (5) years immediately preceding the Application Deadline.
Net Cash Accruals	Profit After Tax + Depreciation
Net Worth	Net Worth shall mean: (Subscribed and Paid-up Equity + Reserves) <b>less</b> (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
Obstructive Practice	(a) Deliberately destroying, falsifying, altering, or concealing evidence material to the investigations or making false statements to investigators in order to materially impede the Contracting Authority investigation into allegations of a Corrupt Practice, a Fraudulent Practice, a Coercive Practice, a Collusive Practice, and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigations or from pursuing the investigations; and/or

<b>Term</b>	<b>Definition</b>
	(b) Acts intended to materially impede the exercise of the Contracting Authority's inspection and audit rights.
Preferred Bidder	The Bidder designated by the Contracting Authority as the most qualified for the execution of the Project, following the conclusion of the Selection/Bidding Process.
Pre-Application Meeting	The meeting among the Contracting Authority and the Applicants, held prior to the Applications and notified to prospective Applicants by the Contracting Authority.
Project	The design, development, construction, procurement, financing, commissioning, operation, maintenance and transfer of the Lagos State 4th Mainland Bridge, including the development of tolling facilities and adjacent real estate infrastructure.
Project Advisers	Collectively:  i. Advanced Engineering Consultants (AEC); ii. KPMG Advisory Services; and iii. Olaniwun Ajayi LP
Project Estimated Cost	Based on the specimen design and route selection is US\$2.2billion
PPP	Public Private Partnership
RfP	Request for Proposal to be issued to Pre-Qualified Bidders.
RfQ	Request for Qualification.
Pre-Qualified Bidder(s)	A Bidder to whom the Contracting Authority issues an RfP, following such bidder's compliance with the Guide to Evaluation Criteria contained in Section D of this RfQ.
TBD	To Be Disclosed



**A. INTRODUCTION**

**1. Background**

- 1.1 The Lagos State Government (“LASG”), acting through its Ministry of Works & Infrastructure, and the Lagos State Office of Public-Private Partnerships (collectively referred to as the “Contracting Authority”) intends to construct the Fourth Mainland Bridge (“the Project”) under a Design, Build, Finance, Operate, Maintain and Transfer arrangement.
- 1.2 The Project is a proposed PPP transport infrastructure development, which includes the construction and operation of a greenfield tolled road and bridge with a design speed of 120 km/h, including the development of adjacent real estates. It aims to relieve severe congestion on the existing Third Mainland Bridge, while opening new areas of the City for future development. 4MB is one of the priority solutions to relieve traffic and distribute social and economic growth across the State. The Project is aligned with the Lagos State Strategic Transport Master Plan and National Integrated Infrastructure Master Plan which aims to raise Nigeria’s stock of infrastructure from the current 20 - 25% of GDP to at least 70% of GDP by 2043.
- 1.3 The Project will span about 38 kilometres, starting from Abraham Adesanya in Ajah, on the Eti-Osa-Lekki-Epe corridor and traverse the North West towards the Lagoon shoreline of the Lagos-Ibadan Expressway via Owutu/Isawo in Ikorodu.
- 1.4 On the basis of the specimen design and route selection, the “Estimated Project Cost” is US\$ 2.25 billion (NGN840 billion).
- 1.5 The Contracting Authority has commenced a competitive Selection/Bidding process for the selection of a Concessionaire, to whom the Project may be awarded. The Contracting Authority intends to pre-qualify and shortlist suitable Applicants who will be eligible for participation in the Request for Proposal (RFP) stage, based on criteria set out in this RfQ.
- 1.6 The Preferred Bidder (“the Concessionaire”) shall be responsible for the “Design, Build Finance, Operation, Maintenance & Transfer” (DBFOMT) of the Project, in accordance with the provisions of a concession agreement (“the Concession Agreement”) to be entered between the Concessionaire and the Contracting Authority in the form to be provided by the Contracting Authority as part of the Bidding Documents during the RFP stage of the Selection/Bidding Process.
- 1.7 The Contracting Authority shall receive responses pursuant to this RfQ in accordance with the terms set forth herein as modified, altered, amended, and clarified from time to time by the Contracting Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the Application Deadline.

**2. Description of Selection/Bidding Process**

- 2.1 The Contracting Authority has adopted a six-stage process (collectively referred to as the “Selection/Bidding Process”) for the selection of a suitable concessionaire for delivery of the Project.
- 2.2 The first stage of the Selection/Bidding Process (the “Expression of Interest stage”) involved Applicants indicating interest in participating in the Project, in response to the publication issued by the Contracting Authority on 27 November 2019. Thirty-Nine (39) applicants expressed interest in the Project, thirty-two (32) of which fully qualified with the Expression of Interest (EOI) submission requirements.
- 2.3 The second stage (the “Request for Qualification” or “Qualification” stage) involves qualification of pre-qualified Applicants from the EOI stage who shall demonstrate their financial and technical eligibility to carry out the Project, as well as other prerequisites as indicated by the Contracting Authority (the “Qualification”). The thirty-two (32) Applicants who fully qualified with the EOI requirements have been issued this Request for Qualification. The outcome of the Request for Qualification stage would be an announcement of successful Pre-Qualified Bidders who shall be eligible for participation in the third stage of the process – “Request for Proposals” (RfP).
- 2.4 In the Pre-Qualification stage, Applicants would be required to provide all the information specified in this RfQ. Only those Applicants that are pre-qualified and shortlisted by the Contracting Authority would be invited to make Applications for the Project within the timeframe stipulated.
- 2.5 Following the evaluation of the responses to the RfQ, qualified bidders will be issued the RfP for the implementation of the Project (“the Bid Stage”). In the Bid Stage, Bidders will be required to deposit a Bid Security equivalent to about 0.1% of the estimated project cost.
- 2.6 Later stages of the Selection/Bidding Process, following the Request for Proposal stage, are:
  - a) Select Preferred and Reserve Bidders
  - b) Negotiate Concession Agreement with Preferred Bidder
  - c) Sign Concession Agreement with Preferred Bidder
- 2.7 Any queries or request for additional information concerning this RfQ shall be submitted by e-mail to [4MB@lagosstate.gov.ng](mailto:4MB@lagosstate.gov.ng) and [4MB@ppplagos.ng](mailto:4MB@ppplagos.ng)

### 3. Schedule of Selection/Bidding Process

Action Points	Timeframe <sup>1</sup>
Publication of request for “Expressions of Interest” (EoI) from interested Groups	Wednesday, 27 November 2019
Receipt, collation & review of “EoI” submissions	Wednesday, 18 December 2019
Publication of “List” of successful “EoI” Respondents	Tuesday, 31 December 2019
<b>Issuance “Request for Qualification” (RfQ) to selected “EoI” Respondents</b>	<b>Monday, 10 February 2020</b>
<b>Date for commencement of “Pre-Application Meetings”</b>	<b>Monday, 17 February 2020</b>
<b>End of “Pre-Application Meetings”</b>	<b>Friday, 28 February 2020</b>
<b>Date for return of “RfQ Applications”</b>	<b>Friday, 20 March 2020</b>
<b>Opening of “Returned Applications”</b>	<b>Tuesday, 23 March 2020</b>
<b>Publication of “List” of successful “RfQ” Applicant</b>	<b>Monday, 14 April 2020</b>
Issuance of “Request for Proposal” (RfP) to “Pre-Qualified” Groups	TBD
Date for “Return” of “RfP” Documents	TBD
Opening of “RfP” Documents	TBD
Publication of “List” of successful “RfP” Bidder & “Reserved Bidders”	TBD
Negotiation with “Preferred Bidder”	TBD
Execution of a “Concession Agreement” with “Preferred Bidder”	TBD
Execution of “Financial Closure” with “Preferred Bidder”	TBD
Award of Concession Contract to “Preferred Bidder”	TBD

### 4. Invitation to Pre-Qualify

Further to your compliance with the EOI evaluation criteria, the Contracting Authority hereby invites your Firm/Company/Consortium to make an Application in accordance with the terms of this RfQ for the purpose of demonstrating your technical and financial capabilities to execute the Project.

Applicants should review the entire RfQ, prepare their responses in strict compliance therewith and submit their Applications in the form specified in Appendices of this RfQ.

**B. EVALUATION PROCESS**

**5. Scope of Selection/Bidding Process**

5.1 The Contracting Authority wishes to receive Applications from Applicants, for qualification in order to shortlist experienced and capable Bidders for the RfP Stage.

5.2 Shortlisted Applicants may be subsequently invited to submit bids for the Project under the RfP.

**6. Eligibility of Applicants**

6.1 For determining eligibility of Applicants, only pre-qualified Applicants from the Expression of Interest phase shall apply.

6.2 Each Applicant shall enclose with its Application the following:

6.2.1 **TECHNICAL CAPACITY:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall, over the past 5 (five) financial years preceding the Application Deadline, have:

6.2.1.1 Paid for, or received payments for, construction of Eligible Project(s); and/or

6.2.1.2 Paid for development of Eligible Projects(s) in Category 1 and/or Category 2 specified in Clause 22.1; and/or

6.2.1.3 Collected and appropriated revenues from Eligible Projects(s) in Category 1 and/or Category 2 specified in Clause 22.1,

Such that the sum total of the above is more than US\$4.4billion (the “**Threshold Technical Capacity**”),

Provided that at least half of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 22.1.

6.2.2 **FINANCIAL CAPACITY:** The Applicant shall have a minimum Net Worth (the “**Financial Capacity**”) of US\$500Million at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and net worth of Members, who have and shall continue to have an equity share of at least 20% (twenty percent) each in the special purpose vehicle, (the “**SPV**”), (to be incorporated under the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004, which if applicable, will serve as the Concessionaire for the purpose of executing the Concession Agreement and implementing the Project), should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 20% (twenty percent) of the subscribed and paid up equity of the SPV; and (ii) 6% (six per cent) of the Total Project Cost specified in the Concession Agreement.

- 6.2.3 **O&M Experience:** The Applicant shall, [in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project, and has either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (O&M) of Category 1 projects specified in Clause 22.1, which have an aggregate capital cost equal to the Estimated Project Cost and with an annual operating cost of over US\$10M per year over 5years.
- 6.2.4 **Tolling Experience:** The Applicant shall have by itself, ( or in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project), experience of 5 (five) years or more in tolling of Category 1 projects specified in Clause 22.1, which have an aggregate capital cost equal to the Estimated Project Cost.
- 6.2.5 The Applicants shall enclose with the application, to be submitted as per the format at Appendix II, complete with its Annexes the following:
- (i) Certificate(s) from its statutory auditors or the concerned client(s) stating the payments made/received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in Clause 6.2.1 above. In case a particular job/contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in the work done for that particular job/contract by producing a certificate from its statutory auditor or the relevant client; and
  - (ii) Certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 6.2.5 (ii). For the purposes of this RfQ, net worth (the “**Net Worth**”) shall mean the sum of the 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.
  - (iii) The Applicant should submit a Power of Attorney as per the format at Appendix III, authorizing the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix IV I Where the Applicant is a single entity, it may be required to form an appropriate SPV. In cases where the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
    - (a) Number of members in a Consortium shall not exceed 6 (six) and shall consist at a minimum an engineering, procurement and construction contractor, with his Designers,

- O&M and Tolling partner but information sought in the Application may be restricted to 5 (five) members in the order of their equity contribution;
- (b) subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;
  - (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 20% (twenty per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix III, signed by all the other members of the Consortium;
  - (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical, O&M and tolling obligations;
  - (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification under this RfQ. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
  - (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
  - (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix V (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
    - i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RfQ, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, and in the event the concession to undertake the Project is awarded to the Consortium; clearly outline the proposed roles and responsibilities, if any, of each member;
    - ii. clearly outline the proposed roles and responsibilities, if any, of each member
    - iii. commit the minimum equity stake to be held by each member;
    - iv. commit that each of the members, whose experience will be evaluated for the purposes of this RfQ, shall subscribe to 20% (twenty per cent) or more of the paid up and subscribed equity of the SPV and shall further commit 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) 20% (twenty per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 6% (six per cent) of the Total Project Cost specified in the Concession Agreement.

- v. members of the Consortium undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid-up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project; and
  - vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
  - vii. except as provided under this RfQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Contracting Authority.
- 6.2.6 Any entity which has been barred by the Federal Government of Nigeria and Lagos State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium. Any Application made which is found by the Contracting Authority to have been submitted in breach of this provision shall be automatically disqualified.
- 6.2.7 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Applicant, Consortium Member or Associate.
- 6.2.8 In computing the Technical Capacity and Net Worth of the Applicant/Consortium Members under Clauses 6.2.1 and 6.2.5, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.
- 6.2.9 The following conditions shall be adhered to while submitting an Application:
- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making provision for incorporation of the requested information;
  - (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Where applicable, the RfP will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
  - (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with the criteria provided in this RfQ; and

(d) where the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

6.2.10 Notwithstanding anything to the contrary contained herein, in the event that the Application Deadline falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

## **7. Changes in Composition of Consortium**

7.1 Where the Applicant is a Consortium, changes in the composition of the Consortium may be permitted by the Contracting Authority prior to the Application Deadline, only where:

7.1.1. the Lead Member continues to be the Lead Member of the Consortium;

7.1.2. the substitute (in the case of substitution) is at least equal, in terms of Technical and/or Financial Capacity required by this RfQ, to the Consortium Member/Associate who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification criteria for Applicants; and

7.1.3. the new Consortium Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally and is not a Member and/or Affiliate of any other Consortium bidding for the Project.

7.2 Notwithstanding the provisions of paragraph 7.1 above, approval for change in the composition of a Consortium shall be at the sole discretion of the Contracting Authority.

7.3 Notwithstanding anything to the contrary contained in this RfQ, an Applicant may within **five (5) days** after the Application Deadline, remove from its Consortium any Member who suffers from conflict of interest, and such removal shall be deemed to cure the conflict of interest arising in respect thereof. However, the resulting Consortium shall continue to meet the pre-qualification criteria for Applicants.

## **8. Number of Applications per Applicant and Costs Thereof**

8.1 An Applicant may make a Application as an individual firm/company or as a Consortium.

8.2 Applicants are only permitted to make one (1) Application each in response to this RfQ. An Applicant bidding individually or as a Consortium Member shall not be entitled to make another Application either individually or as a Consortium Member, as the case may be.

8.3 The Applicants shall be responsible for all the costs associated with the preparation of their Applications and their participation in the Selection/Bidding Process, if shortlisted. The Contracting Authority shall



not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection/Bidding Process.

**9. Contracting Authority’s Right to Accept or Reject any or all Applications**

- 9.1 Notwithstanding anything contained in this RfQ, the Contracting Authority reserves the right to accept or reject any Application , to waive minor informalities in Application s received, and to annul the Selection/Bidding Process and reject all Application s at any time prior to the award of the Concession Agreement, without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons for any actions taken. In the event that the Contracting Authority rejects or annuls all Applications, the Contracting Authority may, in its discretion, invite all eligible Applicants to submit fresh Applications hereunder.
- 9.2 The Contracting Authority reserves the right to reject any, and disqualify an Applicant if:
- 9.2.1 at any time, a material misrepresentation is made or uncovered, or
- 9.2.2 the Applicant does not provide, within the time specified by the Contracting Authority, the supplemental information sought by the Contracting Authority for the evaluation of the Application.
- 9.3 Where an Applicant who is a Consortium Lead Member has been disqualified in accordance with paragraph 9.2 above, then its entire Consortium may be disqualified.
- 9.4 In the event that the disqualification of an Applicant and rejection of its Application occurs after the Applications have been opened, the Contracting Authority reserves the right to take any other measure as may be deemed fit in its sole discretion, including annulment of the Selection/Bidding Process.
- 9.5 The Contracting Authority reserves the right to verify all statements, information and documents submitted by any Applicant in response to the RfQ. Any such verification or lack of such verification by the Contracting Authority shall not relieve the Applicant of its obligations or liabilities hereunder, nor will it affect any rights of the Contracting Authority thereunder.

**10. Acknowledgement by Applicants**

- 10.1 No later than five (5) Business Days after receipt of the RfQ, you are required to notify the Contracting Authority of such receipt using the form in Appendix I (*Acknowledgement of Receipt of RfQ*).
- 10.2 It shall be deemed that by making the Application, the Applicant has:
- a) made a complete and careful examination of the RfQ;
  - b) received all relevant information requested from the Contracting Authority; and
  - c) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

#### **11. Clarification of RfQ and Pre-Application Meeting**

- 11.1 An Applicant requiring any clarification on this RfQ shall contact the Contracting Authority in writing at the Contracting Authority's address at **PPP Lagos Office, Governor's Office, Alausa, Ikeja, Lagos, Nigeria** or in an email to [4MB@lagosstate.gov.ng](mailto:4MB@lagosstate.gov.ng) and [4MB@ppplagos.ng](mailto:4MB@ppplagos.ng) or raise enquiries during the Pre-Application Meeting. The Contracting Authority will respond in writing to any request for clarification, provided that such request is received no later than five (5) Business Days prior to the Application Deadline. The Contracting Authority shall forward copies of its response to all Applicants who have been issued with this RfQ; including a description of the inquiry but without identifying its source. Should the Contracting Authority deem it necessary to amend the RfQ as a result of a request for clarification, it shall do so following the procedure under Clause 12 below.
- 11.2 Each Applicant's designated representative is required to attend a Pre-Application Meeting at such date, time and venue to be communicated in writing or in an email by the Contracting Authority not later than 7 days before the Pre-Application Meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 11.3 The Applicant is requested, as far as possible, to submit any questions in writing to the Contracting Authority not later than one (1) week before the Pre-Application Meeting.
- 11.4 Minutes of the Pre-Application Meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Applicants who have acquired/been issued with this RfQ. Any modification to this RfQ that may become necessary as a result of the Pre-Application Meeting shall be made by the Contracting Authority exclusively through the issue of an addendum to this RfQ which will be shared via the email addresses of the Applicants, and not through the minutes of the Pre-Application Meeting. Non-attendance of the Pre-Application Meeting will not be a cause for disqualification of an Applicant.

#### **12. Amendments to this RfQ**

- 12.1 At any time prior to the Application Deadline, the Contracting Authority may amend this RfQ by issuing an addendum to that effect.
- 12.2 Any addendum issued shall be deemed part of this RfQ and shall be communicated in writing to all who have obtained this RfQ from the Contracting Authority. The Contracting Authority shall promptly publish the addenda on the Contracting Authority's website.
- 12.3 To give prospective Applicants reasonable time in which to take an addendum into account in preparing their Applications, the Contracting Authority may, at its discretion, extend the Application Deadline, pursuant to Clause 15 below (*Deadline for Application*).

### **13. Language of Applications**

The Applications and all communications in relation to or concerning the Applications shall be in English language.

### **14. Format and Signing of Applications**

14.1 The Applicant shall prepare one (1) original of the documents comprising the Application in the forms prescribed in Annexure 2 (together with originals/copies of documents required to be submitted along therewith pursuant to this RfQ) and clearly mark it “ORIGINAL”. In addition, the Applicant shall submit two (2) copies of the Application, along with documents required to be submitted along therewith pursuant to this RfQ and clearly marked “COPY”. The hard copies shall be submitted in a wax-sealed envelope, addressed “4<sup>th</sup> MAINLAND BRIDGE – RfQ” and sent to **PPP Lagos, Governor’s Office, Alausa, Ikeja, Lagos, Nigeria**. The Applicant shall also submit electronic copies of the Application to [4MB@lagosstate.gov.ng](mailto:4MB@lagosstate.gov.ng) and [4MB@ppplagos.ng](mailto:4MB@ppplagos.ng). In the event of any discrepancy between the original and the electronic copy, the original shall prevail.

14.2 Applicants shall mark as “CONFIDENTIAL”, all information in their Applications which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

### **15. Deadline for Application**

15.1 All Applications must be submitted to the Contracting Authority before the Application Deadline.

15.2 The Contracting Authority may, at its discretion, extend the Application Deadline by amending this RfQ by a notice in writing issued to all Applicants. In which case, all rights and obligations of the Contracting Authority and Applicants subject to the previous Application Deadline shall thereafter be subject to the new Application Deadline, as extended and notified to the Applicants.

### **16. Late Applications**

Applications received after the specified time on the Application Deadline or issued addendum for extension shall not be eligible for consideration and shall be summarily rejected.

### **17. Withdrawals, Substitutions, or Modifications of Applications**

17.1 An Applicant may withdraw, substitute, or modify its Application after it has been submitted by sending a written notice, duly signed by an authorised representative. The corresponding substitution or modification of the Application must accompany the respective notice.

17.2 All notices must be:

17.2.1 submitted in wax-sealed envelopes which are clearly marked “WITHDRAWAL”, “SUBSTITUTION”, “MODIFICATION”, as applicable; and

17.2.2 received by the Contracting Authority prior to the Application Deadline.

- 17.3 Any alteration or modification in the Applications or additional information supplied subsequent to the Application Deadline, unless the same has been expressly sought for by the Contracting Authority, shall be disregarded.

## **EVALUATION PROCESS**

### **18. Opening and Evaluation of Applications**

- 18.1 The Contracting Authority shall publicly open and read out all Applications received by the Application Deadline, at 5:30pm (Nigerian Time) on the Application Deadline, at the place specified in paragraph 14.1, in the presence of the Applicants' designated representatives and anyone who chooses to attend.
- 18.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Application shall be destroyed. No Application withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at the Application opening.
- 18.3 Next, envelopes marked "SUBSTITUTION" shall be opened, read out and exchanged with the corresponding Application being substituted. The substituted Application shall be destroyed. No Application substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at the Application opening.
- 18.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Application. No Application modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at the Application opening.
- 18.5 Next, all remaining envelopes shall be opened one at a time, reading out the name of the Applicant and whether there is a modification Applicant.
- 18.6 Only Applications that are read out at Application opening shall be considered further.
- 18.7 The Contracting Authority shall neither discuss the merits of any Applications nor reject any Application (except for late and withdrawn Applications).
- 18.8 The Contracting Authority shall prepare a record of the Application opening that shall include, as a minimum the name of the Applicant and whether there is a withdrawal, substitution, or modification.
- 18.9 The Applicants' representatives who are present shall be requested to sign the record. The omission of an Applicant's signature on the record shall not invalidate the contents and effect of the record.
- 18.10 Applicants are advised that qualification of Applications will be entirely at the discretion of the Contracting Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection/Bidding Process or selection will be given.
- 18.11 Any information contained in the Application shall not in any way be construed as binding on the Contracting Authority, its agents or assign, but shall be binding against the Applicant if it is awarded the Project based on such information.

- 18.12 The Contracting Authority reserves the right not to proceed with the Selection/Bidding process at any time without notice or liability and to reject any or all Application (s) without assigning any reasons.
- 18.13 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Contracting Authority may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Applicant.
- 18.14 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Contracting Authority to be incorrect or erroneous, the Contracting Authority shall reject such claim and exclude the same from computations of Eligible Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Contracting Authority reserves the right to reject the Application in accordance with the provisions of this RfQ.

## **19. Confidentiality**

- 19.1 Information relating to the clarification or evaluation of Applications and recommendation of any Applicant (s) shall not be disclosed to Applicants and/or any other person who is not officially concerned with the Selection/Bidding Process or is not a retained professional adviser advising the Contracting Authority in relation to matters arising out of or concerning the Selection/Bidding Process, until and unless information pertaining to the Selection/Bidding Process is officially transmitted by the Contracting Authority.
- 19.2 The Contracting Authority shall treat all information submitted by the Applicants as confidential and will require all those who have access to such material to treat the same accordingly. The Contracting Authority shall not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Contracting Authority or as may be required by law or in connection with any legal process.
- 19.3 Any effort by an Applicant to influence the Contracting Authority in the evaluation of the Applications may result in the rejection of its Application.
- 19.4 Notwithstanding the foregoing, following the Application Opening, any Applicant may contact the Contracting Authority in writing from time to time on any matter related to the Selection/Bidding Process.

## **20. Clarification of Applications**

- 20.1 To assist in the examination, evaluation and comparison of the Applications, and qualification of the Applicants, the Contracting Authority may, at its discretion, ask any Applicant for a clarification of its Application. Any clarification submitted by an Applicant that is not in response to a request by the Contracting Authority shall not be considered. The Contracting Authority's request for clarification and the response shall be in writing. No change in the substance of the Application shall be sought, offered,

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or permitted, except to confirm the correction of arithmetic errors discovered by the Contracting Authority in the evaluation of the Applications.

- 20.2 If an Applicant does not provide clarifications of its Application by the date and time stated in the Contracting Authority's request for clarification, its Application may be rejected.

## **C. EVALUATION CRITERIA**

### **21. Evaluation Parameters**

- 21.1 Only those Applicants who meet the eligibility criteria specified herein shall qualify for evaluation under this Section. Applicants who do not meet these criteria shall be rejected.
- 21.2 The Applicant's competence and capability is proposed to be established by the following parameters:
- a) Technical capacity; and
  - b) Financial capacity.

### **22. Technical Capacity**

- 22.1. Subject to the provisions of this RfQ, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in paragraph 22.3 below ("**the Eligible Projects**"):

Category 1: Project experience on Eligible Projects in highways sector that qualify under Clause 22.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 22.3

Category 3: Construction experience on Eligible Projects in [highways] sector that qualify under Clause 22.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 22.4

For the purpose of this RfQ:

- i. highways sector would be deemed to include highways, expressways, bridges, causeway bridges, tunnels longer than 10km; and
  - ii. core sector would be deemed to include ports, airports, railways, metro rail and marine and heavy piling works.
- 22.2. Eligible Experience in respect of each category shall be measured only for Eligible Projects.
- 22.3. For a project to qualify as an Eligible Project under categories 1 and 2:
- a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT, DBFOMT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public authority.
  - b) The entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 20% (twenty percent) equity during the entire year for which Eligible Experience is being claimed;
  - c) The capital cost of the project should be more than US\$1Billion; and

- d) The entity claiming experience shall, during the last 10 (ten) financial years preceding the Application Deadline, have (i) paid for development of the project (excluding cost of land), and/or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of the fixed project assets, such as revenues from highways, causeway bridges, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.
- 22.4. For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction works or received payments from its clients(s) for construction works executed, fully or partially, during the ten (10) financial years immediately preceding the Application Deadline.
- 22.5. The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 22.6. An Applicant’s experience shall be measured and stated in terms of a score (the “**Experience Score**”). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 22.1, divided by 10,000,000 and then multiplied by the applicable factor in Table 1.1 below. In case the Applicant 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 1.1: Factors for Experience across categories**

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

- 22.7. 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.



**Details of Experience**

- 22.7.1. The Applicant should furnish the details of the Eligible Experience for the last ten (10) financial years preceding the Application Deadline.
- 22.7.2. The Applicants must provide the necessary information relating to the Technical Capacity as per Appendix II, Annex II.
- 22.7.3. The Applicant should furnish the required project-specific information and evidence in support of its claim of Technical Capacity, as per format in Appendix II, Annex II.

**Financial information for purposes of evaluation**

- 22.7.4. This Application must be accompanied by the IFRS compliant Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Application is made.
- 22.7.5. In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 22.7.6. The Applicant must establish the minimum Net Worth specified in Clause 6.2.5 and provide details as per format in Appendix II, Annex III.

**23. Short-listing of Applicants**

- 23.1. The credentials of eligible Applicants 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 Applicant. In case of a Consortium, the Aggregate Score of each of its Members, who are indicated in the Application to take up an equity share of at least 20% in the SPV to be incorporated by such Consortium for implementing the Project, shall be summed up in arriving at the combined Aggregate Experience Score of the Consortium.
- 23.2. The Applicants shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed to receive the RfP. The Contracting Authority expects to short-list up to 6 (six) pre-qualified Applicants for participation in the Bid Stage. The Contracting Authority, however, reserves the right to increase the number of short-listed pre-qualified Applicants by adding additional Applicants.
- 23.3. The Contracting Authority may, in its discretion, maintain a reserve list of pre-qualified Applicants who may be invited to substitute the short-listed Applicants in the event of their withdrawal from the Selection/Bidding Process or upon such Applicants’ failure to conform to the conditions specified herein; provided that a substituted Applicant shall be given at least 30 (thirty) days to submit its Application.

**D. CONFLICT OF INTEREST AND FRAUD & CORRUPT PRACTICES**

**24. Conflict of Interest**

- 24.1 Each Applicant (including any of its Associates), shall at all times hold the Contracting Authority's interests paramount, strictly avoid conflicts with other assignments or its own corporate interests, act without any consideration for future work and must not have a conflict of interest ("COI"). Any Applicant found to have a COI in respect of this RfQ process shall be disqualified.
- 24.2 An Applicant shall be deemed to have a COI, if:
  - 24.2.1 such Applicant has the same legal representative for purposes of this Application as any other Applicant (s); and/or
  - 24.2.2 such Applicant, or any officer thereof has a relationship with another Applicant, or any officer thereof, directly or through a common third party/parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Application of either or each other; and/or
  - 24.2.3 such Applicant, or any officer thereof has participated as a consultant to the Contracting Authority in the preparation of any documents, design or technical specifications of the Project; and/or
  - 24.2.4 any other situation in which an Applicant provides biased professional advice to the Contracting Authority in order to obtain from the Contracting Authority an undue benefit for itself or its Associate(s) in relation to the Project.

**25. Corrupt Practices**

- 25.1 The Contracting Authority requires that Applicants and the Applicants' officers shall observe the highest standard of ethics during the implementation of the RfQ process and the execution of the Project.
- 25.2 In pursuance of this requirement, the Contracting Authority shall:
  - 25.2.1 exclude an Applicant from participation in the RfQ process concerned or reject a proposal for award; and
  - 25.2.2 declare an Applicant ineligible, either indefinitely or for a stated period of time, from participation in the RFP process;if it, at any time, determines that the Applicant has, directly or through an agent, engaged in Corrupt Practice, Fraudulent Practice, Collusive Practice, Coercive Practice or Obstructive Practice in competing for, or in executing the Project.
- 25.3 Should any Corrupt Practice or Fraudulent Practice of any kind come to the knowledge of the Contracting Authority, it shall, in the first place, allow the Applicant to provide an explanation and shall take appropriate actions only when a satisfactory explanation is not received. Such exclusion and the reasons

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for it, shall be recorded in the record of the Application process and promptly communicated to the Applicant concerned.

- 25.4 Any communications between the Applicant and the Contracting Authority related to matters of alleged Fraudulent Practice or Corrupt Practice shall be in writing.
- 25.5 The Contracting Authority requires that its personnel have an equal obligation not to solicit, ask for and/or use coercive methods to obtain personal benefits in connection with the Application process or the execution of the Project.

## **APPENDICES AND ANNEXURES**

### **APPENDIX I**

#### **Letter Acknowledging Receipt of the RfQ**

The Director General  
**Office of Public-Private Partnerships (OPPP)**  
Ground Floor, Administrative Building,  
Governor's Office, Lagos House,  
Alausa-Ikeja,  
Lagos,  
Nigeria.

**Acknowledgment of the Receipt of Request for Qualification**  
**in respect of the Design, Build, Financing, Operation, Maintenance and Transfer of the**  
**Lagos State 4<sup>th</sup> Mainland Bridge (the Project)**

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We, [Applicant's name], hereby confirm that we have received the Request for Qualification for the Project and reaffirm our interest in submitting our technical and financial qualification on or before the Application Deadline contained in the RfQ.

Yours faithfully

For and on behalf of [insert name of Applicant/Lead Consortium Member]

Appendix II

**Letter Comprising the Application for Pre-Qualification**

The Director General  
**Office of Public-Private Partnerships (OPPP)**  
Ground Floor, Administrative Building,  
Governor's Office, Lagos House,  
Alausa-Ikeja  
Lagos,  
Nigeria.

***Application for Pre-Qualification for the Fourth Mainland Bridge Project***

Dear Sir,

1. With reference to your RfQ document dated ....., we having examined the RfQ document and understood its contents, hereby make our Application for Qualification for the aforesaid Project. This Application is unconditional and unqualified.
2. We acknowledge that the Contracting Authority will be relying on the information provided in this Application and accompanying documents for the Qualification of the Applicants for the aforesaid Project, and we certify that all information provided in the Application and in the Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Application are true copies of their respective originals.
3. We shall make available to the Contracting Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
4. We acknowledge the right of the Contracting Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. We certify that in the last three years, we/any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. We declare that:
  - a. We have examined and have no reservations to the RfQ document, including any Addendum issued by the Contracting Authority;
  - b. We do not have any conflict of interest in accordance with the provisions of this RfQ document;
  - c. We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the provisions of this RfQ document, in respect of any tender or request for proposal issued by or any

- agreement entered into with the Contracting Authority or any other public sector enterprise or any government, Federal or State; and
- d. We hereby certify that we have taken steps to ensure that in conformity with the provisions of this RfQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the Selection/Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with the provisions of this RfQ document.
  8. We believe that we/our Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RfQ document and are/is qualified to submit a Bid.
  9. We declare that we/any Member of the Consortium, or our/its Associates are not a Member of a/any other Consortium making an Application for Qualification.
  10. We certify that **in regard to matters other than security and integrity of Nigeria**, we/any Member of the Consortium or any of our/their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  11. We further certify that in regard to matters relating to security and integrity of Nigeria, we/any Member of the Consortium or any of our/ their Associates have not been **charge-sheeted** by any agency of the Government or convicted by a Court of Law.
  12. We further certify that no investigation by a regulatory authority is pending either against us/any Member of the Consortium or against our/their Associates or against our CEO or any of our directors/managers/ employees.
  13. We undertake that in case due to any change in facts or circumstances during the Selection/Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RfQ, we shall intimate the Contracting Authority of the same immediately.
  14. The Statement of Legal Capacity as per format provided in the Annexures of this RfQ document, and duly signed, is enclosed. The Power of Attorney for signing of Application and the Power of Attorney for Lead Member of Consortium, as per format provided in the Appendix III and IV of this RfQ document, are also enclosed.
  15. We understand that the selected Applicant shall either be an existing Company incorporated under the Companies and Allied Matters Act 2004 or shall incorporate as such prior to execution of the Concession Agreement.
  16. We hereby confirm that we are in compliance of the O&M and tolling requirements specified in this RfQ document.
  17. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Contracting Authority in connection

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with the selection of Applicants, selection of the Bidder, or in connection with the Selection/Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

18. We agree and undertake to abide by all the terms and conditions of the RfQ document.
19. We certify that in terms of this RfQ document, our Net worth is US\$. ..... (US\$ in words) and the Aggregate Experience Score is ..... (number in words).
20. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.

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

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Applicant/Lead Member

**APPENDIX II, ANNEX-I**

**DETAILS OF APPLICANTS**

1. General information
  - a. Name:
  - b. Country of incorporation:
  - c. Address of the corporate headquarters and its branch office(s), if any, in Nigeria:
  - d. Dates of incorporation and commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/communication for the Contracting Authority:
  - a. Name:
  - b. Designation:
  - c. Company:
  - d. Address:
  - e. Telephone Number:
  - f. E-Mail Address:
4. Particulars of the Authorised Signatory of the Applicants:
  - a. Name:
  - b. Designation:
  - c. Address:
  - d. Telephone Number:
5. In case of a Consortium:
  - a. The information above (1-4) should be provided for all the Members of the Consortium.
  - b. A copy of the Joint Bidding Agreement, as envisaged in the Annexures of this RfQ document should be attached to the Application.
  - c. Information regarding the role of each Member should be provided as per table below:

S/N	Name of Member	Role	Percentage of equity in the Consortium
1			
2			
3			
4			

- d. The following information shall also be provided for each Member of the Consortium:

S/N	Criteria	Yes	No
1	Has the Applicant/Member of the Consortium been barred by the [Federal/State] Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2	If the answer to 1 is yes, does the bar subsist as on the date of Application?		



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3	Has the Applicant/ Member of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		
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6. A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

APPENDIX II, ANNEX-II

TECHNICAL CAPACITY OF THE APPLICANT<sup>+</sup>

Applicant type #	Member Code *	Project Code **	Category \$	Experience &			Experience Score @
				Payments made/received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2	
Single entity Applicant		a					
		b					
		c					
		d					
Consortium Member 1		1a					
		1b					
		1c					
		1d					
Consortium Member 2		2a					
		2b					
		2c					
		2d					
Consortium Member 3		3a					
		3b					
		3c					
		3d					
Consortium Member 4		4a					
		4b					
		4c					
		4d					
Consortium Member 5		5a					
		5b					
		5c					
		5d					
<b>Aggregate Experience Score =</b>							

Each Applicant is to provide details of only those projects that have been undertaken by the Applicant under its own name and/or by an Associate specified in Clause 6.2.8 and/ or by a project company eligible under Clause 22.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 22.3 (c) and for Categories 3 and 4, include only those projects where the payments

made/received exceed the amount specified in Clause 22.4. In case the Application Deadline falls within 3 (three) months of the close of the latest financial year, refer to Clause 6.2.10.

#An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed from an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 6.2.8, shall be provided.

\*Member Code shall indicate NA for Not Applicable in case of a single entity Respondent. For other Members, the following abbreviations are suggested: LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, TCM means Tolling Company Member, OM means other Member.

\*\*Refer Annex – IV of this Appendix – II. Add more rows if necessary.

In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.

@Divide the amount in the Experience column by 10,000,000 and then multiply the result thereof by the applicable factor set out in Table 1.1 to arrive at the Experience Score for each Eligible Project.

## APPENDIX II, ANNEX III

## 1.1. FINANCIAL CAPACITY OF THE APPLICANT

(In US\$)

Applicant type <sup>§</sup>	Member Code*	Net Cash Accruals					Net Worth <sup>#</sup>
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
Single entity Respondent							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
Consortium Member 5							
<b>TOTAL</b>							

**Name & Address of Applicant's Bankers:**

<sup>§</sup>An Applicant consisting of a single entity should fill in details as per row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

\*For Member Code, see instruction 4 at Annex IV of this Appendix II.

<sup>#</sup>The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 6.2.8

**Instructions:**

1. The Applicant/its constituent Consortium Members shall attach copies of their balance sheets, financial statements and IFRS compliant Annual Reports for 5 (five) years preceding the Application Deadline. The financial statements shall:

- a. reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associates financials;
- b. be audited by a statutory auditor;
- c. be complete, include all notes to the financial statements; and
- d. correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.

3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).

4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Deadline falls within 3 (three) months of the close of the latest financial year, refer to Clause 6.2.10.

5. In case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 6.2.5 (g) of the RfQ document,

6. The applicant shall also provide name and address of the Bankers to the Applicant.

7. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 6.2.5 (ii) of the RfQ.

## APPENDIX II, ANNEX- IV

## DETAILS OF ELIGIBLE PROJECTS

Project Code:

Member Code:

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title & nature of the project		
Category	(5)	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/contract		
Date of completion commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Affiliate (Yes/ No)	15	

**Instructions:**

1. Applicants are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified Clause 22.3 and 22.4 of the RfQ, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Application.
2. For a single entity Respondent, the Project Codes would be a, b, c, d etc. In case the Applicant is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, TCM means Tolling Company Member; and OM means other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write “Associate” along with Member Code.
5. Refer to Clause 22.1 of the RfQ for category number.
6. The total payments received /made and/or revenues appropriated for each Eligible Project are to be stated in Annex II of this Appendix II. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Deadline; Year 2 refers to the Year before Year 1, Year 3 refers to the year before Year 2, and so on (refer Clause 6.2.10). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of the projects having an estimated capital cost exceeding the amount specified in Clause 22.3 (c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 22.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/Authority / Agency (i.e. concession grantor, counter party to PPA. Etc) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of the Eligible Project. Refer to Clauses 22.3 and 22.4.
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity share holding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, need to be given (Refer Clause 22.3).

11. 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.
12. Certificate from the Applicant’s statutory auditor or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Applicant/Member/Associate may provide the requisite certification.
13. If the Applicant is claiming experience under Categories 1 & 2, it should provide a certificate from its statutory auditor in the format below:

**Certificate from the Statutory Auditor regarding PPP projects**

Based on its books of accounts and other published information authenticated by it, this is to certify that.....(*name of the Applicant/Member/Associate*) is/was an equity shareholder in .....(*title of the project company*) and holds/held US\$..... of equity (which constitutes .....% of the total paid up and subscribed equity capital) of the project company from .....(*date*) to ..... (*date*). The project was/is likely to be commissioned on .....(*date of commissioning of the project*).

We further certify that the total estimated capital cost of the project is US\$....., of which US\$..... of the capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....  
.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 22.1 and 22.3 (d) of the RfQ during the past five financial years were US\$..... as per year-wise detailed noted below:

.....  
.....

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorised signatory)

Date:



14. If the Applicant is claiming experience under Category 3 & 4, it should provide a certificate from its statutory auditors or the client in the format below:

**Certificate from the Statutory Auditor/ Client regarding construction works**

Based on its books of accounts and other published information authenticated by it, {this is to certify that .....(name of the Applicant/Member/Associate) was engaged by ..... (title of the project company) to execute ..... (nature of project)}. The construction of the project commenced on (date) and the project was/ is likely to be commissioned on ..... (date, if any). It is certified that ..... (name of the Applicant/ Member/ Associate) received/paid US\$..... by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is US\$....., of which the Applicant /Member/Associate received/paid US\$....., in terms of Clauses 22.1 and 22.4 of the RfQ, during the past five financial years as per year-wise details noted below:

.....  
.....

*{It is further certified that the payments/receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.}*

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorised signatory)

Date:

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 6.2.10, the Applicant should also provide a certificate in the format below:

<p style="text-align: center;"><b>Certificate from Statutory Auditor/ Company Secretary regarding Associate</b></p> <p>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 ..... <i>(name of the Associate)</i> is held, directly or indirectly, by ..... <i>(name of Applicant/ Consortium Member)</i>. By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 6.2.8 of the RfQ.</p> <p>A brief description of the said equity held, directly or indirectly, is given below:</p> <p><i>{Describe the share-holding of the Applicant/ Consortium Member in the Associate}</i></p> <p>Name of the audit firm: Seal of the audit firm: (Signature, name and designation of the authorised signatory) Date:</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

16. 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.

**APPENDIX II, ANNEX- V**

**STATEMENT OF LEGAL CAPACITY**

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

Ref. Date:

The Director General  
**Office of Public Private Partnerships (OPPP)**  
Governor's Office, Lagos House  
Alausa-Ikeja  
Lagos,  
Nigeria.

Dear Sir,

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

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

We have agreed that ..... (insert individual's name) will act as our representative/will act as the representative of the Consortium on its behalf\* and has been duly authorized to submit the RfQ.

Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....

*\*Please strike out whichever is not applicable.*

**APPENDIX III**

**POWER OF ATTORNEY FOR SIGNING OF SUBMISSION**

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/Ms, ..... 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 our Application for qualification for the Fourth Mainland Bridge Project proposed by the Contracting Authority including but not limited to signing and submission of all Applications, bids and other documents and writings, participate in Pre-Application Meetings 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 application, and generally dealing with the Contracting Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Contracting Authority.

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 ..... 2....

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

.....

(Signature)

(Name, Title and Address of the Attorney)

**APPENDIX IV**

**POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM**

Whereas the Contracting Authority has invited Applications from interested parties for the Fourth Mainland Bridge Project (the “Project”). Whereas, ....., ....., and ..... (collectively the “Consortium”) being Members of the Consortium are interested in applying for the Project in accordance with the terms and conditions of this 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 ..... and ..... having our registered office at ....., (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Application process and, in the event the Consortium is awarded the Concession, 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 prequalification of the Consortium and Application of its bid for the Project, including but not limited to signing and Application of and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Contracting Authority, and/or any other government agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s Application 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.

**LAGOS STATE GOVERNMENT**

*Fourth Mainland Bridge Project*

*Request for Qualification*

*February 2020*

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)

.....

(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

**APPENDIX V**

**JOINT BIDDING AGREEMENT**

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

**AMONGST**

1. {..... Limited, a company incorporated under the Companies and Allied Matters Act, 2004} 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 and Allied Matters Act, 2004} 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 and Allied Matters Act, 2004} and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

4. {..... Limited, a company incorporated under the Companies and Allied Matters Act, 2004} and having its registered office at ..... (hereinafter referred to as the “**Forth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

5. {..... Limited, a company incorporated under the Companies and Allied Matters Act, 2004} and having its registered office at ..... (hereinafter referred to as the “**Fifth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

**WHEREAS,**

- A. The Contracting Authority has invited submissions (the **Application s**) by its Request for Qualification No. .... dated ..... (the “**RfQ**”) for Qualification and short-listing of Applicants for designing, building, financing, operation and maintenance of the Fourth Mainland Bridge Project (the “**Project**”) through public private partnership.
- B. The Parties are interested in jointly applying for the Project as members of a Consortium and in accordance with the terms and conditions of this RfQ document and other documents in respect of the Project, and
- C. It is a necessary condition under the RfQ document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Selection/Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Selection/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, 2004 for entering into a Concession Agreement with the Contracting Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

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

- a. Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the



Selection/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 (EPC Contractor and Designer) of the Consortium;
- c. Party of the Third Part shall be the Financial Member of the Consortium;
- d. Party of the Fourth Part shall be the Operations & Maintenance Member of the Consortium; and
- e. Party of the Fifth Part shall be the Tolling 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:  
Fifth Party:
- 6.2 The Parties undertake that a minimum of 20% 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, Third, Fourth, Fifth Part whose experience and net worth have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the RfQ.
- 6.3 The Parties undertake that each of the Parties specified in Appendix V 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 6% of the Total Project Cost.
- 6.4 The Parties undertake that they shall collectively hold at least 51% 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 and Tolling Members shall subscribe and each hold at least 10% of the subscribed and paid up equity shares in the SPV in terms of the Concession Agreement.

**7. Representation of the Parties**

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

- a. Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - i. require any consent or approval not already obtained;
  - ii. violate any applicable law presently in effect and having applicability to it;
  - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment 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 qualified for the Project or does not get selected for award of the Project, the Agreement will stand.

**9. Miscellaneous**

9.1 This Joint Bidding Agreement shall be governed by laws 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

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

**LAGOS STATE GOVERNMENT**

*Fourth Mainland Bridge Project*

*Request for Qualification*

*February 2020*