

Request for Proposal (“RFP”) for
Slump Sale of 11 Operating Units of
U.P State Sugar Corporation Limited (“UPSSCL”)



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

Date of Issue:

29th June, 2009

Date of Submission of Financial Bids:

18th August, 2009



Advisor: IFCI LTD

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

Definitions

In this Request for Proposal (RFP) document, unless the context otherwise requires, the following terms and expressions shall have the meanings assigned to them herein;

“Accounting Advisor” means Independent auditor appointed by UPSSCL to determine the Adjustment to the Bid Amount in accordance with Clause 2.6.4 of this Document;

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

“Adjusted Bid Amount” means the Bid Amount arrived at after adjustments as per Clause 2.6.4;

“Application” means Financial Bid as per Annexure 1;

“Application Due Date” shall mean the date appointed as the last date for the submission of the Financial Bids as laid down in Clause 3.6 herein;

“Application Validity Period” means, 180 days from the Application Due Date (including extensions of validity, if any);

“Bid Amount” means the amount offered in the financial proposal of a Shortlisted Applicant / Bidder for purchasing the units of UPSSCL via slump sale;

“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;

“Clause or Clauses” means clause or clauses of this RFP;

“Confidential Information Memorandum” or “(CIM)” means the document (annexed at ANNEXURE 7 to this RFP);

“Consortium” is a group of companies that have executed a Memorandum of Understanding or intend to execute the same as per the EOI/RFQ to collectively participate in the process for selection of Purchaser for Unit(s) of UPSSCL and to collectively undertake and execute the transaction if selected;

“Cumulative Networth Criteria” The Networth eligibility for purchase of ‘n’ number of units shall be ‘n’ times of Minimum Qualifying Networkth;

“Extended Final Payment Due Date” means the extended date by which the Purchaser has to make the Final Payment with interest for the purchase of the Unit (s), as per Clause 2.3.3 (3);

“EOI cum RFQ” means the ‘Expression of Interest cum Request for Qualification document’, made available on the websites: www.upsugarcorp.com and/or www.upcane.org, and/or www.ifcilt.com, together with all its annexes, as may be amended and modified from time to time;

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“Final Payment Amount” means the amount to be paid by the Purchaser towards Final Payment for the purchase of the Unit (s), as per Clause 2.3.3 (2);

“Final Payment Due Date” means the date by which the Purchaser has to make the Final Payment for the purchase of the Unit (s), as per Clause 2.3.3 (3);

“Financial Proposal” means the Application submitted pursuant to this RFP;

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

“GoUP” means the Government of Uttar Pradesh;

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

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

“Intimation Date” means the date on which the Selected Bidder is intimated about its selection, as per Clause 1.5;

“Minimum Qualifying Networth” means the Minimum networth required for an Applicant to be eligible to submit EOI cum RFQ application as defined in Clause 3.4.2 of EOI cum RFQ;

“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;

“RBI” means Reserve Bank of India;

“RFP or Request for Proposal” means this document which has been prepared to provide information about the process of sale of units of UPSSCL via Slump Sale to the Applicants together with all its annexes;

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

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

“Signing Date” means the date on which the Slump Sale Agreement is executed between UPSSCL and Successful Bidder after Initial Payment as per clause 2.3.1;

“Slump Sale” means sale of a unit with all its assets and liabilities excluding the liabilities to be retained by UPSSCL as mentioned in section 2.3.1 of EOI cum RFQ;

“Slump Sale Agreements” means the agreement to sell Unit(s) of UPSSCL via Slump Sale;

“Slump Sale of Unit” or “the Transaction” means the sale of any one or more unit(s) out of 11 operating units of UPSSCL via slump sale;

“Stake/Interest” means proposed shareholding percentages of the Consortium members in the Special Purpose Vehicle (“SPV”) formed/ to be formed (at the time of signing of Sale Deed after Final Payment defined in Clause 2.3.3) for the purpose of this Transaction;

“Successful Bidder/ Purchaser” means the Applicant selected to purchase any one or more units of UPSSCL;

“Technical Proposal” means the Application submitted by Applicants pursuant to EOI cum RFQ and invited by UPSSCL vide its public notice on 29th June, 2009;

“Transactions Documents” means all the documents which are to be executed to effect the slump sale, inclusive but not limited to the Slump Sale Agreement, Sale Deed, Deed of Assignment/Transfer and Undertakings;

“Transaction Development Costs or TDC” means Transaction Development Cost as defined in Clause 2.11;

“Unit(s)” mean one or more unit out of 11 operating sugar units belonging to UP State Sugar Corporation Limited. The locations of these units are given in Box 1 to 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);

Unit(s) of UPSSCL as per Terms of Reference issued to them by UPSSCL,;

Box 1

Operating Units
1. Chandpur
2. Amroha
3. Rohanakalan
4. Saharanpur
5. Bijnor
6. Sakhotitanda
7. Mohiuddinpur
8. Bulandshahr
9. Siswabazar
10. Khadda
11. Jarwalroad

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Section I – Transaction Process

1. The Slump Sale Process

1.1 ABOUT THE SLUMP SALE PROCESS

In pursuance of Government order No. 1215 SC/18-2-07-56/07 T.C.-1 dated June 4, 2007, UPSSCL intends to sell its 11 operating units individually via Slump Sale to the appropriate Purchaser through competitive bidding process (without 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 RFP, other relevant documents referred to herein, and the documents provided henceforth.

This RFP document is published on the site at www.ifcilttd.com and/or www.upcane.org and/or www.upsugarcorp.com for the perusal for the Applicants who are interested in purchasing Unit(s) of UPSSCL via slump sale.

1.2 THE PROCESS

GoUP/UPSSCL vide its public notice on 29th July, 2009 invited EOI cum RFQ and RFP proposal for sale of its operating units of UPSSCL via slump sale. The Applications against the said EOI/RFQ shall be evaluated and Applicant(s) shall be short-listed based on the evaluation of their Technical Proposal as mentioned in the EOI cum RFQ. The Shortlisted Applicants would be permitted to submit RFP.

1.3 THE SUBSEQUENT PROCESS

The Applicants may have access to the Data Room and Confidential Information Memorandum (CIM) on submission/ execution of:

1. Chartered Accountant's certificate certifying the Net worth of the Applicant evidencing that the Applicant possesses eligible Net worth.
2. Confidentiality Agreement
3. Proof of deposit of Rs. 50, 000(Rs. Fifty Thousand Only) towards bid document cost(non refundable) in the in favour of "UP State Sugar Corporation Ltd." payable at Lucknow

After this, the Applicant(s) can start due diligence and Site Visits of the Units and for the said purpose

1.4 SUBMISSION OF FINANCIAL BID

The interested Shortlisted Applicant(s)/Bidder(s) are expected to submit their RFP and Financial Bids, upto **14:00 hrs (IST)** on **the Application due date** as per instructions given in **Chapter 3** of this RFP. The Application shall be submitted to and at the following address:

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

1.5 TIME SCHEDULE

The indicative timeline is as follows:

Activity	Estimated Date
Data Room Diligence and Site Visits starts	from 1 st July, 2009
First Pre Bid Meeting at Hotel Taj Man Singh, New Delhi	To be Intimated
Weekly Clarification Meetings at: UP State Sugar Corporation Ltd. 3 rd Floor Conference Room Vipin Khand, Gomti Nagar Lucknow - 226 010	Every Wednesday (from 15.00 hours to 17.00 hours)
Date of Submission of RFQ	21 st July, 2009
Date of Release of list of Shortlisted Applicant(s)	23 rd July, 2009
Issue of Draft Slump Sale Agreement and Transaction Documents To the short-listed Bidders	23 rd July, 2009
Receipt of comments on RFP, draft Slump Sale Agreement and Transaction Documents	3 rd August, 2009
Second Pre Bid Meeting at Hotel Taj, Lucknow	3 rd August, 2009
Issue of final RFP along with final Slump Sale Agreement and Transaction Documents to the short-listed Bidders	11 th August, 2009
Date for submitting the Financial Bids	18 th August, 2009 (upto 14.00 hours)
Opening of Envelope – 2 of RFP	18 th August, 2009 (upto 15.00 hours)

Opening Of Financial Bids (Envelope- 1)	22 nd August, 2009
Intimation to Highest Bidder (H1) and Second Highest Bidder (H2)	Intimation Date (I) (to be intimated)
Signing of the Slump Sale Agreement and Transaction Documents with the selected Bidder after Payment of Initial Payment Amount and Financial Guarantee by the selected Bidder as per Clause 2.3.1	Signing Date (Intimation Date + 15 days)
Commencement of Work by Accounting Advisor (for revaluing the current assets and current liabilities)	Signing Date (I + 15)
Closure of VRS Scheme	I + 7 days
Window of Negotiation and Interfacing between the Selected Bidder and the workers/officers and information by UPSSCL to Selected Bidder about VRS allocation and its value.	I + 10 days
Estimation and intimation of VRS amount by Accounting Advisor	I + 21 days
Handing over of possession of the assets of the unit on payment of 25% of the Bid Amount and furnishing the financial guarantee of 75 days validity issued by Scheduled Commercial Bank for the balance 75% of the Bid Amount	Signing Date
Submission of the Accounting Advisor's report as per Clause 2.6.4	Signing date + 30 days
Payment of VRS amount as defined in clause 2.3.2	Signing date + 21 days
Payment of the Final Payment Amount by the selected Bidder as per Clause 2.3.3	Signing date + 45 days
Signing of Other Transaction Documents	To be intimated
Transfer of Assets	To be intimated

NOTE: In case of any change in the timelines, the shortlisted Applicants will be promptly informed by GoUP/ UPSSCL over telephone and E-Mail/Fax.

2. Terms of Sale

2.1 SLUMP SALE

UPSSCL shall execute Slump Sale Agreements and Transaction Documents with the Selected Bidder (s) to sell its 11 operating units individually via slump sale. In case the Successful Bidder is a consortium, they have to form an SPV with their respective stake in consortium before signing of Sale Deed. The Sale Deed will be executed in favour of SPV.

2.2 GOVERNING LAW/ JURISDICTION

This Transaction shall be governed by the laws of India. All disputes arising out of the process for Sale of Operating Unit(s) shall be subject to the exclusive jurisdiction of the courts at Lucknow, Uttar Pradesh, India.

2.3 BID AMOUNT AND PAYMENT SCHEDULE

The Shortlisted Applicants are required to submit an offer for the Bid Amount i.e. amount they are willing to pay to acquire the Unit(s) of UPSSCL. The Bid Amount shall be payable by the Successful Bidder as follows:

S. No.	Date	Description	Amount Payable
1.	Signing Date:	Within 15 days from the date of Intimation to the Successful Bidder	25% of the Bid Amount + Transaction Development Cost(TDC) + Financial Guarantee for balance 75% of the Bid Amount, valid for 75 days from Signing Date
2.	First VRS Payment Date	Within 21 days from the Signing Date	Cost of First VRS
3.	Final Installment Date	i) Within 45 days from the Signing Date without interest. ii) In case the Final Payment is made beyond 45 days from the Signing Date but before 90 days from the Signing Date, the Successful Bidder shall pay final installment alongwith interest @ SBI PLR + 2% pa for the period from 46 th day till the date of Final Payment which shall not be beyond 90 days from the Signing Date.	i) 75% of the bid amount \pm difference between the Bid value and Adjusted Bid value ii) 75% of the bid amount \pm difference between the Bid value and Adjusted Bid value + Applicable interest + extension of Financial Guarantee.

4	Performance Guarantee valid for 18 months	Within 45 days of Signing Date, for compliance with Consortium related covenants as mentioned in Clause no. 2.7 and employee related conditions as mentioned in Clause no. 2.10	Amount Rs. 5.0 crores
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All payments shall be in the form of a Bank Draft issued by any Scheduled Commercial Bank in favour of “U.P. State Sugar Corporation Limited” payable at Lucknow

2.3.1 Initial Payment

The Applicant selected to purchase the Unit of UPSSCL will be required pay 25% of the Bid Amount along with the Transaction Development Cost (Clause 2.11) within 15 days of intimation of selection and also need to furnish Financial Guarantee from any Scheduled Commercial Bank for balance 75% of the Bid Amount having the least validity period of 75 days from Signing Date in favor of “U.P. State Sugar Corporation Limited”.

The successful Applicant will execute the Slump Sale Agreement and will be handed over the possession of the Unit for repair and maintenance and preparation of Unit for ensuing crushing season after payment of 25% of the Bid Amount + TDC and furnishing the financial guarantee of validity of 75 days issued by Scheduled Commercial bank for the balance 75% of the Bid Amount.

In case the Selected Bidder is not able to deposit 25% of the Bid Amount within the above stipulated time, the Selected Bidder will be disqualified from the bid process for sale of Unit of UPSSCL and the Bid Security including any other amount deposited by such Applicant will be forfeited by UPSSCL. In such case, second highest bidder may be invited to complete the process for sale of the Unit of UPSSCL.

2.3.2 Second Installment

The Purchaser will have to pay the Cost of First VRS, within 21 days from the Signing Date **(First VRS Payment Date) as follows:**

Cost of First VRS = First VRS amount to be paid through UPSSCL (as per Clause 2.10)

2.3.3 Final payment

The following activities will also commence after signing of the Slump Sale Agreement:

1. UPSSCL will receive report form previously appointed Accounting Advisor (certifying the following on the Signing Date):
 - i. The difference in the values of the Current Assets between March 31, 2009 and the Signing Date, which shall be subtracted/ added to the Bid Amount.

- ii. The difference in the values of the Current Liabilities between March 31, 2009 and the Signing Date, which shall be subtracted/ added to the Bid Amount.
2. As Final Payment, the Purchaser will be required to pay 75% of the Bid Amount along with adjustment for changes in value of Current Assets and the Current Liabilities as follows :

Final Payment Amount = 75% of the Bid Amount + [(Current Assets on Signing Date – Estimated Current Assets as on March 31, 2009) – (Current Liabilities on Signing Date – Estimated Current Liabilities as on March 31, 2009)] + Applicable interest amount as per Clause 2.3.3 (3) below.

3. The Purchaser shall pay the final payment (the “**Final Payment Amount**”) within forty five (45) days from the Signing Date without interest amount (the “**Final Payment Due Date**”). In case final payment is made beyond 45 days from the Signing Date but before 90 days from the Signing Date, the Successful Bidder shall pay final installment along with the interest amount @ SBI PLR plus 2% p.a. for the period from 46th day till the date of final payment which shall not be beyond 90 days from the Signing Date (the “**Extended Final Payment Due Date**”): Provided that the Purchaser will have to intimate whether he desires to opt for provision of Extended Final Payment Due Date by a notice in writing to be received by UPSSCL at least five working days prior to Final Payment Due Date alongwith extension of validity period of the Financial Guarantee for next 50 days.
4. After payment of first installment and up to full payment of final installment of Bid Amount as laid down above, if the selected Bidder/Purchaser defaults in any payment at any stage or breaches any of the terms and conditions, the entire amount paid by the selected Bidder/Purchaser up to that point, shall be forfeited and following shall take place
- a. The process of selection of Purchaser may be started de novo if GoUP/UPSSCL so decides.
 - b. The Purchaser shall return the possession of the Unit(s) within 15 days from the notice of default.
 - c. The Purchaser shall also reimburse the damages to the Units as estimated by UPSSCL.

2.3.5 The Purchaser will bear the Stamp duty as applicable on the Slump Sale Agreement and other Transaction Documents.

2.3.6 In case of any default in the payment terms by the Purchaser, GoUP / UPSSCL may invoke the Financial Guarantee.

2.4 BID SECURITY AND FORFEITURE OF BID SECURITY

Shortlisted Bidder shall submit Bid Security of Rs.1,00,00,000/- (Rs one crore) only in the form of Bank Draft in favour of “ U. P. State Sugar Corporation Limited.” payable at Lucknow issued by any Schedule Commercial Bank. The Bank Draft shall be valid for a period of 180 days and may be released without interest, earlier in the following situations:

- i. For the Successful Bidder(H1) – After final Payment
- ii. For the Second Highest Bidder(H2) : on submission of the 25% bid amount by the First Highest Bidder (as detailed in Clause 2.3)
- iii. For Other Bidders: on selection of First and Second Highest Bidders;

The entire Bid Security shall be forfeited in any the following cases:

1. In case an Successful Bidder of UPSSCL fails to deposit the 25% payment along with Transaction Development Cost (TDC) as per Clause 2.11 within 15 days from the Intimation Date, or
2. If the Bidder fails to submit financial guarantee for 75% of the Bid Amount or performance guarantee for VRS-II as per clauses 2.12, or
3. In case any Short listed Bidder withdraws it Financial Bid before the time provided for refund of security, its Bid Security will be forfeited.
4. If the Bidder is disqualified as per Clause 4.4 after opening of the Financial Bid.

2.5 LIABILITIES RETAINED/ SETTLED BY UPSSCL

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

1. **Cane dues**
2. **Labour and Employees Dues:** All the dues payable to labour and employees till the Signing Date will be settled by UPSSCL.
3. **Head Office Account:** All remittances given to the units by H.O (UPSSCL) and shown as H.O accounts in the book of the Units will be retained by UPSSCL.
4. **Inter Unit Account:** To be settled before transfer.
5. **Working capital borrowings** (including interest thereon): All the working capital borrowings of the Units from the Banks will be settled by UPSSCL before Signing of the Slump Sale Agreement, through Bridge loan received from Government of U. P

The approximate value of these liabilities as on March 31, 2009 unit wise are provided in CIM.

Any other liability quantified or non-quantified other than those mentioned above will, be the responsibility of and be borne by the Purchaser. The Bidder will be provided indicative details related to contingent liabilities in the Data Room. Further details will be available at Unit level for detailed due diligence.

2.6 NET WORKING CAPITAL AND ADJUSTMENT TO BID AMOUNT

2.6.1 Current Assets

1. The following will be considered as Current Assets:
 - a. Inventory of Sugar
 - b. Inventory of Molasses
 - c. Stores and Spares
 - d. Inventory of Bagasse
 - e. Inventory of Press Mud
 - f. Cash , bank balances Cash Equivalents
2. The Applicants should factor in the value of the tentative value of Current Assets as on 31 March 2009, as enclosed in CIM in their Financial Bid/ Bid Amount (Estimated Current Assets).
3. The final value for the Current Assets on the Signing Date shall be computed after the Signing Date by the Accounting Advisor appointed by GoUP/UPSSCL (Adjusted Current Assets).

2.6.2 Current Liabilities

1. The Current Liabilities include the following:
 - a. Suppliers' Dues
 - i. Suppliers payable A/c
 - ii. Performance Guarantee
 - iii. Sundry Debtors payable
 - iv. Security Deposit payable
 - v. Payable to Contractors
 - b. Statutory Dues
 - i. Income Tax
 - ii. Sales Tax/VAT
 - iii. Entry Tax
 - iv. Others dues
2. The Applicants should factor in the value of the tentative value of Current liabilities as of 31 March 2009, as enclosed in CIM in their Financial Bid/Bid Amount (Estimated Current Liabilities).
3. The final value for the Current Liabilities on the Signing Date shall be computed after the Signing Date by the Accounting Advisor appointed by UPSSCL (Adjusted Current Liabilities).

2.6.3 Working capital Loans

The current assets and fixed assets of the Units being sold are encumbered against the working capital loans given by the District Cooperative Bank, Meerut (In case of Mohindipur Unit) and Uttar Pradesh Cooperative Bank (for all other units). Presently, the working capital loans are also guaranteed by GoUP. The detailed breakup of the outstanding against each Unit as on March 31, 2009 is as provided in the CIM

The banks mentioned above have agreed to provide a No Objection Certificate (NOC) to release their charge against all the units immediately on clearance of their outstanding dues against UPSSCL prior to the transfer of entire assets of the Unit(s) of UPSSCL to the Purchaser.

2.6.4 Adjustment to Bid Amount

The Bid Amount will be adjusted based on the value of the Current Assets and Current Liabilities on the Signing Date as determined by the Accounting Advisor as per the following:

$$\text{Adjusted Bid Amount} = \text{Bid Amount} + (\text{Current Assets on Signing Date} - \text{Estimated Current Assets as on March 31, 2009}) - (\text{Current Liabilities on Signing Date} - \text{Estimated Current Liabilities as on March 31, 2009})$$

The difference between the Adjusted Bid Amount and the Bid Amount will be settled along with the Third and Final Installment date.

2.7 CONDITIONS FOR CHANGE IN A CONSORTIUM

In case of the Bidder being a Consortium:

- 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 in the Consortium
- The minimum interest of a member in the Consortium should not be less than 10%
- The total number of members in the Consortium shall not exceed 4.
- No change in Consortium composition is permitted after submission of EOI cum RFQ.
- All applicants are expected to conform to regulatory approvals for their respective sectors and those for the sugar sector in India / UP
- In case the finally selected Applicant (Purchaser) is a Consortium, the following conditions shall apply:
 - i. Lock in period of one year from the date of signing of Sale Deed/ Final Payment.
 - ii. The Lead member of the Consortium shall be required to maintain at least 51 % of the interest in the Consortium for initial one year from the date of execution of Sale Deed. However inter se change in shareholding among members is allowed subject to the Lead Member maintaining minimum 51% stake.

- iii. Any change in composition of the Consortium, including addition of new members, after 1 year is permissible.

2.8 LEGAL PROCEEDINGS

There are legal proceedings pending before courts and forums relating to Unit(s) of UPSSCL. The details of such proceedings would be available in the Data Room and all applicants are advised to undertake a thorough due diligence in the data room in relation to all legal proceedings and other legal matters pertaining to Unit(s) of UPSSCL.

2.9 INDEMNITY, REPRESENTATIONS AND WARRANTIES

1. Liabilities other than those mentioned in Clause 2.5 above shall not be retained or indemnified by GoUP/UPSSCL.
2. It is further clarified that remaining liabilities other than those mentioned in clause 2.5 whether quantified or non-quantified liabilities shall be borne by the Purchaser.
3. However, GoUP/UPSSCL has endeavored to quantify most of its liabilities and has made provisions for the Applicants to assess the quantified liabilities through:
 - a. The disclosures schedule in the CIM (*Annexure 7*)
 - b. The due diligence that will be conducted by the Applicants

2.10 EMPLOYEES

- (i) The details of the number of the wage board employees and the centralized service staff deputed in each Unit are provided in the CIM.
- (ii) The Purchaser will be liable to provide reservation in employment or other matters as per the GoUP/UPSSCL policies for private sector investments as applicable.
- (iii) The Purchaser should recognize that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Caste/ Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of society. The Purchaser shall use its best efforts to cause the company to provide adequate job opportunities for such persons. Further in the event of any reduction in the strength of the employees of the company in compliance with applicable labour laws, the Purchaser shall use its best efforts to ensure that the physically handicapped persons, Scheduled Casts/Scheduled Tribes are retrenched at the end.
- (iv) The prospective purchaser will provide Performance Guarantee of Rs. 5.00 crores to implement VRS-II and also sign a MOU with the unions of Labour/Employees/Officers.

The Employees of the Unit(s) (Wage Board Employees and posted/deputed Centralized Service Staff at the unit) as on the Signing Date will be deemed to remain employees of the Unit(s) even

after the transfer of all the Assets of the Unit of UPSSCL to the Purchaser in accordance with the following condition.

The wage board employees shall have three options:

1. **First Voluntary Retirement Scheme (“First VRS”)** – The wage board employees of the Units may opt for voluntary retirement wherein they will be paid as per GoUP norms according to their years of service performed/remaining. (Details for First VRS which is to be announced by UPSSCL as per Annexure 2).
2. **Continue employment with the Unit under new management of the Purchaser:** The remaining wage board employees of the Units shall continue their service at the existing service conditions and no retrenchment of employees shall be undertaken by the Purchaser for at least one complete crushing season or one year from the date of execution of Sale Deed with Purchaser whichever is earlier (which shall however not be earlier than the implementation of the Second VRS)
3. **Second Voluntary Retirement Scheme (“Second VRS”)** - Within one calendar year or after one crushing season from execution of Sale Deed with the Purchaser, whichever is earlier, the wage board employees shall be given an option to opt for Second VRS by the Purchaser. The terms of the Second VRS shall not be inferior to the then prevailing terms for the VRS scheme of GoUP. The Purchaser shall be obligated to pay the VRS dues to such wage board employees who opt for the Second VRS.

2.10.2 Centralized Service Staff

The centralized service staff deputed at unit shall have two options:

1. **First Voluntary Retirement Scheme (“First VRS”)** Centralised service staff deputed at the units may opt for voluntary retirement or agree for the transfer of the services to the Unit(s) , In case he opts for VRS they will be paid as per GoUP norms according to their years of service performed/remaining. (Details for First VRS which are to be announced by UPSSCL as per Annexure 2).
2. **Continue employment with the Unit under new management of the Purchaser:** The posted/deputed Centralized Service Staff who have opted for services of the Unit shall continue their service at the revised terms of the **Sixth** Pay Commission of the Government of India as adopted by GoUP. No retrenchment of Centralized Service Staff shall be undertaken by the Purchaser for at least one complete crushing season or one year from the execution of Sale Deed with the Purchaser whichever is earlier (which shall however not be earlier than the implementation of the Second VRS scheme provided below).
3. **Second Voluntary Retirement Scheme (“Second VRS”)** Within one calendar year or after one crushing season from the date of execution of Sale Deed with Unit(s) to the

Purchaser, whichever is earlier, the Centralized Service Staff transferred to the Unit shall be given an option to opt for Second VRS by the Purchaser.

The terms of the Second VRS shall not be inferior to the then prevailing terms for the VRS scheme of GoUP. The Purchaser is obligated to pay the VRS dues to such Centralized Service Staff who opt for the Second VRS.

2.10.3 Treatment of VRS amount for the Bid Value

The Purchaser should assume that the employees of the Unit(s), as on the Signing Date shall continue to remain employee of Unit(s) even after the sale of the units on the following conditions;

- i. Wage board employees on existing service conditions and retirement benefits.
- ii. The centralized service staff as per pay scales of the 6th Pay Commission (effective from the date of signing of Slump Sale Agreement).
- iii. The employees of categories (i) & (ii) above shall be given the benefits of number of years of services performed in UPSSCL, for calculation of all benefits including retirements benefits and VRS
- iv. The terms of VRS offered by the Purchaser will not be inferior to the then prevailing VRS policy of GoUP.

NOTE: The details of the GoUP's VRS policy are provided in *Annexure 2*.

2.10.4 VRS Process

However, GoUP/UPSSCL shall facilitate the issuance of the VRS for the 11 operating units and the centralized staff deputed at the Unit(s) and thereafter help the Purchaser to optimize the workforce being passed to the Purchaser in the following steps;

1. **Step 1:** UPSSCL shall announce the First VRS (as per Annexure 2) []
 - During this period, the employees can decide if they would like to opt for VRS.
 - After the closure of the First VRS, The selected Bidder/ Purchaser shall be informed about the number of employees opting for VRS. This intimation shall be given within 07 days of Intimation Date.
 - The selected Bidder/Purchaser will be consulted to finalize Wage Board employees to whom the Purchaser is willing to offer the First VRS.
 - *The Purchaser is obligated to pay the VRS to such Centralized Service Staff posted/ deputed at Unit(s) who opt for the First VRS and do not agree to transfer services to the Unit(s) under new management of the Purchaser.*
2. **Step 2:** First VRS amounts to be computed by Accounting Advisor/UPSSCL within 15 days after selection of the Bidder/ Intimation Date.

3. **Step 3:** Payment of the VRS amount (to be disbursed through /UPSSCL) to be made by the Purchaser on the **First VRS Payment Date**.
4. **Step 4:** Disbursement of the VRS amount by UPSSCL to the employees to be given VRS within 21 days of the **First VRS Payment Date**.
5. **Step 5:** Lock-in of one crushing season or one calendar year whichever is earlier from the date of execution of Sale Deed for the remaining employees on the following terms;
 - a. The wage board employees shall continue at the prevailing sugar wage board rates
 - b. The centralized service staffs who have opted for the services of the Unit(s) shall continue but as per pay scales not inferior to the 6th Pay Commission or prevailing Pay Scale at UPSSCL (effective from the date of signing of Slump Sale Agreement).
 - c. No Retrenchment of wage board employees or centralized service staff will be permitted during this lock-in period
6. **Step 6:** After one crushing season or one calendar year whichever is earlier from the date of execution of Sale Deed , the Purchaser will be bound to offer the Second VRS and provide VRS benefits to all the employees who opt for VRS. The terms of the second VRS will not be inferior to the then prevailing VRS policy of GoUP .

2.10.5 Provident Fund (PF) and Gratuity

A PF Trust has been created at the Head Office of UPSSCL whose members are centralized services employees. The Managing Director of UPSSCL is the Chairman of the Trust. It is managed by a board of 8 trustees comprising 4 trustees from the employer i.e, UPSSCL and 4 members from the employees of the centralized services of UPSSCL.

The PF Funds of the centralized services staff who have opted for transfer of services to the Unit(s) shall be transferred to the PF Trust of the Purchaser. In case, there is no Trust of the Purchaser, then the funds will be transferred to the PF Commissioner's account.

Regarding the employees of the Wage Board appointed by respective Units, their PF records are maintained by respective Regional Provident Fund Commissioners (RPFs) and their contribution is sent to the respective RPFs.

The Gratuity will be payable by the Purchaser as and when it becomes due and payable to the employees.

2.11 PAYMENT OF TRANSACTION DEVELOPMENT COST (TDC)

All the fees paid and payable by GoUP/UPSSCL to Advisors/Legal Advisors, Accounting Advisor and Valuers and other related expenses in the process shall be reimbursed by the selected

Bidder/Purchaser to UPSSCL on Signing Date. . The TDC payable will be estimated by the UPSSCL and intimated accordingly.

2.12 PERFORMANCE GUARANTEE

- (i) The Purchaser will submit Performance Guarantees (in prescribed Format - Annexure-6) equivalent to Rs. 5.00 crores to be valid for 18 months from the Date of Final Installment in favour of the U.P. State Sugar Corporation Limited , in the form of single or multiple Bank Guarantees issued by any Scheduled Commercial Bank.
- (ii) The Purchaser agrees that UPSSCL shall have unconditional and irrevocable right to invoke the Performance Guarantees in the events of the Purchaser failing to implement Second VRS as laid down in clause 2.10 or does not comply with the Consortium related covenants as mentioned in section 2.7.
- (iii) The Performance Guarantees shall be released with in thirty days after implementation of Second VRS as laid down in clause 2.10.
- (iv) The performance guarantee shall be worded in such a way as to be encashed by the issuing Bank without Demur, immediately upon receipt of such written request from UPSSCL.

3. Instructions for Submitting Financial Bid

3.1 ONE FINANCIAL BID PER APPLICANT COMPANY PER UNIT

Each Applicant Company is entitled to submit only one Financial Bid per Unit and cannot be a party to more than one Financial Bid, whether by itself or as a part of a Consortium for the same unit. Any Applicant Company found having made more than one Financial Bid per Unit by itself or as a part of a Consortium for the same Unit(s) shall be liable to be disqualified and will also lead to disqualification of the Consortium(s) of which it is a member.

Any Applicant can bid for more than one Unit subject to the rules defined in next paragraph, however, at the time of award for more than one bid to same Applicant, the Applicant should satisfy Cumulative Net Worth Criteria i.e. for award of one bid the Applicant should satisfy Minimum Networth of 20.0 crores (Minimum Qualifying Net worth), For Award of 2 bids the Applicant should have net worth of (2 x 20crs) 40.0 crores and For Award of n bids , Applicant should satisfy minimum net worth of 20 x n crores.

After short listing at EOI/RFQ, the number of bids an Applicant can submit is restricted as per the networth of the Applicant. The maximum number of bids, a shortlisted Applicant is entitled to submit is 5 times of number of bids he is entitled to be awarded. The mathematical representation of the same is as follows:

Number of Bids = Rounded value up to lower Integer Value ($\lfloor \text{Networth of Bidder} / \text{Minimum Qualifying Networth} \rfloor$) * 5

Minimum Qualifying networth is Rs. 20.0 crores as mentioned in EOI cum RFQ.

i.e. in case net worth of any bidder is 30 crores it is entitled to bid for 5 units. The steps of calculation are as follows:

Number of bids = Rounded Value up to Lower Integer Value of $\{(\text{Networth of bidder} / 20)\} * 5$
= Rounded Value up to Lower Integer Value of $\{(30/ 20)\} * 5$
= Rounded Value up to Lower Integer Value of $\{(1.5)\} * 5$
= 1* 5

However, it may be mentioned that in above example, the Applicant is eligible to purchase only one unit as per cumulative net worth criteria.

In case, Any Bidder is H1 in number of Units higher than the Units it is entitled to purchase as per Cumulative Net Worth Criteria described above i.e. in the above example we assume that same applicant is H1 for bids for three Units against 5 bids submitted, The number of bids the Applicant shall be awarded as justified by Cumulative Net Worth criteria i.e. in above example one bid. The units that will be allocated will be of higher priority as per the Priority Order provided in

Annexure 8. (Continuing with above example, the Applicant will be awarded one Unit of highest priority as per the priority order mentioned in Annexure 8)

3.2 LANGUAGE AND CURRENCY

The Application and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by Applicant with the Application may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. 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. The currency for the purpose of the Application shall be the Indian Rupee (INR).

3.3 BID VARIABLE

The Bid Variable shall be the Bid Amount. The Bidders shall quote the Bid Amount i.e. amount they are willing to pay to purchase the Unit(s) of UPSSCL via slump sale.

3.4 DOCUMENTS TO BE SUBMITTED BY APPLICANTS

The APPLICATION shall be submitted in separate sealed cover for each Unit containing following sealed envelopes:

Envelope 1:

Titled “**PRIVATE AND CONFIDENTIAL – FINANCIAL BID FOR PURCHASE OF THE UNIT ----- (INSERT THE NAME OF UNIT)**”

(The envelope shall contain Financial Bid as per the format enclosed as *Annexure -1*)

Envelope 2

1. A copy of the “Transaction Documents and Slump Sale Agreement” signed by the authorized signatory of the Applicant (to confirm the acceptance of the final draft of the Slump Sale Agreement and Transaction Documents)
2. A refundable Bank Draft issued by any Scheduled Commercial Bank in India of INR 1.00 Crore (in words One Crore only) per unit as Bid security (Earnest Money) in favor of “U.P. State Sugar Corporation Limited.” payable at Lucknow
 - The Bank Draft shall be valid for a period of 180 days and may be released without interest earlier in the following situations:
 - i. For the Successful Bidder: after Final Payment.
 - ii. For the Second Highest Bidder: on submission of the 25% bid amount by the First Highest Bidder (as detailed in Clause 2.3)
 - iii. For Other Bidders: on selection of First and Second Highest Bidders;
3. Section 108A application under the Companies Act, 1956, if required

4. FIPB/SIA application, if required
5. Board Authorizations, if required
6. Other documents (including Power of Attorney (POA), Board Resolutions including for Consortium formation as applicable and Consortium Agreement) which could not be submitted at RFQ stage.
7. Annexure 8: Containing priority and minimum committed number of units any Applicant is interested to buy.

3.5 FORMAT AND SIGNING OF APPLICATION

The cover envelope with its contents 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 Application shall be typed or written in indelible ink and each page shall be signed by the Applicant (Signed in original, not scanned). All the alterations, omissions, additions, or amendments made to the Application shall be initialed by the person (s) signing the Application.

The Applicant would provide all the information as per this RFP. GoUP/UPSSCL may evaluate only those Applications that are received in the required format and complete in all respects.

3.6 APPLICATION DUE DATE

The Applications containing the Financial Bid should be submitted at the above address upto 14.00 hours on the Application due date, i.e. 18th August, 2009. Applications submitted by either e-mail, facsimile transmission or telex would not be acceptable. Applications submitted after the time stated above will be rejected. GoUP/UPSSCL will not be responsible for any delay, loss or non-receipt of the Applications along with other documents sent by post/courier. Further, GoUP/ UPSSCL shall not be responsible for any delay in receiving the Applications and reserve the right to accept/reject any or all Applications without assigning any reason thereof. GoUP/ UPSSCL may, at its sole discretion, extend the **Application Due Date** by issuing an Addendum.

3.7 MODIFICATIONS / SUBSTITUTION OF APPLICATIONS

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

3.8 APPLICATION PREPARATION COST

The Applicant shall be responsible for all of the costs associated with the preparation of its Application as described in this RFP, including, without limitation, any and all costs, directly or indirectly 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. GoUP / UPSSCL will not be responsible or in any way liable, for such costs.

3.9 APPLICANT WARRANTY AND GOUP/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 RFP document; and
2. Independently verified all Information received in the CIM and during the due diligence.

And, 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.

GoUP/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 Transaction generally.

3.10 AMENDMENTS TO RFP

At any time prior to the deadline for submission of Applications, GoUP/UPSSCL may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of addenda (the “Addenda or Addendum”, as the case may be). Any Addendum thus issued shall be made available by email to the e-mail address provided by the Applicants. The Addendum will be published at the website www.ifcilt.com and/or www.upcane.org and/or www.upsugarcorp.com

3.11 VALIDITY/ EXTENSION OF VALIDITY OF APPLICATION

Applications shall be valid for a period of 180 days from the **Application Due Date** (the “**Application Validity Period**”). GoUP/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, GoUP/UPSSCL may request Applicants to extend the Application Validity Period for a specified additional period (a maximum of 90 days). If for whatsoever reason, any Applicant does not convey consent, to the extension of the Application Validity Period, its Application may not be considered by GoUP/UPSSCL, and the Bid Security shall be refunded. Such consent shall be required to be communicated in writing before the expiry of the original Application Validity Period.

3.12 QUESTIONS AND CLARIFICATIONS

Queries for clarifications relating to this RFP 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, GoUP/UPSSCL retains the right not to answer any or all of the clarifications/queries:

1. The Managing Director,
UP State Sugar Corporation Ltd
Room No. 408, 17 New Berry Road
Lucknow 226001

Phone: 0522-2396556, Fax: 0522 – 2300095

E-Mail: upsugcor2007@rediffmail.com

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

3.13 DUE DILIGENCE (DATA ROOM RULES)

The Data Room will be set up by UPSSCL and the applicants will be provided access to the Data Room facility to carry out due diligence of the units of UPSSCL subject to completing the following formalities:

- (i) Networth certificate from Chartered Accountant certifying the Net Worth of the Shortlisted Bidder evidencing that the Shortlisted Bidder possess Net Worth.
- (ii) Demand Draft of Rs. 50,000/= (Rs. fifty thousand) only towards Bid documents (non-refundable).
- (iii) Signing of the Confidentiality Agreement.

The rules of Conduct in Data Room and the Due Diligence are mentioned in *Annexure 4*. There are Five Data Rooms- three in Lucknow and two in New Delhi.

The Data Rooms shall be available at the following locations:

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


4. Evaluation of Application

4.1 OPENING AND EVALUATION OF APPLICATIONS

1. A committee duly constituted by GoUP – would open the Applications at 15.00 hours on the Bid Opening Date. Applicants can depute their representatives at the address mentioned in Clause 1.4 for witnessing the opening of the Financial Bid.
2. Members of the above Committee and Advisors shall authenticate each Financial Bid envelope without opening it by signing on the envelopes. Thereafter the signatures of each present Bidders will be taken on each envelope.
3. The signed Financial Bids (Envelope 1) envelopes thereafter shall be placed carefully by the Committee in a third envelope which shall thereafter be sealed and authenticated by the members of above Committee and the Bidders present.
4. Firstly, the Envelope- 2 (as per Clause 3.5) shall be opened by the Advisors and Legal Advisors to the transaction, who will scrutinize the documents and certify that they are in order.
5. Test of Responsiveness – The Applications not having any of the documents required in Envelope 2 as per Clause 3.4 will be considered unresponsive and this may lead to rejection of the Application and the Financial Bids for the same may not be considered. The Financial Bids of only those Applicants whose applications are found to be complete and satisfactory may be opened for further evaluation.
6. The opening of envelopes (excluding envelop 1) will continue, if necessary in more than one session sometimes spreading over more than one day,

4.2 DETERMINATION OF THE RESERVE PRICE

1. The Valuation reports shall be submitted by the Valuers (which will be kept in Sealed Envelops till such time) and will be signed by the above Committee in the presence of the Advisors and Valuers.
2. All the sealed envelopes in 4.1 & 4.2 above shall then be submitted to the Chairman of the Core Group of Secretaries on Disinvestment (CGD).
3. These reports will be reviewed by the CGD and the Advisors. The CGD may also ask the Valuers to make a detailed presentation on their reports.
4. The Advisors shall prepare and submit a separate Valuation Presentation based on the Valuation Reports submitted by the Valuers and recommend a Reserve Price to the CGD.

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5. At this stage, the Advisors and Valuers shall withdraw from the meeting and the CGD thereafter shall deliberate on the issue, if necessary in more than one session sometimes spreading over more than one day, and decide a reserve price, which could be different from that recommended by the Advisor. In case of a difference of opinion, detailed reasons shall be recorded in the minutes. The Advisors and Valuers are not involved in the process of making the final decision about the reserve price by the CGD. Their contribution is only to provide the valuation reports, making a presentation and furnishing any further details/clarification that the CGD may seek. Thus, the Advisors and Valuers are not a member of the CGD but may attend its meetings as special invitees.

4.3 FINANCIAL BID OPENING

1. After the Reserve Price is decided upon by the CGD, the sealed envelope containing price bids (on which signatures of members of above committee and the bidders had been obtained) is scrutinized by both the CGD and the bidders (the Advisors and the bidders are invited to be present at this point of time) to ensure that they have not been tampered with.
2. Then the sealed envelope containing the Financial Bids (on which signatures of members of above committee and the Bidders had been obtained) will be opened and signature of the members of CGD and the bidders obtained on the reverse of the Financial Bids. The signatures of the Bidders are obtained to give comfort to the Bidders that no tampering could take place even after this stage in the bids submitted by them. Their signatures are obtained on the reverse to ensure that none of the Bidders comes to know what bid the others have submitted.
3. Thereafter, the bidders and Advisors withdraw from the meeting and the CGD makes its recommendations on whether or not to accept the highest bid in view of the Reserve Price based on the following;
 - 3.1 Two highest Financial Bids (H1 & H2) of the Applicants shall be considered for the eventual Slump Sale of Units. In case the first highest bidder prefers to withdraw from the process, the second highest bidder (H2) will be asked to match the bid of H1. In Case, H2 refuses to match the offer, the process may be annulled.
 - 3.2 The first two highest Applicants qualifying the RFP stage will also be informed by E-Mail on the E-mail addresses submitted by them. .
 - 3.3 In case any of the above two highest Applicants withdraws its Financial Bid, its Bid Security will be forfeited.
 - 3.4 In case same amount of the highest bid for a unit is quoted by more than one Bidder, the CGD may ask them to submit fresh sealed bid on the same date which should not lesser than original bid.

3.5 In case a Bidder has applied for more than one Unit and also succeeds to get highest bid for more than one Unit, the CGD will declare it as H1 according to its priority and commitment made in the application.

3.6 The successful Bidder, finally selected by GoUP/UPSSCL will be intimated over email/in writing.

4.4 DISQUALIFICATION

Notwithstanding anything to the contrary contained in this RFP document and without prejudice to any of the rights or remedies of the GoUP/UPSSCL, GoUP/UPSSCL shall be entitled to in its sole discretion to determine that an Applicant is to be disqualified at any stage of the process for sale of 11 operating units of UPSSCL and its participation in the Slump Sale of operating units and/or its RFP 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. If the RFP submitted by the bidder is in any respect inconsistent with, or demonstrates any failure to comply with, the provisions of the RFP; or
3. Failure to comply with other material requirement of this RFP; or
4. If the Financial Bid submitted by the Bidder is inconsistent with the requirements of this RFP in any respect; or
5. GoUP/UPSSCL is not satisfied with sources of funds/ownership structure of the Applicant; or
6. Failure to comply with the reasonable requests of GoUP/UPSSCL in relation to this Slump Sale of unit of UPSSCL; or
7. Breach of the confidentiality agreement (Non Disclosure Agreement) by the Applicant or the Consortium or any member of a Consortium; or
8. 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
9. Any information regarding the Applicant which becomes known to UPSSCL/ GoUP/Advisor and which is detrimental to Slump Sale of units of UPSSCL and/or the interests of GoUP; or

10. 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 selection process for slump sale of 11 operating units of UPSSCL or the Transaction, e.g. inspection by the Applicants of the case files of UPSSCL of matters filed against that Applicant; or
11. Any restrictions or limitations have been put on the Applicant or any member of the Consortium pursuant to any regulatory or statutory guidance to participate in the process for slump sale of operating units of UPSSCL; or
12. 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
13. The company or the consortium has been disqualified from participating in the disinvestment process either by Government of India or any of the State Governments; Mere pendency of an appeal against the order will have no effect on the disqualification.
14. If information becomes known after the Applicant has been qualified at any stage to proceed with the Slump Sale of operating unit of UPSSCL which would have entitled GoUP/UPSSCL to reject or disqualify the relevant Applicant/consortium, GoUP/UPSSCL reserves the right to reject or disqualify the concerned Applicant/Consortium at the time, or at any time, such information becomes known to the GoUP/UPSSCL. Where such party is a member of Consortium, GoUP/UPSSCL may disqualify the Consortium, even if it applies to only one member of the Consortium;
15. Each Applicant is entitled to submit only one Financial Bid per Unit and cannot be a party to more than one Financial Bid, whether by itself or as a part of a Consortium for the same unit. Any Applicant found having made more than one Financial Bid per Unit by itself or as a part of a Consortium for the same Unit(s) shall be disqualified and will also lead to disqualification of the Consortium(s) of which it is a member.

NOTE: Decision of GoUP/UPSSCL that one or more of the events specified above have occurred shall be final and conclusive.


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

1. Notwithstanding anything contained in this RFP, GoUP/UPSSCL reserves the right to accept or reject any Application and to annul the process for slump sale of operating units of UPSSCL and reject any or all Applications / Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons.
2. GoUP/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.



4.6 CONFIDENTIALITY

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 for sale of operating units of UPSSCL. GoUP/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. GoUP/UPSSCL will not divulge any such information unless it is ordered to do so by any authority that has power under law to require its disclosure. GoUP/UPSSCL however reserves the right to make public disclosure of the names of the Applicants and qualified Applicants.



Section II – Annexures

ANNEXURE 1: FINANCIAL BID FOR PURCHASE OF UNIT OF UPSSCL

To

The Managing Director and
UP State Sugar Corporation Ltd.,
L U C K N O W - 226010

Sub: Financial Bid For Purchase Of _____ (Insert the name of the Unit)

Sir,

We have perused the CIM and other details and are interested in purchasing the
----- (insert the name of unit) of UPSSCL.

We have read and understood the entire contents of this RFP and it would be deemed that by submitting the Application, we warrant that we:

1. Have made a complete and careful examination of the RFP document; and
2. Have independently verified all Information received in the CIM and during the due diligence including those relating to Clause 2.8.
3. Undertake to abide by all the conditions of this RFP including those laid down in clauses in Chapter 2.

Our offer for the Purchase of the said unit of UPSSCL is Rs. (i.e., in words Rupees.....).

Our offer is inclusive of all:

- i. Taxes including service tax
- ii. Incidentals and overheads
- iii. Travelling and related expenses

This offer is valid for a period of 180 days from the **Application Due Date**.

For

Witnesses Signature

Name :

Address :

Signature of Authorised Person

Name :

Address :

ANNEXURE 2: GOUP VRS POLICY

SAILENT FEATURES OF V.R.S. AS PER G.O. NO. 1420SC/18-2-2008 - 345/95 TC dated 18-07-2008, 2199SC/18-2-2008-345/95 TC dated. 22-07-2008 & 2200SC/18-2-2008 - 345/95TC dated. 22-07-08

1. This Scheme is applicable to all the Wage Board Permanent / Seasonal employees/workers and employees/officers of Centralized Services who have been permanently appointed at the unit/Head Office.
2. The following benefits shall be admissible to the employee who opted VRS:-
 - a) Amount lying in P.F. account of the employee.
 - b) Encashment of earned leave lying in the account of the employees as per rules..
 - c) Gratuity payable to the employees as per Payment of Gratuity Act.
 - d) As per terms and conditions of applicable service rules amount payable to the employees in lieu of notice for 01 month or 03 months as the case may be.
 - e) Each permanent / seasonal employee who opted VRS will be entitled to get Compensation as under :-

i. PERMANENT EMPLOYEE:-

Amount equivalent to one and half month salary at a time of VRS for every completed year of service. (Salary means basic salary plus D.A.).

OR

At the time of VRS, amount of salary payable to the employees for remaining period of service. Whichever is less.

ii. SEASONAL EMPLOYEES :-

Amount equivalent to 22 Day's salary for every completed Crushing Season of service. (Salary means basic salary plus D.A.).

OR

At the time of VRS, amount equivalent to 15 Day's salary payable to the employees for remaining period of service. Whichever is less.

3. For computation of amount of compensation period of one month shall be equivalent 30 days.
4. In addition, retired employee and his family shall be entitled for traveling allowance as per entitlement up to the place of permanent residence.

ANNEXURE 3: AUTHORIZATION LETTER

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 Proposal (RFP) 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 as per annexure 4 of RFP.

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 4: 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.

ANNEXURE 5: LIABILITIES RETAINED BY UPSSCL

LIABILITIES TO BE RETAINED BY UPSSCL AS ON 31-03-2009

Unit	Rs. Lakh		
	Cane Dues	Labour Dues	Secured loans/ CC limit
Khadda	638.77	51.71	1,349.00
Mohiuddinpur	703.41	35.50	2,113.00
Sakhotitanda	661.49	40.73	1,522.00
Amroha	1,075.12	61.05	678.00
Jarwalroad	574.91	45.95	788.00
Bijnor	602.34	54.67	3,625.00
Saharanpur	805.28	58.30	1,464.00
Chandpur	793.03	65.54	2,282.00
Rohanakalan	645.28	60.26	940.00
Bulandshahr	578.06	48.30	1,252.00
Siswabazar	735.88	61.65	1,688.00
Total	7,813.57	583.66	17,701.00

Annexure 6: Format for Performance Guarantee

PERFORMANCE GUARANTEE BOND
(See Clause 2.12 of RFP)

IN consideration of the Uttar Pradesh State Sugar Corporation Limited (hereinafter called "UPSSCL") having agreed to exempt _____ (hereinafter called "the said Applicant(s)") from the demand under terms and conditions of an Agreement, dated _____ made between _____ and _____ (hereinafter called "the said Agreement"), for payment of the Security Deposit of Rs. _____ (Rupees _____ only) for the due fulfillment by said Applicant(s) of the Consortium related covenants and employee related conditions contained in the said Agreement and the Request For Proposal, on production of Bank Guarantee for Rs.5,00,00,000/- (Rupees five crores only). We, _____ (**indicate the name of Bank**), (hereinafter referred to as "the Bank") at the request of _____/Applicant(s)/ do hereby undertake to pay to UPSSCL an amount not exceeding Rs.5,00,00,000/- (Rupees five crores only) against any loss or damage caused to or suffered by or that would be caused to or suffered by UPSSCL by reason of any breach by the said Applicant(s) of any of the terms and conditions contained in the said Agreement.

2- We, _____ (**indicate the name of Bank**) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or suffered by or that would be caused to or suffered by UPSSCL by reasons of breach by the said Applicant(s) of any of the terms or conditions contained in the said Agreement or by reason of the Applicant(s)' failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. 5,00,00,000/- (Rupees five crores only) .

3- We undertake to pay to UPSSCL any money so demanded notwithstanding any dispute or disputes raised by the Applicant(s) in any suit or proceeding pending before any Court or Tribunal or Arbitrator relating thereto, our liability under this present being absolute and unequivocal.

The payment so made by us under this Bond shall be a valid discharge of our liability for payment hereunder and the Applicant(s) shall have no claim against us for making such payment.

4- We _____(indicate the name of Bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of UPSSCL under or by virtue of the said agreement have been fully paid and its claim satisfied or discharged or till UPSSCL certifies that all the terms and conditions of the said Agreement, have been fully and properly carried out by the said Applicant(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the _____ (indicate date - 18 months from the date of final Installment payment by the Applicant), we shall be discharged from all liabilities under this guarantee thereafter.

Dated theday of.....

For (indicate the name of Bank)

Signature of Authorised signatory

Designation

Seal of the Bank



ANNEXURE 7: CIM (CONFIDENTIAL INFORMATION MEMORANDUM)

(Enclosed with this RFP Document)

ANNEXURE 8:

PRIORITY ORDER AND MINIMUM COMMITMENT TO PURCHASE NUMBER OF UNITS

The Managing Director,
UP State Sugar Corporation Ltd
LUCKNOW - 226010

Sub: Priority Order and minimum commitment to purchase units of UPSSCL.

Sir,

(We are submitting the bid for [] insert the number of units in alpha numeric and also in word) operating units. In case, we are eligible for award of more number of units against our commitment, the priority order for purchase of units are as follows:

S. No.	Name of Unit (Alphabetical Order)	Priority Ranking
1		
2		
3		
4		
5		

This offer is valid for a period of 180 days from the **Application Due Date**.

Witnesses Signature	For
Name :	Signature of Authorised Person
Address :	Name :
	Address:

Note: Format to be submitted in case of submitting financial bid for more than one unit.

ANNEXURE 9:

Chartered Accountants certificate for Consortium/ Company for Networth for entry in Data Room

Name of Member:

% Shareholding in the Consortium

- 1
- 2
- 3
- 4

Role of Member.....

S. No.	Financial information in Rupees (equivalent, with exchange rate, at the end of concerned year)					Weighted Average
		Member 1	Member 2	Member 3	Member 4	
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)					

Note:

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 Chartered Accountant of the Applicant/Bidder.