

Corrigendum #2

RFP for selection of contractor for Design, Supply, Installation and Maintenance of Tensile Roof Structure above the central plaza of E.K Nayanar memorial park on EPC Mode.

With reference to the RFP issued vide notification no. **Tender Ref. No. SCTL-PRJ/208/2019MUP/Tensile/2** and **Tender ID: 2022_SCLT_496035_1**, Request for Proposal for selection of contractor for “Design, Supply, Installation and Maintenance of Tensile Roof Structure above the central plaza of E.K Nayanar memorial park on EPC Mode”, was published on website of e-tendering portal of the Government of Kerala (<https://etenders.kerala.gov.in/nicgep/app>). In pursuant to terms and conditions of the aforesaid RFP, following provisions and part of the RFP is being modified in the RFP. Bidders are requested to take note of the amended provisions as below inter-alia any other communication as issued by the Authority with regards to the aforesaid RFP. The appendixes with regard to the included clauses are also added in reference. All the other conditions in the uploaded tender documents remain as such.

2. INSTRUCTIONS TO BIDDERS

2.1.12 In case the Bidder is a Joint Venture, it shall comply with the following additional requirements:

- (a) Number of members in a Joint Venture shall not exceed 3 (Three);
- (b) subject to the provisions of clause (a) above, the Bid should contain the information required for each Member of the Joint Venture;
- (c) Members of the Joint Venture shall nominate one member as the lead member (the "**Lead Member**"). Lead Member shall meet 100% requirement of Financial Capacity, required as per RFP clauses. The nomination(s) shall be supported by a Power of Attorney, as per the format at **APPENDIX-III- Format of power of attorney for lead member of Joint Venture** signed by all the other Members of the Joint Venture;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and defect liability obligations;
- (e) An individual Bidder cannot at the same time be member of a Joint Venture applying for this Bid. Further, a member of a particular Bidder Joint Venture cannot be member of any other Bidder Joint Venture applying for this Bid;

- (f) The Bid and in case of successful Bid, the Contract signed shall be legally binding on all members of Consortium;
- (g) The Lead Member shall be authorised to incur liability and receive instructions for and on behalf of any and all the members of Consortium and the entire execution of the Contract including payment shall be done exclusively with the Lead Member;
- (h) All members of the consortium / joint venture shall be liable jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the Joint Bidding Agreement;
- (i) Members of the Joint Venture shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at **APPENDIX IV - Format for Joint Bidding Agreement for Joint Venture** (the "**Jt. Bidding Agreement**"), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Jt. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
 - (i) convey the commitment(s) of the Lead Member in accordance with this RFP, in case the contract to undertake the Project is awarded to the Joint Venture; and clearly outline the proposed roles & responsibilities, if any, of each member;
 - (ii) commit the approximate share of work to be undertaken by each member;
 - (iii) include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the completion of the Project is achieved in accordance with the Contract; and
- (j) Except as provided under this RFP, there shall not be any amendment to the Jt. Bidding Agreement.
- (k) The Contract, in case of Successful Bidder, should be signed jointly by each joint venture/ consortium members.
- (l) By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Contract, it would, notwithstanding anything to the contrary contained in the Contract

Agreement, be deemed to be a breach of the Contract, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Contractor. In such an event, notwithstanding anything to the contrary contained in the Contract, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Contract or otherwise.

2.1.13 The Bidding is open to entities which are an Indian company or Indian partnership firm or Indian proprietorship firm.

2.1.14 Any entity which has been barred or blacklisted by any ministry of Government of Kerala or its agencies/departments/companies/autonomous bodies/authorities or Government of India or its agencies/departments/authorities/companies/autonomous bodies for similar works or other works which bars it from further participating in any government works, and the bar subsists as on the date of bidding, would not be eligible to submit the BID, either individually or as member of a Joint Venture.

2.1.15 The Bidder including individual or any of its Joint Venture Member may provide details of all their on-going projects along with updated stage of litigation, if so, against the Authority / Governments. The Bidder including individual or any of its Joint Venture Member may also provide details of updated on-going process of blacklisting if so, under any contract with Authority / Government. The Authority reserves the right to reject an otherwise eligible Bidder on the basis of the information provided under this Clause 2.1.16. The decision of the Authority in this regard shall be final.

2.2 Eligibility and Qualification Requirements of Bidder

2.2.1 For determining the eligibility of Bidder, the following shall apply:

- (a) The Bidding is open to entities which are an Indian company or Indian partnership firm or Indian proprietorship firm.
- (b) The Bidder shall be an Indian entity and may be a single entity or a group of entities (the "**Joint Venture**"), coming together to implement the Project. However, no Bidder applying individually or as a member of a Joint Venture, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Joint Venture.
- (c) Bidder may be an entity as per clause 2.2.1(a) above or any combination of them with a formal intent to enter into a Joint Venture agreement or under an existing agreement to form a Joint Venture. A Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.1.12 above.
- (d) A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified and liable for forfeiture of the Bid Security or Performance

Security as the case may be. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) the Bidder, its Joint Venture Member (or any constituent thereof) and any other Bidder, its Member or any Member of its Joint Venture thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, or its Joint Venture Member thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Bidder, or its Joint Venture Member, as the case may be), in the other Bidder, its Joint Venture Member is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956 or in concordance with relevant section of the Companies Act, 2013. For the purposes of this Clause 2.2.1(d), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- (ii) a constituent of such Bidder is also a constituent of another; or
- (iii) such Bidder, or any of its Joint Venture Member thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any of its Joint Venture Member thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any of its Joint Venture Member thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Application as any other Bidder; or

- (v) such Bidder, or any of its Joint Venture Member thereof has a relationship with another Bidder, or any of its Joint Venture Member thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's' information about, or to influence the bid of either or each other; or
- (vi) Such Bidder or any of its Joint Venture Member thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

3 APPENDIX-III - Format for Power of Attorney for Lead Member of Joint Venture

Whereas the Smart City Thiruvananthapuram Limited (“the Authority”) has invited Bids for the Selection of Developer for [Project Name] in Thiruvananthapuram the State of Kerala (the “Project”).

Whereas,,, and (collectively the “Joint Venture”) being Members of the Joint Venture are interested in Bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other BID documents including agreement in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at ..., M/s. ... having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S having its registered office at, being one of the Members of the Joint Venture, as the Lead Member and true and lawful attorney of the Joint Venture (hereinafter referred to as the “Attorney”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the Bidding process and, in the event the Joint Venture is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Joint Venture and submission of its BID for the Project, including but not limited to signing and submission of all applications, BIDs and other documents and writings, participate in pre BID and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the BID of the Joint Venture and generally to represent the Joint Venture in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Joint Venture’s BID for the in all respect Project and/ or upon award thereof till the Contract is entered into with the Authority & Compelled.

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



IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For (Signature)	For (Signature)	For (Signature)
..... (Name & Title) (Name & Title) (Name & Title)

(Executants)
(To be executed by all the Members
of the Joint Venture)

Witnesses:

- 1.
- 2.

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

4 APPENDIX IV - Format for Joint Bidding Agreement for Joint Venture

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {..... Limited, and having its registered office at } (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, having its registered office at } and (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, and having its registered office at} (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS,

- (A) THE SMART CITY THIRUVANANTHAPURAM LIMITED, established under the SMART CITY MISSION of the Government of India under the Companies Act , 2013, represented by its Chairman and having its principal offices at _____ (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the Bids") by its RFP for Selection of Contractor for Design, Supply, Installation and Maintenance of Electro-Mechanical Car Parking System at A Block, behind Saphalyam complex, Palayam on EPC Mode (the "**Project**").
- (B) The Parties are interested in jointly Bidding for the Project as members of a Joint Venture and in accordance with the terms and conditions of the RFP document and other Bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Joint Venture

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

3. Covenants

The Parties hereby undertake that in the event the Joint Venture is declared the selected Bidder and awarded the Project, it shall enter into a Contract with the Authority for performing all its obligations as the Contractor in terms of the Contract for the Project.

4. Role of the Parties

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

- (a) Party of the First Part shall be the Lead member of the Joint Venture and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding Process and until the Appointed Date under the Contract;
- (b) Party of the Second Part shall be {the Member of the Joint Venture; and
- (c) Party of the Third Part shall be {the Member of the Joint Venture.}

5. Joint and Several Liability

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

6. Share of work in the Project

The Parties agree that the proportion of construction in the Contract to be allocated among the members shall be as follows:

First Party:

Second Party:

{Third Party:}

7. Representation of the Parties

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

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

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until Project completion (the "Defects Liability Period") is achieved under and in accordance with the Contract, in case the Project is awarded to the Joint Venture. However, in case the Joint Venture is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

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

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

For and on behalf of

LEAD MEMBER by:	SECOND PART	THIRD PART
(Signature)	(Signature)	(Signature)
(Name)	(Name)	(Name)
(Designation)	(Designation)	(Designation)
(Address)	(Address)	(Address)

In the presence of:

1.....

Notes:

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

5 Check List for Uploading Technical and Financial Bid Documents

In case of both single (sole) bidder or consortium submitting the bid, all the documents required at the serial no. (a) below shall have to be submitted by each member of the consortium or the single bidder. However, the price bid is to be submitted jointly on behalf of the consortium in case of consortium.

(a) Documents required for Technical Bid Submission:

- (i) Acknowledgement copy of Bid Security of Rs. 1,00,000 through e-procurement portal.
- (ii) Acknowledgement copy of Bid Document Fee of Rs.7,500/-through e-procurement portal.
- (iii) Appendix IA.
- (iv) Appendix IB.
- (v) Appendix II
- (vi) Appendix III**
- (vii) Appendix IV**
- (viii) Experience Certificates clearly indicating completion of works required as per technical capacity.
- (ix) Certificate from statutory auditor on net worth and annual turnover on letter head of statutory auditor with CA registration no., address, seal and signature further signed by authorised signatory of the bidder.
- (x) 3 year income tax return copies
- (xi) PAN Card
- (xii) TAN Card
- (xiii) GST Registration Document
- (xiv) Registration with ESI and PF Authorities
- (xv) Certification of Incorporation, Certification of Registration, Memorandum of Association and Articles of Association.
- (xvi) An undertaking from the person having PoA referred to in in sub clause (a) of the 2.11.2
- (xvii) Annex – I
- (xviii) Annex – II
- (xix) Annex – III
- (xx) Annex – IV

(b) Documents required for Financial Bid Submission:

- (i) Properly filled in Price Bid.

All the pages of the technical bid document(s) should be serially numbered and clearly readable. All pages of the technical bid document(s) should be signed by the authorised signatory of the bidder or the consortium as the case may be and sole bidder or lead member's seal must be affixed by the bidder or the lead member of the consortium; in absence of which the bid is liable for rejection.



Chief Executive Officer
Smart City Thiruvananthapuram Ltd