

**EOI cum RFQ
for Sale of
Mohiuddinpur Unit**

A Unit of UP State Sugar Corporation Limited
("UPSSCL")



UP State Sugar Corporation Limited
Vipin Khand, Gomti Nagar,
Lucknow – 226010

Date of Issue: July 28, 2010

**Date of Submission: August 12, 2010
Up to 14.00 hours**



Transaction Advisors

Disclaimer and Important Notice

All information contained in this EOI cum RFQ (“**EOI cum RFQ**”) or subsequently provided in writing to persons to whom this EOI cum RFQ has been issued, or those persons who have procured this information and EOI cum RFQ otherwise, (the “**Applicant(s)**”), by or on behalf of representatives of the Government of Uttar Pradesh (GoUP)/UPSSCL or any of its employees or advisors (the “**Information**”), is provided to Applicant(s) on the terms and conditions set out in this EOI cum RFQ and also any other supplementary terms and conditions subject to which such Information is or may be provided.

This EOI cum RFQ or any of its contents is not an agreement to sell any securities or any of the businesses or assets which are held by UPSSCL, to enter into an agreement or arrangement of any kind with any party, including without limitation, the Applicants.

This EOI cum RFQ does not, and does not purport to contain all the information and data each Applicant and / or their advisors and / or their representatives may desire or require in reaching decisions as to their involvement to purchase unit(s) of UPSSCL. Each Applicant should conduct of its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this EOI cum RFQ and obtain independent advice from appropriate sources. Applicants should form their own views as to what Information provided herein or separately is relevant to any decisions that they make and should make their own independent investigations in relation to any additional information that they may require.

This EOI cum RFQ may not be appropriate for all persons and it is not possible for GoUP,/ UPSSCL its employees or advisors to consider the investment objectives, financial situation and particular needs of each person who reads or uses this EOI cum RFQ.

The Information contained in this EOI cum RFQ or any other Information which may be provided to Applicants is subject to change without notice. Further, it should not be assumed that there shall be no deviation or change in any Information provided. UPSSCL may, in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the Information including the qualification process in this EOI cum RFQ.

While this EOI cum RFQ has been prepared in good faith, neither UPSSCL, nor its employees or advisors and their employees make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, completeness or reliability of Information, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of this EOI cum RFQ, even if any loss or damage is caused by any act or omission on the part of UPSSCL or its employees or advisors, whether negligent or otherwise.

This EOI cum RFQ has not been filed, registered or approved in any jurisdiction. Recipients of this EOI cum RFQ resident in jurisdictions outside India as well as that resident in India should inform themselves of, and observe any applicable legal requirements.

UPSSCL reserves the right to accept or reject any or all applications without giving any reasons. UPSSCL and its representatives will not entertain any claim for any expenses whatsoever.

Definitions

In this Expression of Interest cum Request for Qualification document (EOI cum RFQ), unless the context otherwise requires, the following terms and expressions shall have the meanings assigned to them herein:

“Accounting year” refers to any 12 month period usually followed by the Applicant or any member of the Consortium for the purpose of reporting its/their accounts;

“Application” means combination of the EOI as per Annexure 1, Statement of Legal Capacity as per Annexure 2, and Request for Qualification as per Annexure 3 and the supporting documents as per Annexure 4 to 14 of this EOI cum RFQ;

“Applicant(s) / Bidder(s)” means a company (incorporated in India or overseas) or a Consortium which expresses its interest in purchasing the unit of UPSSCL via slump sale of assets;

“Application Due Date” shall mean the date appointed as the last date for the submission of the Application(s) as laid down in Section 3.9 herein;

“Application Validity Period” means, **270 days** from the Application Due Date and any extension thereof as provided in Section 3.14 herein;

“CGD” means Core Group of Secretaries on Disinvestment setup by GoUP vide its order no. 41/77-3-08 L.C.-21/2007 dated 23 January 2008;

“Consortium” means an association of companies that have entered into or may enter into Memorandum of Understanding/ Joint Bidding Agreement to collectively participate in the selection process and to collectively undertake and execute the Transaction, if selected;

“EOI cum RFQ” means this ‘Expression of Interest cum Request for Qualification document’, as may be amended and modified from time to time, together with all Annexures, addendums and amendments which may be made from time to time;

“Financial Year” refers to the 12 month period ending March 31, i.e., from April 1 to March 31, unless specified otherwise;

“GoUP” means the Government of Uttar Pradesh;

“Group Company” or “Associate” means, in relation to the Applicant/Consortium member, a company who controls, is controlled by, or is under the common control with such Applicant/Consortium member. As used in this definition, the expression

“Control” means with respect to a person which is a company or corporation, the ownership, directly or indirectly of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise;

“Indian Rupees”, “Rupees” or “INR” mean the lawful currency of the Republic of India;

“Information” means all information contained in this EOI cum RFQ related to this transaction or subsequently provided to the Applicant(s), whether verbally or in documentary form, by or on behalf of UPSSCL or their authorized representatives or any of their authorized employees or advisors;

“PIM” means Preliminary Information Memorandum as defined in Annexure 13;

“Purchaser” means the Applicant who will buy the Unit owned by UPSSCL;

“Prequalified Applicant(s)” means Applicants who are notified as being ‘pre-qualified’ at the EOI cum RFQ Stage on the basis, *inter alia*, of certain minimum prescribed criteria listed in this EOI cum RFQ;

“Proposal Stage” means the second stage of the selection process wherein Pre-qualified Applicants will participate on the basis of the RFP leading to the Transaction;

“Qualification Stage” means the first stage of the selection process to designate certain Applicants as ‘Pre-qualified Applicants’ who would then be eligible to participate in the Proposal Stage;

“RBI” means Reserve Bank of India;

“RFP” means the ‘Request for Proposal Document’, as may be amended and modified from time to time together with all Annexures, addendums and amendments. This shall be furnished to the Pre-qualified Applicants;

“Slump Sale of Assets” means sale of a unit with all its assets and liabilities excluding the liabilities to be retained by UPSSCL as mentioned in section 2.3 herein;

“Slump Sale Agreements” means the agreement to sell the Unit of UPSSCL via slump sale;

“Sale Deed” means the Transfer Deed relating to the Unit via slump sale;

“Shortlisted Applicant(s)” means the applicant(s) qualified at the EOI cum RFQ stage based on the EOI cum RFQ Application;

“Sale of Unit (s)” means the sale of the unit owned by UPSSCL;

“Signing Date” means the date on which the Slump Sale Agreement is executed between UPSSCL and Successful Bidder after Initial Payment as per clauses of this RFP;

“Stake/Interest” means proposed shareholding percentages of the Consortium members in the Special Purpose Vehicle (“SPV”) formed / to be formed for the purpose of this Transaction;

“Technical Proposal” means the Application submitted pursuant to this EOI cum RFQ;

“Transaction” means the transfer of Unit(s) of UPSSCL to the Purchaser;

“Unit (s)” means individually or collectively 06 (Six) operating sugar mills of UPSSCL as list provided in this RFP;

“Union Government” means the Government of India;

“UPSSCL” means U.P. State Sugar Corporation Limited having its Registered Office at Vipin Khand, Gomti Nagar Lucknow-226001 (Uttar Pradesh);

USD”, “US\$” or “\$” mean the lawful currency of the United States of America.;

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Section I – Transaction Process

1. The Sale Process

1.1 ABOUT THE SALE PROCESS

UPSSCL vide its advertisement dated July 28, 2010 invited Expression of Interest cum Request for Qualification for sale of Mohiuddinpur Unit of UPSSCL via slump sale of assets (“**The Transaction**”) through a competitive bidding route.

UPSSCL wishes to invite Expressions of Interest cum Request for Qualification (EOI cum RFQ) for sale of Mohiuddinpur Unit of U.P. State Sugar Corporation Ltd. (UPSSCL) details of which are mentioned in the Annexure 13 (PIM) via Slump Sale of Assets. (Without UPSSCL creating and/or conferring any rights or expectations whatsoever on those so invited and hereby disclaims all such rights and expectations, if any) subject to the conditions contained in this EOI cum RFQ, other relevant documents referred to herein, and the documents provided henceforth.

UPSSCL proposes to transfer all the assets and certain liabilities of the Unit as a going concern as per its Unit balance sheet along with employees of Unit to the selected bidder who would be expected to run the Unit as a sugar Unit.

The transaction under consideration is subject to final decision of Hon’ble Supreme Court to be passed in SLP no. 16362/2010 (Rajiv Kumar Mishra versus State of UP and others)

1.2 THE ADVERTISEMENT AND THE EOI CUM RFQ

This EOI cum RFQ is released with the formats of EOI, Statement of Legal Capacity, and Request for Qualification (RFQ) along with other supporting documents pursuant to the Advertisement by UPSSCL.

The interested bidders are expected to submit their Applications, upto **14:00 hrs (IST) on the Application due date**. The Applications shall be submitted as per this RFP at Room No. 408, 17 New Berry Road, Dali Bagh, Lucknow – 226001

The EOI cum RFQ contains:

1. Pre-qualification requirements, evaluation criteria and methodology
2. Required forms/ applications to be submitted by the Applicant
3. Preliminary Information Memorandum (PIM) which includes
 - a. Brief overview of UPSSCL
 - b. Operating unit of UPSSCL

2. The Process

2.1 THE PROCESS

Post the submission of the EOI cum RFQ, UPSSCL will evaluate the Applications based on technical parameters described in this EOI cum RFQ and will prepare a list of short-listed applicants. These shortlisted applicants will be considered eligible to submit the Request for Proposal (RFP).

The draft RFP for the Slump Sale of Mohiuddinpur Unit is issued and can be viewed / downloaded from the site www.upsugarcorp.com and/or www.upcane.org and/or www.ifcilt.com.

The Data Rooms have been established as per details provided in this document. Applicants can start due diligence including site visits, entry to Data Rooms etc. after furnishing following documents

1. Signing of the Confidentiality Agreement as per Annexure 11.
2. Authority Letter as per Annexure - 14
3. Eligibility/Qualification certificate from Statutory Auditor/Chartered Accountant certifying the Net worth and Average turnover of the Applicant evidencing that the applicant possess the eligibility criteria as mentioned in Clause 3.4.2 of this EOI cum RFQ.
4. Demand Draft of Rs. 50,000 (Fifty Thousand Only) towards bid document cost (Non Refundable)

Permission to carryout due diligence should not be construed as qualifying at the EOI cum RFQ stage.

2.2 TIME SCHEDULE

The indicative timetable for the Transaction is as follows:

ACTIVITY	ESTIMATED DATE/MONTH
Applications Due Date – for submission of application including supporting documents etc	Date: August 12, 2010 upto 14.00 hours at: The Managing Director, UP State Sugar Corporation Ltd. Room No. 408, 17 New Berry Road. Lucknow – 226 001
Opening of the Application(s)	Date: August 12, 2010 from 15.00 hours at: The Managing Director , UP State Sugar Corporation Ltd. Room No. 408, 17 New Berry Road. Lucknow – 226 001

ACTIVITY	ESTIMATED DATE/MONTH
Intimation to the Shortlisted applicants qualifying the Technical Criteria	Shortlisted Bidders will be informed via Email.

2.3 LIABILITIES AND FACILITIES

2.3.1 UPSSCL will settle the following liabilities of the Unit of UPSSCL accrued till the Signing Date:

1. Cane dues
2. Labour and Employee Dues: All the unpaid dues of labor and employees
3. Head Office Account: All remittances given to unit by H.O (UPSSCL) and shown as H.O accounts in the book of unit will be retained by UPSSCL.
4. Inter unit Account: To be settled before transfer.
5. Working capital borrowings (including interest thereof): All the working capital borrowings of unit with the cooperative banks will be settled by UPSSCL before Signing Date through bridge loan of Govt.
6. Contingent Liabilities in respect of difference of Cane Purchase price for the financial year 2007-08 and 2008-09.

2.3.2 All other liabilities of the unit(s) of UPSSCL (quantified and non-quantified) will be transferred to and borne by the Purchaser and the Purchaser is expected to do proper due diligence of the same

3. Instructions to Applicants

3.1 MEMBERSHIP OF MULTIPLE CONSORTIUM FOR ANY APPLICANT COMPANY

Each Applicant is entitled to submit one Application (EOI/RFQ) individually by itself and can be a party to more than one Application as a member of a Consortium which intends to bid for separate Unit. However, while submitting financial bids, each Applicant is entitled to submit only one bid per Unit and cannot be a party to more than one bid for the same Unit, whether by itself or as a part of a Consortium. Any Applicant found having made more than one Application for the same Unit by itself or as a part of a Consortium shall be liable to be disqualified and will also lead to disqualification of the Consortium(s) of which it is a member.

3.2 LANGUAGE

The Application and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by appropriate/true translations thereof in English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

3.3 CURRENCY

The currency for the purpose of the Application shall be the Indian Rupee (INR).

3.4 ELIGIBLE APPLICANTS

3.4.1 The Applicant may be a company or a Consortium of companies for the purchase of one or more unit owned by UPSSCL sold via Slump Sale of the Assets. In computing the eligibility criteria of the Applicant/Consortium Members, the Net Worth & Turnover of their respective Associates/Group Companies may also be taken into consideration provided that the Applicant/Consortium Member and their Associates or Group Companies shall agree and undertake to be jointly and severally responsible for purchase of the unit(s) and furnishing undertakings for fulfillment of any and all such obligations of the Applicant/Consortium Member as may be required for the Transaction.

3.4.2 The Applicant shall meet the following criteria:

- i. **Net worth of not less than INR 20 Crore** as per the last audited accounts for the Accounting year which should not have ended before 31 March 2009. For this purpose:
 - a. “**Net Worth**” shall be filled in as described as per Annexure 10 and certified by a chartered accountant.

- b. Net Worth shall be calculated according to following formula $\text{Net Worth} = (\text{Paid up equity} + \text{Reserves}) - (\text{Revaluation Reserves} + \text{Accumulated Losses} + \text{Miscellaneous Expenditure not Written off})$
 - c. In case of a Consortium the net-worth shall be the weighted average of the net-worth of its members (based on their proposed equity stake i.e. contributions to the equity of Special Purpose Vehicle (SPV) to be formed for the Transaction) and each member shall submit information in the form of Annexure 10 as a proof of its net-worth.
 - d. The Lead Member of the Consortium should satisfy the proportionate net worth criteria i.e. The net worth of the Lead Member having 75% stake in the consortium should be higher than the 75% of Rs. 20.0 crores i.e. 15.0 crores.
- ii. **Average Turnover of not less than INR 50 Crore** as per the last 3 annual audited accounts where latest accounting year should not have ended before March 31, 2009 of the Applicant. For this purpose:
- a. “**Turnover**” shall be the gross income of a company or Consortium Member. It should be filled in Annexure 10 and also be certified by a chartered accountant.
 - b. In case of a Consortium the Turnover shall be the weighted average of the Turnover of its members (based on their proposed stake; i.e. contributions to the equity capital of Special Purpose Vehicle (SPV) to be formed for the Transaction) and each member shall submit a proof of its Turnover.

3.4.3 Financial, Technical and Legal Capability

The financial, technical and legal capability of Applicant/Bidder shall be evaluated based on the detailed information provided by the Applicant/ Bidder in the EOI cum RFQ as per Annexure 1, 2 & 3.

The Applicants are required to certify that all statements made by them and information provided by them is complete, true and accurate to the best of their knowledge and belief. If at a subsequent date it is discovered that the Applicant or any Consortium member did not either possess the requisite authorization or that any part of the information provided in the EOI cum RFQ was not accurate or complete in any material respect, the UPSSCL reserves the right to disqualify any such Applicant from the process of Transaction.

3.4.4 Foreign Direct Investment (FDI) Norms

The Applicant and/or each member of a Consortium will have to comply with the FDI norms, as applicable for the sugar sector, and will be required to provide satisfactory credentials as may be required by UPSSCL, within 10 days of issue of invitation to submit RFP. Non-submission or non-satisfactory submission of credentials may lead to disqualification.

3.4.5 Integrity of the Bidder

The undertaking provided by the Applicant for qualification in terms of integrity of bidders should be in accordance with Annexure -4.

3.4.6. Security Consideration

The Applicants and/or each member of a Consortium which have been charge sheeted or convicted on matters relating to national security or integrity under the provisions of Indian Penal Code, or Officials Secrets Act, or other relevant legislations shall be disqualified from the bidding process. The Applicant shall be required to submit an undertaking as per Annexure -4

3.4.7 Additional Criteria for Consortium Members

1. In addition to the above mentioned criteria, in case of a Consortium;
 - Members of the Consortium should be a Company.
 - The Consortium would need to specify a Lead Member for the Transaction.
 - The Lead Member would be required to commit to hold a minimum 51% Interest/ Stake in the Consortium till the end of one calendar year from the date of Sale Deed.
 - The minimum Interest of a member in a Consortium should not be less than 10%
 - The total number of members in a Consortium shall not exceed 04.
 - No change in Consortium composition is permitted after submission of the EOI cum RFQ
 - All Applicants are expected to conform to regulatory approvals for their respective sectors and those for the sugar sector in India / Uttar Pradesh.
 - In case the finally selected Applicant (Purchaser/Successful Bidder) is a Consortium, the following conditions shall apply:
 - i. Lock in period for change in Consortium of one year from the date of signing of Sale Deed.
 - ii. The Lead member of the Consortium shall be required to maintain at least 51 % of the interest/stake in the Consortium for initial one year from the date of Sale Deed. However inter-se change in shareholding among member is allowed subject to Lead member maintaining minimum 51% interest / stake.
 - iii. Any change in composition of the Consortium, including addition of new members, after 1 years is permissible,
2. Each Applicant should have ascertained the applicability as well as complied with the laws of its home country as well as Indian laws and regulations including but not limited to Foreign Direct Investment Guidelines. Any application not found complying with these guidelines shall be rejected at any stage of the transaction.

3.4.8. Share Holding in SPV

Each Consortium Member shall hold the same percentage shareholding in the proposed SPV as it holds in Consortium.

3.5 DOCUMENTS TO BE SUBMITTED BY APPLICANTS - (COMPANY)

The APPLICATION shall comprise:

1. Application for EOI as per the format enclosed as Annexure -1
2. Statement of Legal Capacity as per Annexure -2
3. RFQ as per Annexure -3
4. Undertaking (Security & Integrity) as per Annexure 4;
5. Board Resolution giving authority to the Applicant Company to express interest and to submit EOI cum RFQ and RFP w.r.t. the sale of the unit(s) of UPSSCL. The format for the Board Resolution is provided at Annexure -5.
6. A power of attorney as per the format enclosed at Annexure -6.
7. Eligibility criteria as per Annexure 10.
8. An undertaking (in the format provided in Annexure 12) from Group Company/ Associate, if included in the eligibility criteria of Applicant as per Clause 3.4.
9. A non-refundable Demand draft for INR 50,000/- (Rupees Fifty Thousand) drawn in favour of 'UP State Sugar Corporation Limited.' payable at Lucknow or the receipt from UPSSCL confirming the payment of Rs. Fifty Thousand to UPSSCL towards bid document cost.
10. A certified true copy of the Memorandum and Articles of Association
11. Audited Financial Statements/Accounts of last 03 years (latest year should not be earlier than March, 2009).

3.6 DOCUMENTS TO BE SUBMITTED BY APPLICANTS – CONSORTIUM

The APPLICATION shall comprise:

1. Application for EOI as per the format enclosed as Annexure -1
2. Statement of Legal Capacity with respect to all members of the Consortium as per Annexure -2
3. RFQ as per Annexure -3
4. Undertaking (Security & Integrity) as per Annexure 4;
5. Power of Attorney, as per Annexure -7, by the members of the Consortium to nominate one member as the '**Lead Member**'.
6. Board Resolution and Power of Attorney by each member of consortium as per the format enclosed at Annexure 5 and 6.

7. Memorandum of Understanding (MoU) from the members of the Consortium as per Annexure -8.
8. Board Resolutions of each member of Consortium, giving authority to enter into a MoU with other members for expressing interest in the “sale of unit(s) of UPSSCL” as per format provided in Annexure -9.
9. Eligibility criteria as per Annexure 10.
10. An undertaking (in the format provided in Annexure 12) from Group Company/ Associate, if included in the eligibility criteria of any member of consortium as per Clause 3.4.
11. A non-refundable Demand draft for INR 50,000/- (Rupees Fifty Thousand Only) drawn in favour of ‘UP State Sugar Corporation Limited.’ payable at Lucknow the receipt from UPSSCL confirming the payment of Rs. Fifty Thousand by UPSSCL towards bid document cost.
12. A certified true copy of the Memorandum and Articles of Association of all members of the Consortium
13. Audited Financial Statements of last 3 years (latest year should not be ending before March, 2009 with respect to each of the members of the consortium).

3.7 FORMAT AND SIGNING OF APPLICATION

The cover envelopes containing the EOI cum RFQ and the Annexures shall be clearly identified and addressed to:

The Managing Director ,
UP State Sugar Corporation Ltd
Room No. 408, 17 New Berry Road.
Lucknow – 226 001

The Applicant should provide all the information as per this EOI cum RFQ. UPSSCL would evaluate only those Applications that are received in the required format and complete in all respects alongwith all the attachments.

The Application shall be typed/computer printed or written in indelible ink and each page shall be signed by the Applicant. All the alterations, omissions, additions, or amendments made to the Application shall be initialed by the person (s) signing the Application.

Further, all copies of every Application must be submitted in a hard-bound form or a spiral-bound form, with all pages numbered serially, along with an index of submissions. Applicants are required to submit all details only on prescribed format. In the event, any of the instructions mentioned herein have not been adhered to, the Application is liable to be rejected.

3.8 SEALING AND MARKING OF APPLICATIONS

The Application should be submitted in a sealed envelope marked “**PRIVATE AND CONFIDENTIAL – EXPRESSION OF INTEREST CUM REQUEST FOR QUALIFICATION FOR SALE OF UNIT(S) OWNED BY UPSSCL**”

The Cover should mark “EOI cum RFQ” and also contains the name of authorized representative along with his email, phone and fax number.

3.9 APPLICATION DUE DATE

The Application should be submitted on August 12, 2010 upto 14.00 hours. Applications submitted by either **e-mail, facsimile transmission or telex would not be acceptable.** Applications submitted after the time stated above will be rejected. UPSSCL will not be responsible for any delay, loss or non-receipt of EOI cum RFQ along with other documents sent by post/ courier. Further, UPSSCL shall not be responsible for any delay in receiving the Application and reserves the right to accept/ reject any or all Applications without assigning any reason thereof. UPSSCL may, at its sole discretion, extend the **Application Due Date** by issuing an Addendum.

3.10 MODIFICATIONS / SUBSTITUTION OF APPLICATIONS

No Application shall be modified or substituted or withdrawn by the Applicant after its submission.

3.11 APPLICATION PREPARATION COST

The Applicant shall be responsible for all of the costs associated with the preparation of its Application as described in this EOI cum RFQ, including, without limitation, any and all costs, direct or indirect incurred in verifying, gathering and collating material, information and data, whether included in the Information or not, or on securing the services of advisors and / or consultant, etc. UPSSCL will not be responsible or in any way liable for such costs.

3.12 APPLICANT WARRANTY AND UPSSCL PRESUMPTION

It would be deemed that by submitting the Application, the applicant warrants that it has:

1. Made a complete and careful examination of the EOI cum RFQ document; and
2. Independently verified all Information mentioned in the documents including PIM as part of this EOI cum RFQ document.

It shall be further deemed that by submitting the Application to UPSSCL, UPSSCL is entitled to presume the existence of and rely on the aforesaid Applicant warranty.

UPSSCL shall not be liable for any wrongful presumption, mistake or error on the part of the Applicant in respect of the above or in respect of the selection process or the Transaction generally.

3.13 AMENDMENTS TO EOI CUM RFQ

At any time prior to the deadline for submission of Application, UPSSCL may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the EOI cum RFQ document by the issuance of addenda (the “Addenda or Addendum”, as the case may be) and also on website www.ifcilt.com or www.upcane.org or www.upsugarcorp.com and/or published in the print media.

3.14 VALIDITY/ EXTENSION OF VALIDITY OF APPLICATION

EOI cum RFQ Applications shall be valid for a period of 270 days from the **Application Due Date** (the “**Application Validity Period**”). UPSSCL reserves the right to reject any Application, which does not meet this requirement. In exceptional circumstances, 15 days prior to expiry of the original Application Validity Period, UPSSCL may request Applicants to extend the Application Validity Period for a specified additional period. If for whatsoever reason, any Applicant does not convey consent, to the extension of the Application Validity Period; its Application will not be considered by UPSSCL. Such consent shall be required to be communicated in writing before the expiry of the original Application Validity Period

3.15 DATA ROOM FACILITY FOR DUE DILIGENCE

The Data Room has been set up by UPSSCL and the Applicants will be provided access to the Data Room facility to carry out due diligence of the unit of UPSSCL subject to rules and conditions as mentioned in draft RFP issued on www.upsugarcorp.com and/or www.upcane.org and/or www.ifcilt.com.

3.16 CLARIFICATIONS

Requests for clarifications relating to this EOI cum RFQ document may be submitted to the following at least 7 days before the Application Due Date and with a mandatory copy to the Advisor as mentioned at no. 2 below. However, UPSSCL retains the right not to answer any or all of the requests for clarifications:

1. The Managing Director,
UP state Sugar Corporation Ltd.
Room No. 408, 17, Berry Road
Lucknow – 226 010
Phone: 0522 – 2396556 Fax: 0522 – 2301131
Email: E-Mail: upsugcor2007@rediffmail.com

2. Mr. D. K. Jain,
General Manager,
IFCI Ltd.
5, Park Road, Regency Plaza, LUCKNOW
Phone: 0522- 2239066 / 2239610 Tel Fax: 0522-2239057
E Mail: dk.jain@ifcilt.com; chirag.sapra@ifcilt.com

4. Evaluation of Applications

4.1 OPENING OF APPLICATIONS

1. A committee duly constituted by GoUP would open the Applications at 15.00 hours on the Application Due Date for the purpose of evaluation of EOI cum RFQ. Applicants can depute their representatives to the address mentioned in Section 2.2 for witnessing the opening of the EOI cum RFQ Applications.
2. The opening of envelopes will continue, if necessary in more than one session sometimes spreading over more than one day,
3. UPSSCL with the help of Advisors would subsequently examine and evaluate Applications in accordance with the criteria set out in the EOI cum RFQ. The Applicants qualifying the RFQ stage would be informed by E-Mail on the E-mail address submitted by the Applicants.

4.2 TECHNICAL EVALUATION

UPSSCL with the help of Advisors shall assess the **EOI cum RFQ** submitted by the Applicants on the following parameters as mentioned in the Eligibility Criteria (Clause 3.4):

1. Financial capability
2. Technical and legal capability
3. FDI restrictions (if any)
4. Integrity of the Bidder
5. Security Consideration

An Applicant may be disqualified if the information provided does not meet any one of the above criteria.

4.3 DISQUALIFICATION

Notwithstanding anything to the contrary contained in the EOI cum RFQ document and without prejudice to any of the rights or remedies of the UPSSCL, The UPSSCL shall be entitled to in its sole discretion to determine that an Applicant is to be disqualified at any stage of the process and its participation in the Sale process and/or its **EOI cum RFQ** and subsequent submissions be dropped from further consideration for any of the reasons including without limitations those listed below:

1. The Applicant or in case of a Consortium, any member of the Consortium has made, incorrect, misleading or false representations in the forms, statements and attachments submitted, whether intentionally or unintentionally; or
2. The **EOI cum RFQ** submitted by the Applicant is in any respect inconsistent with, or demonstrate any failure to comply with, the provisions of the EOI cum RFQ; or

3. Failure to comply with other material requirement of this Request for Qualification; or
4. UPSSCL is not satisfied with sources of funds/ownership structure of the Applicant; or
5. Failure to comply with the reasonable requests of UPSSCL in relation to the Sale Process ;or
6. Breach of the confidentiality agreement (Non Disclosure Agreement) by the Applicant or the Consortium or any member of a Consortium; or
7. If it is discovered at any time that the Applicant or the Consortium or any member of a Consortium is subject matter of winding up or insolvency or other proceedings of similar nature; or
8. Any information regarding the Applicant which becomes known to UPSSCL/ Advisor and which is detrimental to Sale process and/or the interests of UPSSCL; or
9. Initiation or existence of any legal proceedings, by or against the Applicant in respect of UPSSCL, which proceeding may be prejudiced by the participation of the Applicant in the short listing of Applicants as per clause 2.1 e.g. inspection by the Applicants of the case files of the company of matters filed against that Applicant; or
10. Any restrictions or limitations have been put on the Applicant or any member of the Consortium pursuant to any regulatory or statutory guidelines to participate in the process; or
11. The Applicant and in case of Consortium, any member has been convicted for an offence under any legislation designed to protect the members of the public from financial loss due to dishonesty, incompetence or malpractice; or
12. The Applicant or any member of the Consortium has been disqualified from participating in the disinvestment process either by Government of India or any of the State Governments/ Union Territory Governments; Mere pendency of an appeal against the order of disqualification, if any passed by Government of India or any of the State Governments/ Union Territory Governments will have no effect on the disqualification of Applicant or any member of Consortium; or
13. If information becomes known after the Applicant has been qualified at any stage to proceed with the Sale process, which would have entitled to reject or disqualify the relevant Applicant/Consortium, reserves the right to reject or disqualify the relevant Applicant/Consortium at the time, or at any time, such information becomes known to the UPSSCL. Where such party is a Consortium, UPSSCL may disqualify the entire Consortium, even if it applies to only one member of the Consortium; or
14. UPSSCL's determination that one or more of the events specified above have occurred shall be final and conclusive.

4.4 RIGHT TO ACCEPT ANY APPLICATION AND TO REJECT ANY OR ALL APPLICATIONS

1. Notwithstanding anything contained in this EOI cum RFQ, UPSSCL reserves the right to accept or reject any Application and to annul the process of short listing of Applicants and reject all Applications /proposals, at any time, at any stage without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons.
2. UPSSCL reserves the right to reject any Application, if at any time, the Applicant does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Application.

4.5 CONFIDENTIALITY

- 4.5.1 The Applicants shall be required to sign a Confidentiality Agreement as per Annexure-11 before entry in the Data Room.
- 4.5.2 Information relating to the examination, clarification, evaluation, and recommendation in relation to the qualified Applicants shall not be disclosed to any person not officially concerned with the process. UPSSCL will treat all information submitted as part of Application in confidence and would require all those who have access to such material to treat the same in confidence. UPSSCL will not divulge any such information unless it is ordered to do so by any authority that has power under any provision of law to require its disclosure. UPSSCL however reserves the right to make public disclosure of the names of the Applicants and short listed Applicants.

4.6 GOVERNING LAW/ JURISDICTION

This Transaction shall be governed by the laws of India. All disputes arising out of the process shall be subject to the exclusive jurisdiction of the courts at Lucknow, India.

Section II – Annexures

ANNEXURE 1: EOI FOR APPLICATION

(To be forwarded on the letter-head of the Applicant/Lead Members of the Consortium submitting the proposal)

Ref: _____

Date: _____

To.
The Managing Director,
UP State Sugar Corporation Ltd.
Ganna Sansthan , Dali Bagh,
Lucknow – 226 001

Sub: APPLICATION –INVITATION OF EXPRESSION OF INTEREST FOR PURCHASE
OF UNIT(S) OF UPSSCL

Sir,

We refer to the advertisement dated _____ inviting Expression of Interest on the above subject.

As specified in the advertisement, we have read and understood the contents of the EOI cum RFQ and are desirous of participating in the above sale process, and for this purpose:

We propose to submit our EOI in individual capacity as _____ (insert name of the company)

OR

We have formed/propose to form a consortium comprising of _____ members as follows:

1. _____ (insert name)
2. _____ (insert name)
3. _____ (insert name)
4. _____ (insert name)

We, the undersigned, hereby confirm the following:

- a. We understand that Unit(s) of UPSSCL is proposed to be divested by UPSSCL and we are interested in bidding for the same. We believe that we/our consortium/proposed consortium satisfy the eligibility criteria as laid down in UPSSCL EOI cum RFQ for sale of unit(s) of UPSSCL.
- b. We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to manage unit of

UPSSCL when it is disinvested or which relates to a grave offence that outrages the moral sense of the community.

- c. We further certify that in regards to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our sister concerns.
- d. We undertake that in case due to any change in facts or circumstances during the pendency of the sale process, we are attracted by the provisions of disqualification in terms of the subject guidelines; we would intimate the UPSSCL of the same immediately.
- e. The Statement of Legal Capacity and Request for Qualification, duly signed by us/respective members, who jointly satisfy the eligibility criteria are enclosed.
- f. Our Application is valid till **270 days** from the **Application Due Date**.
- g. The Lead Member of the Applicant is [-----]. (Applicable only in the case of a Consortium)
- h. UPSSCL and its authorized representatives are hereby authorized to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this application, and to seek clarification from our bankers and clients regarding any financial and technical aspects. This letter of Application will also serve as authorization to any individual or authorized representative of any company referred to in the supporting information, to provide such information deemed necessary and requested by UPSSCL to verify statements and information provided in this application, or with regard to the resources, experience, and competence of the Applicant.
- i. We have a track record of reputation for operating in a manner what is consistent with standards of good corporate governance, financial strength and integrity.

We shall be glad to receive further communication on the subject.

Yours faithfully,

Authorized Signatory

For and on behalf of
(Name of the Applicant or Lead Member in case of Consortium)

Enclosure: As mentioned in Section 3.5 or 3.6 (whichever is applicable)

ANNEXURE 2: STATEMENT OF LEGAL CAPACITY

(To be forwarded on the letter head of the Applicant/each member of the consortium)

Reference no: _____

Date: _____

To,
The Managing Director,
UP State Sugar Corporation Ltd.
Ganna Sansthan, Dali Bagh,
Lucknow – 226 001

Sub: Statement for Legal Capacity

Sir,

This is with reference to the advertisement dated , 2010 inviting EOI cum RFQ for sale of unit(s) of U.P. State Sugar Corporation Ltd. (UPSSCL) (“**The Transaction**”).

We have read and understood the content of this EOI cum RFQ and the advertisement.

(For Company)*

We _____(name of the Company) satisfy the eligibility criteria as detailed in the EOI cum RFQ.

(For Consortium)*

We _____(name of the Company)/ We are a member of consortium (constitution of which has been described in the Expression of Interest), which jointly satisfies the eligibility criteria as detailed in the EOI cum RFQ. We have agreed that [-----] (insert member’s name) will act as a the Lead Member of our Consortium.

We have agreed that [-----] (insert individual’s name) will act as the representative of our company/consortium* and on our behalf and has been duly authorized to submit the Application. Further, the authorized signatory is vested with requisite powers to furnish such letter and Request for Qualification and authenticate the same*.

Yours Faithfully,

Authorized Signatory,

For on behalf of (party/member)

** Strike out whichever is not applicable*

ANNEXURE 3: REQUEST FOR QUALIFICATION

(To be submitted by Applicant / Lead member of the consortium)

Details of Applicant

1. Name
2. Constitution (Tick Where applicable)
 - i. Public Limited Company
 - ii. Private Limited Company
 - iii. Others, (please specify)

If the Applicant is a foreign company/OCB, specify list of statutory approvals from UPSSCL/RBI/FIPB applied for/obtained/awaiting:

3. Sector (Tick Where applicable)
 - iv. Public Sector
 - v. Joint Sector
 - vi. Others, (please specify)

4. Details of the Shareholding Pattern:

5. In case of a Consortium:

- (a) The information above (1-3) should be provided for all the members of the Consortium.
- (b) Information regarding role of each member of the Consortium should be provided as per table below:

S. No	Name of Member	Expected % Interest	Role
1			Lead Member *
2			Member satisfying Technical Capability
3			Member satisfying Technical Capability
4			Member satisfying Technical Capability

**Specify whether Lead Member or Member*

6. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Transaction.
7. Date and Place of incorporation
8. Date of incorporation and/or commencement of business

9. Address, Phone, Mobile Number, and Fax Number of the Corporate headquarters and Head Office of the Company, if any, in India
 - a. Registered Office
 - b. Head Office
10. Address of correspondence:
11. E-Mail (Mandatory)
12. Financial Statements: Please provide the latest and last 1 year's audited financial statements with their salient features
13. Basis of eligibility for participation in the process (to be submitted by each member of the Consortium required to satisfy Financial Capability)
 - a. Net-worth Criteria (as per *Annexure 10*)
 - b. Turnover Criteria
14. Details of Contingent Liability (if any) that may have or would reasonably be expected to have a material adverse affect on the business and operations of the Applicant in any manner whatever;.
15. Details of individual (s) who will serve as the point of contact / communication within the Company:
 - (a) Name :
 - (b) Designation :
 - (c) Company :
 - (d) Address :
 - (e) Telephone Number :
 - (f) Mobile No.
 - (g) E-Mail Address :
 - (h) Fax Number :
16. Stock Exchanges where listed, if applicable
17. Regulator
18. Background of the Key Promoters (Individuals) of the Company/ Consortium

19. Name, Designation, Address and Phone Numbers of Authorized Signatory of the

- (a) Applicant:
- (b) Name :
- (c) Designation :
- (d) Address :
- (e) Phone No. :
- (f) Mobile No.
- (g) Fax No. :
- (h) E-mail :

20. Details of the Professional Advisor (if any):

- (a) Applicant:
- (b) Name :
- (c) Designation :
- (d) Address :
- (e) Phone No. :
- (f) Mobile No.
- (g) Fax No. :
- (h) E-mail :

Authorized Signatory

Place:

Date:

ANNEXURE 4: UNDERTAKING (SECURITY & INTEGRITY) ON COMPANY'S LETTER HEAD

1. We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to manage the public sector unit when it is disinvested or which relates to a grave offence that outrages the moral sense of the community.
2. We further certify that in regards to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our sister concerns.
3. We undertake that in case due to any change in facts or circumstances during the pendency of the disinvestment process, we are attracted by the provisions of disqualification in terms of the subject guidelines; we would intimate the UPSSCL of the same immediately.
4. We also certify that we have not been disqualified from participating in the disinvestment process either by Government of India or any of the State Governments.

Yours Faithfully

(Authorised Signatory)

ON BEHALF OF THE COMPANY/ EACH MEMBER OF THE CONSORTIUM

ANNEXURE 5: CERTIFIED COPY OF THE BOARD RESOLUTION – ON THE COMPANY’S LETTER HEAD.

“**RESOLVED THAT** approval of the Board be and is hereby granted to submit the Expression of Interest, Request for Qualification (EOI cum RFQ) and the supporting documents including Request for Proposal (RFP) to purchase one or more operating Unit(s) owned by UPSSCL.

RESOLVED FURTHER THAT Mr. _____ (name), _____(designation) be and is hereby authorised to represent the Company before UPSSCL for all purposes with regard to this bidding process, sign all the bidding documents and submit it before the appropriate authority and do any other acts as required.

Signature of Board Members

Member 1

Name:

Signature:

Member 2

Name:

Signature:

ANNEXURE 6: FORMAT FOR POWER OF ATTORNEY DULY ATTESTED BY NOTARY PUBLIC FOR SIGNING THE EOI CUM RFQ AND OTHER DOCUMENTS INCLUDING RFP

<On the Stamp Paper >

Power of Attorney

Know all men by these presents on this the ___day of _____, 2010, we (name and address of the registered office) do hereby constitute, appoint and authorize Mr./Ms..... (name and residential address) who is presently employed with us and holding the position of as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our EOI cum RFQ and other document including RFP for purchasing Unit(s) of UPSSCL (the **Transaction**), including signing and submission of all documents and providing information/responses to UPSSCL, representing us in all matters before UPSSCL, and generally dealing with UPSSCL in all matters in connection with our bid for the said Transaction.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Accepted _____
(Name of the Company and its Common Seal)

..... (Signature)
(Name, Title and Address of the Attorney)

Date:
Place:

ANNEXURE 7: FORMAT FOR POWER OF ATTORNEY DULY ATTESTED BY NOTARY PUBLIC FOR SIGNING THE EOI CUM RFQ AND OTHER DOCUMENTS INCLUDING RFP FOR LEAD MEMBER (S) OF CONSORTIUM

<On a Stamp Paper>

Power Of Attorney

Whereas UPSSCL has invited expression of interest and supporting documents from interested parties for purchase of operating unit of UPSSCL individually via Slump Sale.

Whereas, the members of the Consortium are interested in expressing their interest in bidding for purchasing the Unit(s) of UPSSCL (“**the Transaction**”) in accordance with the terms and conditions of the EOI cum RFQ and other connected documents including RFP in respect of the Transaction, and

Whereas, it is necessary under the EOI cum RFQ and RFP 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 participation in the transaction.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

We, M/s. -----, M/s ----- M/s. -----, and M/s..... (the respective names and addresses of the registered office) do hereby designate M/s..... being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium’s expression of interest for the Transaction, including submission of application/proposal, participating in conferences, responding to queries, submission of information/documents and generally to represent the Consortium in all its dealings with UPSSCL, any other Government Agency or any person, in connection with the transaction until culmination of the process of bidding.

We hereby agree to ratify all acts, deeds and things lawfully done by the Lead Member pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us/Consortium.

Dated this theDay of2010

.....

(Executants)

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

Place:

ANNEXURE 8: FORMAT FOR MEMORANDUM OF UNDERSTANDING FOR THE CONSORTIUM

This Memorandum of Understanding (“MoU”) entered into this ____ day of _____ 2010 at _____

Between

(hereinafter referred as” _____”) and having office at _____,
India **Party of the First Part**

AND

(hereinafter referred as” _____”) and having office at _____,
India **Party of the Second Part**

AND

(hereinafter referred as” _____”) and having office at _____,
India **Party of the Third Part**

AND

(hereinafter referred as” _____”) and having office at _____,
India **Party of the Fourth Part**

AND

(hereinafter referred as” _____”) and having office at _____,
India

The Party of the First Part, Party of the Second Part, Party of the Third Part, and the Party of the Fourth Part are individually referred to as “**Party**” and collectively as “**Parties**”.

WHEREAS UPSSCL has invited Application for EOI cum RFQ and RFP for purchase of Unit(s) of UPSSCL.

AND WHEREAS the Parties have had discussions for formation of a Consortium for expressing their interest in bidding for the purchase of unit(s) of UPSSCL (“**the Transaction**”) and have reached an understanding on the following points with respect to the Parties’ rights and obligations towards each other and their working relationship.

IT IS HEREBY AS MUTUAL UNDERSTANDING OF THE PARTIES AGREED AND DECLARED AS FOLLOWS:

That the Parties have formed this Consortium (“Consortium”) with the shareholding commitments expressly stated in this MoU.

1. That M/s _____ whose is a Lead Member, shall invest and continue to invest in at least 51% of the Interest of the Consortium, up-to a period of 1 year from the date of formation of the Consortium. The investment by the other Members of the Consortium shall be as under:
 - a.
 - b.

2. That the shareholding commitments shall be recorded in this MoU and no changes shall be allowed thereof, except in accordance with the provisions as laid down in the Share Subscription Agreement.
3. That the Parties shall carry out all responsibilities as agreed upon in terms of the Share Subscription Agreement, EOI cum RFQ and RFP.
4. That the roles and the responsibilities of each Party for the bid shall be as described in the Share Subscription Agreement.
5. That the Parties shall be jointly and severally liable in accordance with the terms of the Share Subscription Agreement.
6. That this MoU shall be governed in accordance with the laws of India and courts in _____ shall have exclusive jurisdiction to adjudicate disputes arising from the terms herein.

In witness whereof the Parties affirm that the information provided is accurate and true and have caused this MoU to be duly executed on the date and year hereinabove mentioned.

.....
(Party of the First Part)

.....
(Party of the Second part)

.....
(Party of the Third Part)

.....
(Party of the Fourth Part)

Witnesses:

- 1.
- 2.

Note: The members of consortium may add any other terms and conditions as may be mutually decided by them and which are not inconsistent with the terms & conditions mentioned above.

ANNEXURE 9: BOARD OF RESOLUTION - CONSORTIUM

(on the letter head of the each consortium member)

FORMAT FOR BOARD RESOLUTION FOR COMPANIES

“**RESOLVED THAT** approval of the Board be and is hereby granted to form and join the Consortium with _____, _____, _____, and _____ (names and addresses of the Consortium members) for submitting their Expression of Interest cum Request for Qualification and supporting documents Including Request for Proposal (RFP) to purchase the Unit(s) of UPSSCL (“**the Transaction**”) pursuant to the EOI cum RFQ and RFP dated issued by UPSSCL.

“**RESOLVED FURTHER THAT** the “draft” Memorandum of Understanding (“MoU”) to be entered into with the Consortium partners (a copy whereof duly initialed by the Chairman is tabled in the meeting) be and is hereby approved.”

“**RESOLVED FURTHER THAT** Mr. _____ (name), _____ (designation) be and is hereby authorised to enter into the MoU, on behalf of the company, with the Consortium members.

(For an ordinary member of the Consortium)

RESOLVED FURTHER THAT Mr. _____ (name) _____ (designation) be and is hereby authorised to execute a Power of Attorney in favour of _____ to act as the Lead Member and provide all the information/documents required from the Company to participate in the bidding process as a member of the Consortium.

OR

(For the Lead Member of the Consortium)

RESOLVED FURTHER THAT Mr. _____ (name) _____ (designation) be and is hereby authorised to accept a Power of Attorney granted by the other members of the Consortium, to act as the Lead Member and provide all the information/documents required from the Company to participate in the bidding process as a member of the Consortium

ANNEXURE 10: ELIGIBILITY CRITERIA

Financial Capability of an Applicant or all the members of the Consortium

Name of Member: % Shareholding in the Consortium

1

2

3

Lead Member:

S. No.	Financial information in Rupee (equivalent, with exchange rate, at the end of concerned year)	Member-1 (AY*)	Member-2 (AY*)	Member-3 (AY*)	Member-4 (AY*)	Weighted Average
1.	NETWORTH					
A	Paid up Equity					
B	Reserves					
C	Revaluation Reserves & Special Reserves if any					
D	Accumulated Losses (if any)					
E	Miscellaneous Expenditure not written off					
	Net Worth = (Paid up equity + Reserves) - (Revaluation Reserves + Accumulated Losses + Miscellaneous Expenditure not Written Off)					
2.	Average turnover of last 3 years as per audited annual statements (copies to be attached)					

* Audited Accounting Year should not have ended earlier than March 31, 2009.

S. No.	Turnover	AY1	AY2	AY3	Average
1.	Member 1				
2.	Member 2				
3.	Member 3				
4.	Member 4				

Whether Lead member satisfies proportionate net worth criteria i.e. Net Worth of Lead Member > 20.00 crores * stake in consortium: (Yes / No)

Notes:

1. This information should be extracted from the Audited Annual financial Statement/ Balance Sheet, which should be enclosed, and **this response sheet shall be certified by the Statutory Auditor of the Applicant/Bidder.**

2. The Applicant should provide the Financial Capability of its own or weighted average of the Consortium members. In computing the eligibility criteria of the Applicant/ Consortium members, the Net worth & Turnover of their respective Associates/ Group Companies may also be included as per Clause 3.4.1.

3. In Role of Member specify whether Single Applicant, or in case of Consortium specify whether Lead Member or Member.

ANNEXURE 11: CONFIDENTIALITY AGREEMENT

An Agreement is made on this ____th day of _____, 2010 between;

Uttar Pradesh State Sugar Corporation Limited, a company incorporated under the Indian Companies Act, 1956 and having its registered office at Vipin Khand, Gomti Nagar, Lucknow – 226010 (hereinafter referred to as “**UPSSCL**” which expression shall, unless repugnant to the context in which it is used, include its successors, affiliates and administrators) of the **FIRST PART**

And;

ABC Limited, a company incorporated under the Companies Act, 1956 and having its registered office at _____ (hereinafter referred to as “**ABC**” which expression shall, unless repugnant to the context in which it is used, include its successors and administrators) of the **SECOND PART**;

And;

WHEREAS UPSSCL possesses certain non-public, confidential and/or proprietary information relating to the sugar business (the ‘**Business**’) of UPSSCL, and which information it proposes to disclose to **ABC** (the ‘**Confidential Information**’) in written text and/or oral communication and/or site visits etc so as to enable **ABC** to evaluate a potential alliance with/investment in/acquisition of the **Business** (the ‘**Permitted Use**’);

The **Confidential Information** means all information, concerning the business, operations, prospects, finances, or other affairs of UPSSCL. It includes, but is not limited to, documents delivered in connection with the EOI cum RFQ and the information packets, information concerning business activities, products, specifications, data, know-how, compositions, designs, sketches, photographs, graphs, drawings, research and development, marketing or distribution methods of process, customers list, customer requirements, price list, market studies, computer software and programs, database technologies, systems, structures and architectures, historical financials and budgets, future projections, names and background of the personnel, and personnel training techniques.

NOW, THEREFORE, in consideration of the mutual promises contained herein, **UPSSCL** and **ABC** hereby agree as follows:

1. **ABC** agrees to hold the Confidential Information in strict confidence in accordance with the provisions hereof. Such information may be in any form including but not limited to written or printed information or information in electronic form, data, studies, consultants reports, trade secrets, performas and other financial and trade/commercial information, computer models and programs, contracts, plant designs and configurations, plant performance data or other material of any kind or nature in whatever form.
2. Without the prior written consent of UPSSCL or except as otherwise provided herein, **ABC** will not: (i) distribute or disclose to any other person any of the Confidential Information; (ii) permit any other person to have access to the Confidential Information; (iii) use the Confidential Information for any purpose other than the Permitted Use; or (iv) make multiple copies of the Confidential Information beyond what is immediately required under the Permitted Use within the preview of this Agreement; or (v) disclose to any other person (a) that discussions, investigations or negotiations are taking place concerning a possible transaction between the Parties, or (b) the terms, conditions, status or other facts regarding a possible transaction between

the Parties, or (c) that **ABC** has received the Confidential Information from UPSSCL, or (d) the details and/or contents of any evaluation that **ABC** might undertake of the Business for the Permitted Use. Notwithstanding the above, UPSSCL agrees that **ABC** may disclose the Confidential Information, and portions thereof to **ABC**' directors, officers, employees, representatives and advisors of **ABC** (collectively, "Representatives") who need to know such Confidential Information for the purpose of evaluating a possible alliance between the Parties. It is understood that **ABC** will inform its Representatives of the confidential nature of the Confidential Information and will require its Representatives to be bound by this Agreement and not to disclose the Confidential Information to any other person. **ABC** agrees to be responsible for any breach of this Agreement by its Representatives. As used in this Agreement, the term "person" shall be broadly interpreted to include, without limitation, any corporation, company, partnership or individual.

3. In the event that **ABC** is required by law in any judicial or governmental proceeding or otherwise to disclose any Confidential Information, **ABC** will give UPSSCL prompt written notice of such request so that UPSSCL may seek a protective order or appropriate remedy. If, in the absence of a protective order, **ABC** determines, upon the advice of an appropriate legal counsel, that it is required to disclose such Confidential Information, it may disclose such Confidential Information only to the extent compelled to do so; provided, however, that **ABC** gives UPSSCL written notice of the portion of Confidential Information to be disclosed as far in advance of the disclosure as is practicable and uses its best efforts, at **ABC**' expense, to obtain assurances that confidential treatment will be accorded to such Confidential Information.
4. All Information shared shall be deemed to be confidential. Confidential Information does not however include information that **ABC** can reasonably prove, falls within any of the following: (i) information that either is legally in **ABC**' possession or publicly available to **ABC** prior to the disclosure of such information hereunder; (ii) information that, subsequent to its disclosure hereunder, becomes publicly available to **ABC** without any violation of this Agreement; (iii) information that becomes legally available to **ABC** on a non-confidential basis from any third party, the disclosure of which to **ABC** does not, violate any contractual or legal obligation such third party has to UPSSCL with respect to such information
5. Should **ABC** decide not to proceed with the Transaction, then it shall not disclose to any party (a) the reasons for its choosing not to proceed with the Transaction; or (b) the fact that it evaluated the Business; or (c) any details of **ABC**' analysis and/or its views and/or its expert opinions on the attractiveness of the Business.
6. For the purposes of complying with the obligations set forth herein, **ABC** shall use efforts fully commensurate with those that it employs for the protection of its own privileged and confidential information.
7. No license expressed or implied in the Confidential Information is granted to **ABC**, hereby.
8. UPSSCL make no representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. Neither UPSSCL, nor any of its respective affiliates, employees, agents or controlling persons shall have any liability to **ABC** or any other person, resulting from **ABC**' use of the Confidential Information.
9. It is understood that this Agreement is only for sharing of information and does not obligate **ABC** or **UPSSCL** to enter into any further agreement, with respect to any matter arising out of or pertaining hereto.

10. **ABC** agrees that the Confidential Information is and shall at all times remain the property of UPSSCL and is material to the interests, business and affairs of UPSSCL and that the disclosure thereof (other than as permitted under this Agreement) would be detrimental to the interests, business and affairs of UPSSCL. No use of such Confidential Information is permitted except as otherwise provided herein and no grant under any of Company's intellectual property rights is hereby given or intended, including any license (implied or otherwise).
11. Should **ABC** decide not to proceed with the Transaction or upon the request of UPSSCL, **ABC** will return or destroy all Confidential Information and any notes, correspondence, analyses, documents or other records containing and/or derived from any/all Confidential Information, including all copies thereof, then in the possession of **ABC** or its representatives. Such return/destruction, however, does not abrogate the continuing obligations of **ABC** under this Agreement.
12. The obligations of **ABC** to comply with the provisions contained herein shall continue for a period of 2 (two) years commencing upon the date hereof.
13. Without prejudice to any other rights or remedies that **UPSSCL** may have, **ABC** acknowledges and agrees that money damages would not be an adequate remedy for any breach of this Agreement and that UPSSCL shall also be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement.
14. It is understood and agreed that no failure or delay by **UPSSCL** in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
15. **ABC** agrees to indemnify the Advisor and GoUP and UPSSCL from and against any damages, loss, cost or liability arising out of any unauthorized use or disclosure by **ABC**.
16. **ABC** shall not deal with any officer, Director or employees of UPSSCL and UPSSCL regarding the business and operations other than in the manner specified herein.
17. This Agreement shall be governed and construed in accordance with the laws of India.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officer as of the date first written above.

For and on behalf of ABC

For and on behalf of UPSSCL

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ANNEXURE 12: UNDERTAKING BY GROUP COMPANIES/ ASSOCIATES

UNDERTAKING on the letter head of the Flagship Company

(As required by Clause 3.4 (1) of the RFQ/ EOI)

TO WHOMSOEVER IT MAY CONCERN

We have read and fully understood the terms and conditions of the RFQ/ EOI for sale of Unit(s) of UPSSCL .

We hereby acknowledge and confirm that we are the Flagship Company of the (name of the group) whereof the (name of the Applicant) is one of the constituent Companies.

We hereby acknowledge, confirm and undertake that we shall extend any and all necessary financial support to (name of Applicant) and shall, furthermore, be jointly and severally responsible for the fulfillment of any and all obligations of the name of Applicant towards its successful participation in the Transaction and for the successful completion thereof, including all obligations as may be incidental and consequential to the Transaction. We further undertake to continue such financial support undertaken till the satisfactory completion of all the obligations undertaken by the Applicant Company.

Furthermore, we understand and acknowledge that on any breach of the obligations undertaken, the fulfillment whereof is required from us as per the instant undertaking or name of the Applicant in the course of the Transaction, the name of the Applicant shall be disqualified from the Transaction at the discretion of the UPSSCL and we shall be responsible jointly and severally for the consequences of such breach.

Dated:

Signature of the Authorized Signatory

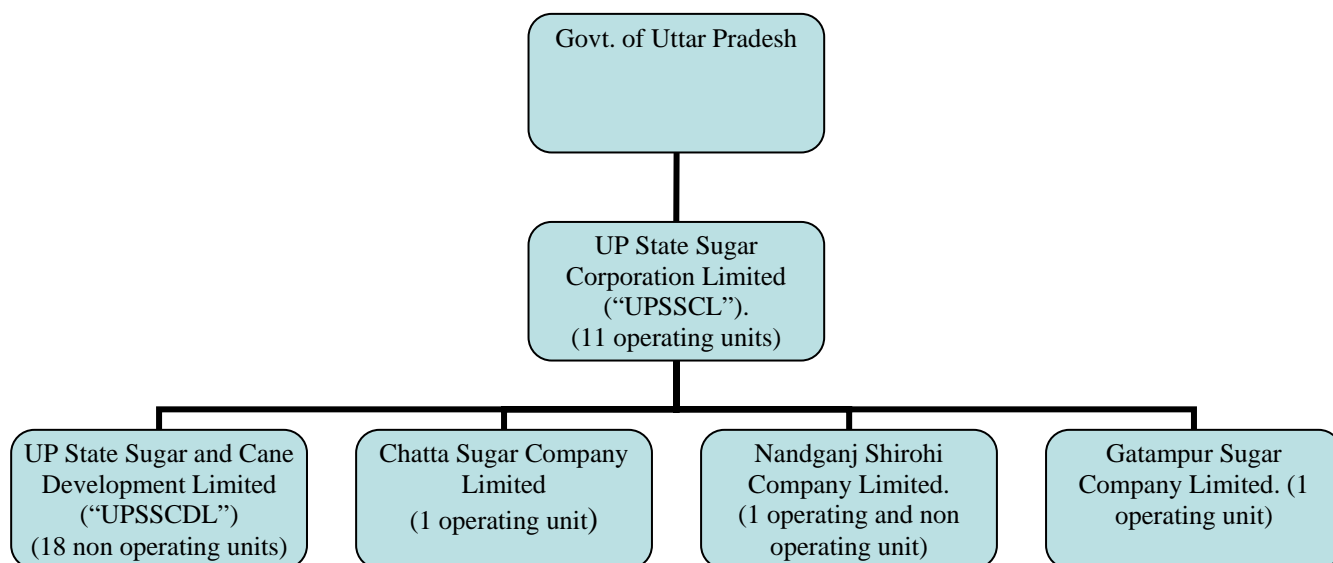
Enclosed: Necessary Board Resolution supporting the Undertaking shall be provided.

ANNEXURE 13: PRELIMINARY INFORMATION MEMORANDUM

U.P. State Sugar Corporation Ltd. (UPSSCL) was established on March 26, 1971 as a State Government Undertaking to run the sick sugar mills acquired by the State Government, in interest of cane growers and workers, under the U.P. Sugar Undertaking (Acquisition) Act, 1971.

1. Initially 12 mills were acquired by the State Government and vested in UPSSCL on July 3, 1971. But the physical possession of 5 sugar mills viz. Barabanki, Bhatni, Khadda, Mohiuddinpur and Sakhoti Tanda could only materialize. UPSSCL got the possession of the remaining 7 sugar mills viz. Amroha, Bijnor, Rampur, Jarwal Road, Burhwal, Ramkola and Lakshmiganj in 1979.
2. In 1984, 12 sugar mills were further vested in UPSSCL viz. Doiwala, Bulandshahr, Meerut, Rohanakalan, Saharanpur, Bareilly, Maholi, Hardoi, Ghughli, Chittauni, Munderwa and Siswabazar.
3. In 1989, 4 more sugar mills were vested in UPSSCL viz. Deoria, Nawabganj, Baitalpur and Shahganj. In the same year, one sugar mill in Pipraich (Gorakhpur) was purchased in an open auction and 6 new sugar mills were established by UPSSCL as separate subsidiary mills viz. Kiccha, Chandpur, Chhatta, Raebareli, Nandganj and Ghatampur.

Thus in all 35 mills were incorporated in UPSSCL. Out of these 35 mills, 5 mills were placed under the management of 4 subsidiaries of UPSSCL and the rest of 30 mills were placed under the direct management of UPSSCL as its mills. The present holding structure of UPSSCL is as follows:



Mohiuddinpur Unit

Particulars	Details
District	Meerut
Year of Establishment	1933
Year of Acquisition	1971
Installed Capacity (TCD)	2500
No of Employees	414 (Permanent- 145, Seasonal-252 and Centralised Staff-17)
Cultivation Area	17582 Hectare
Land Area	27.117 Hectare
Cane Crushed (SY 2009-10)	6.079 lac qtls
Recovery % (SY 2009-10)	8.01 %

FINANCIAL SUMMARY:

Particulars (Rs. Crs)	FY 2006-FY 07	FY 2007-FY 08	FY 2008-FY 09	FY 2009-FY 10*
Income				
Sugar Sale	25.66	39.45	34.22	45.15
By Product	3.72	2.79	3.71	2.41
Other Income	45.93	45.06	50.53	13.77
Total Income	75.31	87.30	88.46	61.33
Expenditure				
Raw Material Expenses	39.71	36.43	22.96	12.53
Manpower Expenses	4.33	5.12	5.15	6.20
Power & Fuel	1.15	1.71	1.81	1.76
Administrative and others	36.90	50.60	47.62	38.99
Total Expenses	82.09	93.86	77.54	59.48
PBDIT	(6.78)	(6.56)	10.92	1.84
PBDIT (%)				
Depreciation	0.37	0.33	0.25	0.17
Interest	2.30	2.48	2.48	0.62
PAT	(9.45)	(9.37)	8.19	1.05

TABLE 2 ; BALANCE SHEET

Particulars (Rs. Crs)	FY 2006-FY 07	FY 2007-FY 08	FY 2008-FY 09	FY 2009-FY 10*
Liabilities				
Fund Received from HO	59.90	69.01	84.46	89.19
Reserve & surplus	0.35	0.32	0.34	0.35
Accumulated profit/Loss	(73.29)	(82.68)	(78.45)	(78.67)
Total	(13.04)	(13.35)	6.35	10.87
Secured Loans	26.91	26.23	21.13	-
Unsecured Loans	9.39	9.09	-	-
Total Liabilities	23.26	21.97	27.48	10.87
Assets				
Fixed Assets	-	-	-	-
Depreciation	-	-	-	-
Net Fixed Assets	3.06	2.80	2.57	2.48
Investments	-	-	-	0.01
Current Assets				
Cash & Balances	0.96	0.78	3.49	3.70
Debtors	0.12	0.11	0.05	0.04
WIP and Stock	45.82	44.12	36.88	13.35
Others	2.64	3.01	3.06	3.21
Current Liabilities				
Sundry Creditors	22.73	23.36	13.87	7.06
Others	6.61	5.49	4.70	4.86
Net Current Assets	20.20	19.17	24.91	8.38
Total Assets	23.26	21.97	27.48	10.87

* Provisional

ANNEXURE14: AUTHORIZATION LETTER (ON LETTER HEAD)

To
The Managing Director and
U.P. State Sugar Corporation Ltd.
L U C K N O W – 226010

Sub: Authorization of the Due Diligence Team

Sir,

- 1) Kindly refer to your letter no. dated inviting us for the Request for Qualification (RFQ) stage of the process. In this context we are required to undertake Due Diligence & Site visits of the Sugar units of UPSSCL. We undertake to abide by the Data Room rules provided in the EOI cum RFQ.

Due Diligence Team

- 2) We authorise the following persons to visit the data room allocated to us and review the information as a part of the due diligence exercise.

- 1)
- 2)
- 3)
- 4)

Site Visit Team

- 3) We authorise the following persons to visit_.....unit (Name of Sugar unit) of UPSSCL and review the information as a part of the due diligence exercise.

- 1)
- 2)
- 3)
- 4)

We request you to provide any assistance and your full cooperation in the due diligence exercise.

For

Signature of Authorised Person

Name:

Address

ANNEXURE 15: DATA ROOM RULES

The rules set forth below regulate the terms of use of the facilities and documents made available in the Data Room.

CONFIDENTIALITY

- Access to, and review of, the documents contained in the Data Room or received in the course of the due diligence process is entirely subject to the Confidentiality Agreement which was entered into between The Applicant (“you”), UPSSCL (the “Company”) and GoUP on [].
- Each member of your team and your advisors would be bound by the terms of the aforesaid agreement and will be required to confirm their acceptance to the same prior to entering the Data Room

TIME FRAME

- The Due Diligence will be for the period till [].
 - The due diligence shall include access to data room and plant visits.
 - The data rooms will contain:
 - Information on various schedules supporting P&L and Balance Sheet for each mill and for UPSSCL
 - Summary of the pending litigation against UPSSCL, and/or its employees
 - Summary of information on the labor and the land assets being owned by each mill
 - Information on the pending VRS liability of Unit(s) of UPSSCL
 - Other Detailed Information
 - The plant sites will contain:
 - Ledger Balances supporting the Schedules
 - The Applicants will be encouraged to access information at both the above locations.
- The plant visits shall be only be allowed for Applicants carrying an Authorization letter, which are being issued by UPSSCL along with this RFP
- An Applicant is free to use at its discretion the time judiciously between the Data Room and site visits. However a prior intimation to the General Manager of the Mill at least 2 days in advance is required.
- Each Applicant shall have a Data Room allocated to it which will be open for all weekdays except Sunday and National Holidays.
- The Data Room will open at 10:30 a.m. and close at 5:00 p.m.

LOCATION

The Data Room is being maintained at the following addresses:

- 1) UP State Sugar Corporation Limited
Vipin Khand, Gomti Nagar, Lucknow
- 2) Data Room 1, Ganna Sansthan, Dali Bagh, Lucknow

- 3) Data Room 2, Ganna Sansthan, Dali Bagh, Lucknow
- 4) UP State Sugar Corporation Limited
585, Padam Bahadur Mal Block
Khel Gaon, New Delhi
- 5) UPSIDC Guest House
302, Khel Gaon, New Delhi

ACCESS

- Prior to entering the Data Room, you must send a complete list of people who will visit the Data Room along with their contact numbers and e-mail addresses. Only persons who have been previously confirmed to IFCI Ltd/ UPSSCL will be admitted to the Data Room. The due diligence team will have access to the Data Room daily on dates and time mentioned above. For confidentiality reasons, the Data Room will be locked at other times. When entering or leaving the Data Room, participants shall enter their names in a presence list.
- Prior to entering the Data Room visitors shall identify themselves to the Data Room in charge.
- Team members are requested to restrict themselves to the data room and not interfere in the daily activities.

PROCEDURE

Data Room in Charge

- There will be a Data Room in charge (Coordinator) for each of the Data Rooms. The names for the same will be provided in the Management meeting.
- The Data Room in charge will be present during opening hours at the Data Room. Data Room participants must comply with instructions given by the Data Room in charge. In particular, participants shall comply with any request by the Data Room in charge to leave the Data Room should it be necessary for any reason. The primary duty of the Data Room in charge is to supervise the Data Room and to handle questions of administrative nature. The Data Room in charge is not authorized to provide any material answers or explanations regarding the contents of the documents contained in the Data Room.

Documentation

- Documents contained in the Data Room must not be removed from the Data Room without explicit permission of IFCI / the Company.
- Documents in ring binders and/or hard bound must not be removed.
- Documents must not be marked, altered, modified, varied (including varying the sequence thereof), damaged or destroyed in any way.
- Documents contained in the Data Room must not be copied without explicit prior permission of IFCI/ the Company in writing.
- Data Room visitors are permitted to make manuscript notes and to use mobile phones (without digital cameras), calculators and personal computers.

Primary Contact Individual

- On the first day of Data Room access, please provide the representative of IFCI with a contact person, i.e. the Primary Contact Individual, representing your due diligence team. All communication (including due diligence questions) will exclusively be handled through your appointed Primary Contact Individual.

Questions

- Any other questions should be gathered and consolidated within your due diligence team, using the electronic questions form which we will provide you with by email. The questions in electronic form may be provided at upsugcor2007@rediffmail.com (before 5pm (IST) each day).
- The Company and IFCI will review the questions and will decide on a case-by-case basis whether answers are to be provided.
- IFCI and the Company would try to provide the answers to such questions within 5 working days of the query. The answer to any such query shall be made available to each Applicant.

Copy Requests

- Requests to receive copies of specific Data Room documents shall be directed to the Coordinator before 5:30 pm (IST) each day.
- The Coordinator will decide on a case-by-case basis whether the respective copies will be provided.
- Documents containing customer or employee information as well as key contracts will not be copied.
- If found relevant, the copy shall be made available to all applicants.

Meeting Requests

- The Due diligence exercise shall begin with a meeting with the management of UPSSCL and representatives of GoUP.

Clarification Meetings

- Meetings shall be held weekly on Each Monday (during the diligence period) at the address mentioned below. The Applicants are requested to attend each of these meetings and seek any clarification during such meetings.

UP State Sugar Corporation Limited
Board Room, 3rd Floor
Vipin Khand, Gomti Nagar, Lucknow

CONFIDENTIAL INFORMATION

- Certain documents in the Data Room contain non-public information that is subject to confidentiality undertakings or legal confidentiality restrictions such as data protection regulations. In order to comply with such restrictions and ensure confidentiality, the following measures have been taken:
 - in certain documents, the names of the parties, and in certain cases other information, have been blackened;
 - certain documents which contain highly sensitive information have been excluded from the Data Room; access to these documents may be given at a later stage of the due diligence process and upon explicit authorization by IFCI/ the Company

NO COMMITMENT

Any written or oral information or representation supplied or made in connection with the use of the Data Room or any investigation or negotiations for the acquisition of the Company shall not be considered as constituting an offer or invitation for the sale of any securities or assets, and shall not be considered as forming the basis of any future contract to be entered into with the shareholders of the Company.

NO REPRESENTATION OR WARRANTY

- No representation or warranty, expressed or implied, is made as to the accuracy or completeness of the information disclosed in the Data Room or in any other written or oral communication transmitted or made available;
- Nothing contained in the Data Room is, or shall be relied upon as, a promise or representation, whether as to the past, current or future performance of the Company;
- Only those representations and warranties made in a final and written agreement between a prospective purchaser and the shareholders of the Company, and subject to such limitations and restrictions as may be provided in such agreement, shall have any legal effect;
- The Company and IFCI reserve the right to modify or amend the present procedures and the timetable at any time on their discretion.