

**Government of India
Planning Commission**

[RFP NO. N-14032/03/2008-Infra dated 7.3.2008]

REQUEST FOR PROPOSAL

FOR ENGAGING CONSULTANT

**For preparing Model EPC Contract for
Highways**

Planning Commission
Yojana Bhawan
Sansad Marg
New Delhi

DISCLAIMER

The information contained in this Request for Proposal document (“**RFP**”) or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of Planning Commission or any of their employees or advisers, is provided to Applicants on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by Planning Commission to the prospective Applicants or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers to assist in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by Planning Commission in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for Planning Commission, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicants is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Planning Commission accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

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

Planning Commission also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon the statements contained in this RFP.

Planning Commission may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that Planning Commission is bound to select an Applicant or to appoint the Selected applicant, as the case may be, for the Consultancy and Planning Commission reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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

GLOSSARY

Additional Costs	As in Item D of Form-2 of Appendix-II
Agreement	As defined in Clause 2.26
Applicant	As defined in Clause 2.1.1
Authorised Representative	As defined in Clause 2.12.3 (iii)
Conditions of Eligibility	As defined in Clause 2.2.2
Conflict of Interest	As defined in Clause 2.3.1
Consultancy	As defined in Clause 1.2
Consultancy Team	As defined in Clause 6.1 of Schedule-1
Consultant	As defined in Clause 1.2
CV	Curriculum Vitae
Documents	As defined in Clause 2.11
Effective Date	As defined in Clause 2.26
Eligible Applicant	As defined in Clause 2.2.1
Evaluation Committee	As defined in Clause 1.6
Expatriate Personnel	As defined in Clause 1.1.1(g) of Schedule-2
FA	Form of Agreement as in Schedule -2
Financial Proposal	As defined in Clause 2.14.1
INR, Re, Rs.	Indian Rupee
Inception Report	As defined in Clause 3 (A) of Schedule-1
Key Date	As defined in Clause 5.2 of Schedule-1
Key Personnel	As defined in Clause 2.1.3
Lead Member	As defined in Clause 2.1.1
LOA	Letter of Award
Official Website	As defined in Clause 1.10.2
Personnel	As defined in Clause 1.1.1(k) of Schedule-2
Procurement Expert	As defined in Clause 2.1.3
Prohibited Practices	As defined in Clause 3.2.5 of Schedule -2
Professional Personnel	As defined in Clause 2.13.6
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clause 1.5
Resident Personnel	As defined in Clause 1.1.1(n) of Schedule-2
RFP	As defined in Disclaimer
Services	As defined in Clause 1.1.1(p) of Schedule -2
Selection Process	As defined in Clause 1.6

Sole Firm	As defined in Clause 2.1.1
Statement of Expenses	As defined in Note 12, Form-2 of Appendix- II
Statutory Auditor	An Auditor appointed under Applicable Laws
Support Personnel	As defined in Clause 2.13.6
Technical Proposal	As defined in Clause 2.13.1
TOR	Terms of Reference as in Schedule - I
US\$	United States Dollar

The words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires, have the meaning ascribed thereto herein.

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1. INTRODUCTION

1.1 Background

The proposal relates to preparation of a Model Document on the principle of contractor accepting to Engineer, Procure and Construct large value roads works. This is normally known as an Engineering, Procurement and Construction (EPC) contract. This system avoids for the Government the risks of increase in costs arising from inflation, changes in bill of quantities during construction, compensation events due to delays and arbitration claims on myriad issues. The Contractor accepts all these risks; and he bids a lump sum amount for the entire work; with inflation proofing in certain specified situations.

1.1.1 The salient features of the EPC contract are as under:-

- i) It focuses on road asset creation and maintenance for a specified number of years by the same contractor.
- ii) It does away with the existing system of separate yearly road repair contracts.
- iii) It replaces the payments for Contractor's 'inputs' by payments for 'outputs'. The reason: payments for "inputs" provide wrong incentive to the Contractor to increase profits.
- iv) It makes the Contractor responsible for both the construction and maintenance over several years. Reason: The Contractor constructing the road is not responsible for maintenance; hence quality suffers as the design is from the Employer.
- v) It makes the Contractor responsible for the design and the quality of the road to ensure overall service quality of the road. Reason: the roads do not last as long as they should because of deficiencies in the original design, aggravated by inadequate maintenance.
- vi) It prescribes the service level of roads.
- vii) It does away with the risks of extra payments arising from inflation, deviations, quantities of inputs being in excess of estimated quantities. The Contractors bid fixed lump-sum prices for bringing (or constructing) road to a certain service level and then maintaining it at that level for a relatively long period.

- viii) It makes periodic payments for road maintenance based on performance service level of road.
- ix) It selects bidders not only on the basis of construction experience, but also on management skills for road maintenance.
- x) It defines the Service Levels from a road user's perspective such as average travel speeds, riding comfort, safety features, etc. It reduces or suspends the payment for any given month if the Service Level is not achieved.

1.2 Request for Proposal

Planning Commission now invites Proposals (the “**Proposals**”) for engaging consultant (the “**Consultant**”) from reputed consultancy firms to provide consultancy services for preparing Model Engineering Procurement Construction (EPC) contracts for Highways. in accordance with the TOR (collectively the “**Consultancy**”). Planning Commission intends to select the Consultant through an open competitive bidding process in accordance with the procedure set out herein.

1.3 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and by sending written queries to Planning Commission.

1.4 Availability of RFP Document

RFP document can be obtained between 1000 hrs and 1700 hrs on all working days from the Planning Commission. The document can also be downloaded from the Official Website of the Planning Commission.

1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 90 days from the Proposal Due Date (the “**PDD**”).

1.6 Brief description of the Selection Process

Planning Commission has adopted a two stage selection process (collectively the “**Selection Process**”) in evaluating the Proposals. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1 by an evaluation committee (the “**Evaluation**

Committee”), to be appointed by Planning Commission. Based on this technical evaluation, a list of short-listed applicants shall be prepared as specified in Clause 3.2. In the second stage, the financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4.

1.7 Currency conversion rate

For the purposes of evaluation, Rs. 40 per US \$ shall be considered as the applicable currency conversion rate. All payments, however, shall be made in INR, in accordance with the bid submitted by the Applicant, and the exchange risk, if any, shall be borne by the Applicant.

1.8 Schedule of Selection Process

Planning Commission would endeavour to adhere to the following schedule:

	Event Description	Estimated Date
1.	Last date for receiving queries/clarifications	24.3.08
2.	Pre- Bid Conference	28.3.2008
3.	Planning Commission response to queries	02.4.2008
4.	Proposal Due Date or PDD	16.4.08
5.	Letter of Award (LOA)	28.4.08
6.	Signing of Agreement	8.5.08

1.9 Pre- Bid Conference

The date, time and venue of Pre-Bid Conference shall be:

Date: 28.3.2008 (Friday)

Time 1100 hours

Venue: Room No -134

Planning Commission

Yojana Bhawan

New Delhi – 110001.

1.10 Communications

1.10.1 All communications including the submission of Proposal should be addressed to:

Director (Infrastructure)

Planning Commission

Room No 346

Yojana Bhawan

Sansad Marg

New Delhi – 110001 (India)

Phone: +91-11-23096721 Fax: +91-11-23096587

Email: sp.chouhan@nic.in,

1.10.2 The Official Website of Planning Commission are:

www.planningcommission.gov.in and www.infrastructure.gov.in

1.10.3 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

[RFP NOTICE NO. N-14032/03/2008 – INFRA DATED 7.3.08]

**FOR ENGAGING CONSULTANT FOR PREPARING MODEL EPC
CONTRACT FOR HIGHWAYS**

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Proposal

2.1.1 Detailed description of the objectives, scope of services, deliverables and other requirements related with this Consultancy are specified in this RFP. In case an applicant firm considers that it possesses the requisite experience and the capabilities required for undertaking the Consultancy, it may participate in the Selection Process either individually (the “**Sole Firm**”) or as lead member of a consortium of firms (the “**Lead Member**”) in response to this invitation. The term applicant (the “**Applicant**”) means the Sole Firm or the Lead Member, as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2 Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by Planning Commission through the Selection Process specified in this RFP. Applicants will be deemed to have understood and agreed that no explanation or justification of any aspect of the Selection Process will be given and that Planning Commission’s decisions are without any right of appeal whatsoever.

2.1.3 Key Personnel

The Consultancy Team shall consist of the following key personnel (the “**Key Personnel**”) who shall discharge their respective responsibilities as specified below:

Key Personnel	Responsibilities
Procurement Expert	He will lead, co-ordinate and supervise the multi disciplinary team for preparation of the Model EPC Contract He shall devote at least 30 working days in Delhi, as per the agreed program, and shall be available for consultation with Planning Commission officials.
Technical Expert	He will be responsible for review of technical/performance specifications of Highways

	including maintenance requirements and will assist in preparing the Model EPC contract. He shall devote at least 20 working days in Delhi, as per agreed program, and shall be available for consultation with Planning Commission officials.
Legal Expert	He will be responsible for review of the legal aspects and also assist in preparing and vetting the Model EPC contract.

2.2 Conditions of Eligibility of Applicants

2.2.1 Applicants must read carefully the Conditions of Eligibility criteria (the “**Conditions of Eligibility**”) provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility (the “**Eligible Applicants**”) will be considered for evaluation.

2.2.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfil the following:

- (A) **Technical Capacity:** The Applicant shall have, over the past 7 (seven) years, preceding the Proposal Due Date, undertaken similar assignments for drafting of contracts or other similar or relevant work.
- (B) **Financial Capacity:** The Applicant shall have received a minimum income of Rs. 1 crore per annum during each of the three financial years preceding the Proposal Due Date.
- (C) **Availability of Key Personnel:** The Applicant shall offer and make available Key Personnel meeting the requirements specified in Sub-clause (D) below.
- (D) **Conditions of Eligibility criteria for Key Personnel:** Each of the Key Personnel must fulfill the minimum Conditions of Eligibility criteria specified below:

Key Personnel	Educational Qualification	Length of Professional Experience	Experience on Assignments
Procurement Expert	Bachelor in Engineering/Law /MBA/CA / MA	20 years	He should have worked at a senior position in the

	in Economics or equivalent		Government at the level of Jt. Secretary or above for a period of 5 years or in an equivalent position in a public sector enterprise. He should have experience in drafting contracts and dealing with procurement and related issues especially from the financial and legal perspective.
Technical Expert	Bachelor in Engineering or equivalent	20 years	He should have worked as a Chief Engineer for 5 years or more in any Central or State organization or in comparable position in any other organization dealing with procurement related issues.
Legal Expert	Bachelor/ Masters in Law	15 years	He should have experience in contract and procurement related matter.

2.2.3 The Applicant should submit a Power of Attorney as per the format at Form - 4 of Appendix-I, authorizing the signatory of the Proposal to commit the Applicant.

2.2.4 Any entity which has been barred by the Central / State Government in India, or any entity controlled by them, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal.

- 2.2.5 An Applicant in the last three years, should have neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant.
- 2.2.6 While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making due provision for incorporation of the requested information.

2.3 Conflict of Interest

- 2.3.1 An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”), as specified in this clause 2.3 or otherwise. Any Applicant found to have a Conflict of Interest shall be disqualified.
- 2.3.2 Planning Commission requires that the Consultant provide professional, objective, and impartial advice and at all times hold Planning Commission’s interests paramount, avoid conflicts with other assignments or their own corporate interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other employers, or that may place it in a position of not being able to carry out the assignment in the best interests of Planning Commission.
- 2.3.3 Without limiting the generality of the above, an Applicant shall be considered to have a Conflict of Interest that affects the Selection Process, if:
- (i) such Applicant (or any constituent thereof) and any other Applicant (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in an Applicant or a constituent thereof in the other Applicant(s) (or any of its constituents) is less than 1% of its paid up and subscribed capital; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
- (iii) such Applicant receives or has received any direct or indirect subsidy from any other Applicant, or has provided any such subsidy to any other Applicant; or
- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (v) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Application of either or each of the other Applicant; or
- (vii) If there is a conflict among this and other consulting assignments of the Consultant (including its personnel and sub-Consultant) and any subsidiaries or entities controlled by such Consultant. The duties of the Consultant depend on the circumstances of each case. While providing consultancy services to Planning Commission for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment.
- (viii) A firm which has been engaged by Planning Commission to provide goods or works for a project, and any of its affiliates, will be disqualified from providing consulting services for the Highway projects based on the Model EPC contract for a period of one year from the date on which the Model EPC Contract is approved and adopted. Conversely, a firm hired to provide consulting services for the preparation of Standard Contract Documents for award/implementation of a project, and any of its affiliates, will be disqualified from subsequently providing goods or works or services related to the same project.

2.3.4 An Applicant, as well as any of its affiliates, eventually appointed to provide Consultancy for this Project shall be disqualified from subsequently providing goods or works or services related to the construction and execution of the same Project (other than a continuation of the firm's earlier consulting services) and any breach of this obligation shall be construed as Conflict of Interest.

2.4 Number of Proposals

An Applicant is eligible to submit only one Application for the Consultancy. An Applicant applying individually or as a member of a Consortium shall not be entitled to submit another application either individually or as a member of any Consortium, as the case may be.

2.5 Cost of Proposal

The Applicant shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process. Planning Commission will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.6 Certain Representations of the Applicant

2.6.1 It shall be deemed that by submitting the Proposal, the Applicant has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from Planning Commission; and
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of Planning Commission .
- (d) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the RFP shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Agreement; and
- (e) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2 Planning Commission shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by Planning Commission.

2.7 Right to and to reject any or all Proposals

2.7.1 Notwithstanding anything contained in this RFP, Planning Commission reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.7.2 Planning Commission reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Applicant does not provide, within the time specified by Planning Commission, the supplemental information sought by Planning Commission for evaluation of the Proposal.

Such misrepresentation/ improper response would lead to the disqualification of the Applicant. If the Applicant is a consortium, then the entire consortium would be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then Planning Commission reserves the right to:

- (i) consider the next best Applicant; or
- (ii) take any such measure as may be deemed fit in the sole discretion of Planning Commission, including annulment of the Selection Process.

B. DOCUMENTS

2.8 Contents of the RFP

2.8.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 2.10:

Request for Proposal

- 1 Introduction
- 2 Instructions to Applicants
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre –Bid conference

6 Miscellaneous

Schedules

1. Terms of Reference
2. Form of Agreement

Annex-1: Terms of Reference

Annex-2: Deployment of Personnel

Annex-3: Estimate of Personnel Costs

Annex-4: Cost of Services

Annex-5: Payment Schedule

Annex-6: Bank Guarantee for Performance Security

Appendices

Appendix-I: Technical Proposal

Form 1: Letter of Proposal

Form 2: Particulars of the Applicant

Form 3: Statement of Legal Capacity

Form 4: Power of Attorney

Form 5: Financial Capacity of the Applicant

Form 6: Particulars of Key Personnel

Form 7: Proposed Methodology and Work Plan

Form 8: Experience of the Applicant

Form 9: Experience of Key Personnel

Form 10: Assignments of Applicant

Form 11: Assignments of Key Personnel

Form 12: CV of Professional Personnel

Form 13: Deployment of Personnel

Appendix - II Financial Proposal

Form 1: Covering Letter

Form 2: Financial Proposal

Form 3: Estimate of Personnel Costs

2.9 Clarifications

2.9.1 Applicants requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.8. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Proposal Due Date.

The envelopes shall clearly bear the following identification:

"Queries/Request for Additional Information concerning RFP"

Planning Commission would endeavour to respond to the queries not later than 7 days before Proposal Due Date. The responses will be sent by fax or e-mail. Planning Commission will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

2.9.2 Planning Commission shall endeavour to respond to the queries raised or clarifications sought by the Applicants. However, Planning Commission reserves the right not to respond to any question or provide any clarifications, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring Planning Commission to respond to any question or to provide any clarification.

2.9.3 Planning Commission may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by Planning Commission shall be deemed to be part of the RFP. Verbal clarifications and information given by Planning Commission or its employees or representatives shall not in any way or manner be binding on Planning Commission.

2.10 Amendment of RFP

- 2.10.1 At any time prior to the deadline for submission of Proposal, Planning Commission may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP by the issuance of Addendum.
- 2.10.2 Any addendum thus issued will be sent in writing to all Applicants who have purchased the RFP document. The amendment will also be posted on the Official Website and will be binding on all Applicants.
- 2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, Planning Commission may, at its own discretion, extend the Proposal Due Date.

C. PREPARATION AND SUBMISSION OF PROPOSAL

2.11 Language

The Proposal with all accompanying documents (the “**Documents**”) and all communications in relation to or concerning the Selection Process shall be in English Language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these documents are in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.12 Format and signing of Proposal

- 2.12.1 The Applicant shall provide all the information sought under this RFP. Planning Commission would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.12.2 The Applicant shall prepare and submit only one original set of the Documents.
- 2.12.3 The Proposal shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall initial each page,

in blue ink. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed as detailed below:

- (i) by the proprietor, in case of a proprietary firm;
- (ii) by the partner holding the Power of Attorney, in case of a partnership firm;
- (iii) by a duly authorised person (the “**Authorised Representative**”) holding the Power of Attorney, in case of a Limited Company or a corporation; or
- (iv) by the Authorised Representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant or a notary public on the specified form shall accompany the Proposal.

2.12.4 Applicants should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Applicants are reminded that no supplementary material will be entertained by Planning Commission, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause 2.16.1. Applicants will normally not be asked to provide additional material information or documents subsequent to the date of submission, and such unsolicited material if submitted will be summarily rejected.

2.13 Technical Proposal

2.13.1 The Technical Proposal should be submitted in the format at Appendix-I (the “**Technical Proposal**”).

2.13.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:

- (a) CVs of all Professional Personnel have been submitted;

- (b) Key Personnels have been proposed only if they meet the Eligibility criteria laid down at Clause 2.2.2(C & D) of the RFP;
- (c) no alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- (d) the CVs have been recently signed in blue ink by the Key Personnels and countersigned by the Applicant. Photocopy or unsigned / countersigned CVs shall be rejected;
- (e) the CVs shall contain an undertaking from the Key Personnels about their availability for the duration specified in the RFP; and
- (f) the Key Personnels proposed have a good working knowledge of English language.

2.13.3 Failure to comply with the requirements spelt out in this Clause 2.13 shall make the Proposal liable to be rejected.

2.13.4 If an individual Key Personnel makes an averment regarding his qualification, experience, age, and it turns out to be false, or his commitment regarding availability for the project is not fulfilled at any stage after signing of the Agreement, he shall be debarred for any future assignment in Planning Commission. The award of this Consultancy to the Applicant shall also be liable to cancellation in such an event.

2.13.5 The Technical Proposal must not include any financial information.

2.13.6 The proposed team shall be composed of experts and specialists (the “**Professional Personnel**”) in their respective areas of expertise and managerial/support staff (the “**Support Personnel**”) such that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.3 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel should also be submitted in the format at Form-12 of Appendix-I. Such CVs

submitted by the successful Applicant shall be examined at the time of negotiation.

2.13.7 Planning Commission reserves the right to verify all statements, information, and documents, submitted by the Applicant in response to the RFP. Failure of the Authority to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.13.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Applicant or Consultant, as the case may be.

2.14 Financial Proposal

2.14.1 The financial proposal shall be submitted in the format at Appendix-II (the “**Financial Proposal**”) clearly indicating the total cost of the Consultancy (Item E of Form-2) in both figures and words, in Indian Rupees, and signed by the Applicant’s authorised signatory. In the event of any difference between figures and words, the amount indicated in words /arithmetical total of all costs shall be taken into account.

2.14.2 While submitting the Financial Proposal, the Applicant shall ensure the following:

- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel, in the field, office etc, accommodation, local transportation, equipment, printing of documents etc. The

total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

(ii) The Financial Proposal shall take into account all expenses and tax liabilities except those specified in Item DII of Form -2 at Appendix-II.

(iii) Costs (including break down of costs) shall be expressed in INR.

2.15 Submission of Proposal

2.15.1 The Applicants shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be signed by the Authorized Representative of the Applicant. In case the proposal is submitted on the document down loaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by Planning Commission and will ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by Planning Commission, the latter shall prevail.

2.15.2 The Proposal will be sealed in an outer envelope which will bear the address of Planning Commission, RFP Notice no., Consultancy name as indicated at Clause 1.10.3 and the name and address of the Applicant. It shall bear on top, the following:

“Do not open, except in presence of the Tender Committee”

If the envelope is not sealed and marked as instructed above, Planning Commission assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted.

2.15.3 This outer envelope will contain two separate sealed envelopes, one clearly marked ‘**Technical Proposal**’ and the other clearly marked ‘**Financial Proposal**’.

- 2.15.4 The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorised signatory of the Applicant. All pages of the original Technical Proposal and Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.
- 2.15.5 The completed Proposal must be delivered on or before the specified time on Proposal Due Date.
- 2.15.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.
- 2.15.7 Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.
- 2.15.8 The rates quoted shall be firm throughout the period of performance of the assignment and discharge of all obligations of the Consultant under the Agreement.

2.16 Proposal Due Date

- 2.16.1 Proposal should be submitted before 1100 hrs on the Proposal Due Date at the address provided in Clause 1.10.1 in the manner and form as detailed in this RFP.
- 2.16.2 Planning Commission may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.17 Late Proposals

Proposals received by Planning Commission after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

2.18 Modification/ substitution/ withdrawal of Proposals

- 2.18.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification,

substitution, or withdrawal is received by Planning Commission prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the specified time on Proposal Due Date.

2.18.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.15.2, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

2.18.3 Any alteration / modification in the Proposal or additional information material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by Planning Commission, shall be disregarded.

D. EVALUATION PROCESS

2.19 Evaluation of Proposals

2.19.1 Planning Commission shall open the Proposals at 1130 hours on the Proposal Due Date, at the place specified in Clause 1.10.1 and in the presence of the Applicants who chose to attend. The packets marked “Technical Proposal” shall be opened first. The packet marked “Financial Proposal” shall be kept sealed for opening at a later date.

2.19.2 Planning Commission shall subsequently examine and evaluate the Proposals in accordance with the provisions set out in Section 3.

2.19.3 To facilitate evaluation of Proposals, Planning Commission may, at its sole discretion, seek clarifications in writing from any Applicant regarding its Proposal.

2.19.4 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.18 shall not be opened.

2.19.5 Tests of responsiveness

Prior to evaluation of Proposals, Planning Commission will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if the Proposal:

- (a) it is received as per the Forms at Appendix-1 (Technical Proposal) and Forms at Appendix-II (Financial Proposal);
- (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.16.2;
- (c) it is signed, sealed, hard bound and marked as stipulated in Clause 2.12.3 and 2.15;
- (d) is accompanied by the Power(s) of Attorney as specified in Clause 2.2.3;
- (e) it contains all the information(complete in all respects) as requested in the RFP;
- (f) it contains information in the formats specified in this RFP; and
- (g) it does not contain any condition or qualification
- (h) it is not non-responsive in terms hereof.

2.19.6 Planning Commission reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by Planning Commission in respect of such Proposals.

2.19.7 Planning Commission would subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.

2.19.8 After the technical evaluation, Planning Commission would prepare a list of pre-qualified Applicants in terms of Clause 3.2 for opening of their Financial Proposals. A date, time and venue will be notified to all Applicants for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified Applicants along with their Technical Score will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to remain present. Planning Commission will not entertain any query or clarification from Applicants who fail to qualify at any stage of Selection Process. The financial evaluation and final ranking of the Proposals would be carried out in terms of Clause 3.3 and 3.4.

2.19.9 Applicants are advised that Selection will be entirely at the discretion of Planning Commission. Applicants will be deemed to have

understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.

2.19.10 Any information contained in the Proposal shall not in anyway be construed as binding on Planning Commission, its agents, successors or assigns, but shall be binding against the Applicant if any Consultancy is subsequently awarded to it under the Selection Process on the basis of such information.

2.19.11 Planning Commission reserves the right not to proceed with the Selection Process at any time without notice or liability and to reject any Proposal without assigning any reasons.

2.20 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising Planning Commission in relation to, or matters arising out of, or concerning the Selection Process. Planning Commission will treat all information submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. Planning Commission may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or Planning Commission.

2.21 Clarifications

2.21.1 To facilitate evaluation of Proposals, Planning Commission may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by Planning Commission for this purpose. Any request for clarification(s) and all clarification(s) shall be in writing.

2.21.2 If an Applicant does not provide clarifications sought under Sub-Clause 2.21.1 above, within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, Planning

Commission may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning of such interpretation of Planning Commission.

E. APPOINTMENT OF CONSULTANT

2.22 Negotiations

2.22.1 The first ranked Applicant shall be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan, etc. shall be discussed during negotiations. Those Key Personnel of the Applicant who did not score 70% marks as required under Clause 3.1.2 would have to be replaced by the Applicant with a better candidate to the satisfaction of Planning Commission. In case the first ranked Applicant fails to reconfirm his commitment, Planning Commission reserves the right to invite the next ranking Applicant for negotiations.

2.22.2 Planning Commission will examine the CVs of all other Professional Personnel and those who are not found suitable shall have to be replaced by the Applicant to the satisfaction of Planning Commission.

2.23 Substitution of Key Personnel

2.23.1 Planning Commission will not normally consider request of the selected Applicant for substitution of Key Personnel during negotiations as the ranking of the Applicant is based on the evaluation of the Key Personnel, and any change therein may upset the ranking. Substitution, will, however be permitted if the Key Personnel is not available for reasons of any incapacity due to health.

2.23.2 Planning Commission expects all the proposed Key Personnel to be available during currency of the Agreement. Planning Commission will not consider substitution of Key Personnel except under exceptional circumstances. Such substitution shall be limited to one Key Personnel and subject to equally or better qualified and experienced personnel being provided to the satisfaction of Planning Commission. Such

substitution shall be subject to reduction of remuneration equal to 20% of the remuneration specified for the original Key Personnel.

- 2.23.3 Substitution of the Team Leader (Procurement Expert) will not normally be considered and may lead to disqualification of the Applicant or termination of the Agreement.

2.24 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify Planning Commission for any direct loss or damage that is caused due to any deficiency in services.

- 2.25 After negotiations, if any, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not received by the stipulated date, the next eligible Applicant may be considered. If negotiations fail, Planning Commission may invite the second ranked applicant for negotiations.

2.26 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement in the form specified at Schedule-2 (the “**Agreement**”) within 10 days of the issue of LOA. The Selected Applicant shall not be entitled to seek any deviation in the Agreement. The Agreement shall come into force and effect on the date of signing which shall be deemed to be the effective date (the “**Effective Date**”)

2.27 Commencement of Assignment

The Consultant shall commence the Services in Delhi within seven days of the date of effectiveness of the Agreement.

2.28 Proprietary data

All documents and other information supplied by Planning Commission or submitted by an Applicant to Planning Commission shall remain or become the property of Planning Commission.

Applicants are to treat all information as strictly confidential. Planning Commission will not return any Proposal or any information provided along therewith.

3. CRITERIA FOR EVALUATION

3.1 Evaluation of Technical Proposals

3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, its understanding of Terms of Reference (TOR), proposed methodology and Work Plan, and the experience of Key Personnel. Only those Applicants whose Technical Proposals score 70 points or more out of 100 shall be ranked as per score achieved by them, from highest to the lowest technical score (S_T).

3.1.2 Each Key Personnel must score a minimum of 70% marks. A Proposal shall be rejected if the Procurement Expert scores less than 70% score. In case Technical & Legal Expert scores less than 70%, he would have to be replaced during negotiations, with a better candidate who, in the opinion of Planning Commission, would score 70% or above.

3.1.3 The scoring criteria to be used for evaluation shall be as follows.

Item Code	Criteria	Marks	Criteria
1.	Firm's Relevant Experience	25	50% of the maximum marks shall be awarded for similar assignments undertaken by the Applicant firm. The remaining 50% shall be awarded for other relevant experience.
2.	Proposed methodology and Work Plan	5	Evaluation will be based on the quality of submissions.
3.	Relevant Experience of the Key Personnel	70	50% of the maximum marks for each Key Personnel shall be awarded for the number of similar assignments the respective Key Personnel has worked on. The remaining 50% shall be awarded for other relevant experience.
3a	Procurement Expert	(30)	As above.
3b	Technical Expert	(20)	As above.

3c	Legal Expert	(20)	As above.
Grand Total		100	

3.2 Short-listing of Applicants

Of the Applicants ranked as aforesaid, not more than five shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such pre-qualified Applicants is less than two, Planning Commission may, in its sole discretion, pre-qualify the Applicant(s) whose Technical Score is less than 70 points; provided that in such an event, the total number of pre-qualified and short-listed Applicants shall not exceed two.

3.3 Evaluation of Financial Proposal

3.3.1 In the second stage, the financial evaluation will be carried out as per this Clause 3.3. Each Financial Proposal will be assigned a financial score (S_F).

3.3.2 For financial evaluation, the total cost indicated in the Financial Proposal, excluding Additional Costs, will be considered. Additional Costs shall include items specified as such in Form -2 of Appendix-II

3.3.3 The Evaluation Committee will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Consultant. The lowest financial proposal (F_M) will be given a financial score (S_F) of 100 points. The financial scores of other proposals will be computed as follows:

$$S_F = 100 \times F_M/F$$

(F = amount of Financial Proposal)

3.4 Combined and Final Evaluation

3.4.1 Proposals will finally be ranked according to their combined technical (S_T) and financial (S_F) scores as follows:

$$S = S_T \times T_w + S_F \times F_w$$

Where, T_w and F_w are weights assigned to technical and financial Proposals that shall be 0.8 and 0.2 respectively.

- 3.4.2 Generally, the successful Applicant shall be the Applicant having the highest combined score. The second highest Applicant shall be kept in reserve and may be invited for negotiations in case the first-ranked Applicant withdraws or is not selected for any reason.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Planning Commission shall reject a Proposal, without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Selection Process.
- 4.2 Without prejudice to the rights of Planning Commission under Clause 4.1 hereinabove and the rights and remedies which Planning Commission may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by Planning Commission to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by Planning Commission during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by Planning Commission to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of Planning Commission who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one

year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by Planning Commission with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a conflict of interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

5. PRE-BID CONFERENCE

5.1 Pre-Bid Conference of the Applicants shall be convened at the designated date, time and place. Only those Applicants who have purchased the RFP document shall be allowed to participate in the Pre-Bid Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.

5.2 During the course of Pre-Bid conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 Planning Commission, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to Planning Commission by, on behalf of and/or in relation to any Applicant; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases Planning Commission, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 All documents and other information supplied by Planning Commission or submitted by an Applicant shall remain or become the property of Planning Commission. Applicants are to treat all information, as strictly confidential. Planning Commission will not return any submissions.

- 6.5 Planning Commission reserves the right to make inquiries with any of the Clients listed by the Applicants in their previous experience record.
- 6.6 Applicants or any of their affiliates shall not be hired for any assignment, which by its nature, may be in conflict with other assignment of the Applicant.
- 6.7 Applicants are advised that Planning Commission will not respond to any enquiries or enter into communication concerning or relating to Selection Process.

SCHEDULES

SCHEDULE - 1

TERMS OF REFERENCE**1 Scope of Services**

The scope of the consultancy would entail the drafting and finalization of a Model EPC contract document of Highways for International Competitive Bidding (ICB).

2 Obligations of “The Consultant”**2.1 Advisory on EPC Contract**

The Consultant shall draft a Standard EPC contract, drawing upon his repertoire of expertise in drafting such procurement contracts.

The Model EPC Contract shall include *interalia*:

- (a) Various possible procurement options and advise the Planning Commission on all possible risks and advantages of each of the selected options. The draft EPC contract shall include evaluation criteria and price structure, including relevant price variation clause, to cover specified events;
- (b) Specifications for the highway (to be indicated with reference to the Manual of Standards and Specifications as published by the Planning Commission)
- (c) Performance standards;
- (d) Maintenance requirements over a 5-year contract period;
- (e) Incentive structure for improved performance and penalty structure for shortfalls;

3 Deliverables

The Consultant shall deliver the following during the course of this Consultancy. 5 hard copies and 5 soft copies in CDs of the Reports mentioned herein below shall be submitted to Planning Commission. The deliverables shall include:

A. Inception Report

On commencement of the Consultancy, the Consultant shall prepare and submit an Inception Report (the “**Inception Report**”). The Inception Report shall be a further elaboration of the Consultant’s submissions towards understanding of the RFP, the methodology to be followed and Work Plan.

B. Peer Review

The Consultant shall subject the draft Model EPC contract document to be reviewed by a peer having an equivalent experience. The cost of engaging such peer reviewer would be included in the proposal. The name of the proposed peer reviewer would also be indicated in the proposal.

C. Workshop

The draft document prepared by the Consultant would be discussed in two workshops to be organized by the Planning Commission and where experts and stakeholders would be invited. The Consultant would be required to make presentations, explain the salient features of the proposed document and also respond to the queries raised in the workshops. The feedback received during the seminar would be suitably considered in the preparation of the document.

D. Model EPC Contract document (Refer Clause 2.1).

4. Time and payment schedule

4.1 The total duration for Consultancy shall be 125 days, excluding any delay in granting approvals by Planning Commission to the draft reports. Consultant shall deploy his Key Personnel at its project office in Delhi (the “**Project Office**”) as per Manning Schedule proposed. Planning Commission may also require the consultant to provide additional services after completion of Services (KD4). For such additional services, not exceeding 20 (twenty) mandays, economy air return fare and per diem at the agreed man day rates shall be reimbursed to the Consultant. For travel associated with the additional

services, per diem for one day would be provided by way of travel time to and from Delhi.

- 4.2 Time schedule (Key Dates) for submission of important deliverables, shall be determined by the maximum permissible number of days from the Effective Date of the Agreement (the “**Key Date**”). The Key Dates and payment schedule linked to the specified deliverables are given below:

Key Date No.	Description of deliverables	No of days from the Key Date	Payment
KD1	Inception Report	7	-
KD2	Draft EPC contract	49	40%
KD3	EPC Contract	91	40%
KD4	Completion of Services	125	20%
Total			100%

Payment of 10% of the total Agreement Value at the Inception Stage shall be made on request against Bank Guarantee of a Scheduled Bank.

5 **Weekly meetings**

Planning Commission may review the progress of the Consultancy in weekly meetings to be held in Delhi at Planning Commission’s office. The Procurement Expert and such other Key Personnel as deemed necessary by the Consultant shall participate in these meetings. Personnel costs of five such meetings would be deemed as included in the Financial Proposal. No reimbursement shall be due in respect of travel time.

6. **Consultancy Team and Project Office**

- 6.1 The Consultant shall form a multi-disciplinary team (the “**Consultancy Team**”) for undertaking this assignment. The Consultancy Team shall consist of experts who have the requisite experience. Procurement Expert shall be the leader of this Consultancy Team.

6.2 The Consultant shall mobilize and demobilize its Key/Professional Personnel in consultation with Planning Commission and shall maintain the time sheet/ attendance sheet of the working of all Key Personnel. These time sheets/ attendance sheets shall be made available to Planning Commission as and when asked for and a copy of such record shall be submitted to Planning Commission at the end of each week.

7.0 Data to be made available by Planning Commission

Planning Commission shall provide to the Consultant the relevant procurement rules and contracts of Ministry of Road Transport and Highways.

8.0 Completion of Services

All the consultancy outputs including primary data shall be compiled, classified and submitted by the Consultant to Planning Commission in soft form apart from the Deliverables indicated in Clause 3 above. The consultancy outputs shall remain the property of Planning Commission and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of Planning Commission. The Consultancy services shall stand completed on acceptance of all the required deliverables of the Consultant by Planning Commission and issue of a certificate by Planning Commission to that effect.

SCHEDULE – 2

AGREEMENT

FOR

ENGAGING CONSULTANT

For Preparing Model EPC Contract for

Highways

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AGREEMENT

For Preparing Model EPC Contract for Highways

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the _____ day of the month of _____ 20**, between, on the one hand, the President of India acting through Director (Infrastructure), Planning Commission, (hereinafter called the “**Planning Commission**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) Planning Commission vide their Request for Proposals for engaging consultant for preparing a Model EPC contract for Highways (hereinafter called the “**Consultancy**”) invited technical and financial proposals to undertake the work of Consultancy for the above referred work (hereinafter called the “**Project**”);
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to Planning Commission that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to Planning Commission on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) Planning Commission, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy work to the Consultant vide the Letter of Award for the Consultancy dated _____ (the “**LOA**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- (a) “Applicable Laws” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (b) “Agreement” means this Agreement, together with all the Annexes;
- (c) “Agreement Value” shall have the meaning set forth in Clause 6.1 (b)
- (d) “Additional Costs” shall have the meaning set forth in Clause 6.1 (b);
- (e) “Confidential Information” shall have the meaning set forth in Clause 3.3;
- (f) “Dispute” shall have the meaning set forth in Clause 9.2.1;
- (g) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) “Expatriate Personnel” means such persons who at the time of being so hired had their domicile outside India;
- (i) “Government” means the Government of India;
- (j) “ INR, Re. or Rs.” means Indian Rupees;
- (k) “Member”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “Members” means all of these entities;
- (k) “Personnel” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (l) “Party” means Planning Commission or the Consultant, as the case may be, and Parties means both of them;

- (m) “Resident Personnel” means such persons who at the time of being so hired had their domicile inside India;
- (n) “RFP” means the Request for Proposal document in response to which the Consultant’s Proposal for providing Services was accepted;
- (o) “Services” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of reference (the “TOR”) at Annex-1 hereto;
- (p) “Third Party” means any person or entity other than the Government, Planning Commission, the Consultant or a Sub-Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over other would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Award

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between Planning Commission and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of Planning Commission and the Consultant shall be as set forth in the Agreement; in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) Planning Commission shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Delhi shall have jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

1.6 Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Consultant, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Planning Commission; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Consultant may from time to time designate by notice to the Planning Commission;
- (b) in the case of Planning Commission, be given by facsimile and by letter delivered by hand and be addressed to the Planning Commission

with a copy delivered to the Planning Commission Representative set out below in Clause 1.10 or to such other person as Planning Commission may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Delhi it may send such notice by facsimile and by registered acknowledgement due, air mail or by courier; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

1.8 Location

The Services shall be performed at Delhi.

1.9 Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights and obligations towards Planning Commission under this Agreement, including without limitation the receiving of instructions and payments from Planning Commission.

1.10 Authorised representatives

1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by Planning Commission or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

1.10.2 Planning Commission may, from time to time, designate one of its officials as Planning Commission Representative. Unless otherwise notified, the Planning Commission Representative shall be:

Director (Infrastructure)
 Planning Commission
 Room No 346
 Yojana Bhawan
 Sansad Marg
 New Delhi – 110001 (India)
 Phone: +91-11-23096721 Fax: +91-11-23096587
 Email: sp.chouhan@nic.in,

1.10.3 The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

Tel: _____

Fax: _____

Email: _____

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and Planning Commission shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect on the date of this Agreement (the "Effective Date").

2.2 Commencement of Services

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, Planning Commission may, by not less than 2 (two) weeks' notice to the Consultant, declare this Agreement to be null and void.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clause 2.9 hereof, this Agreement shall expire when the Services have been completed and a period of 90 (ninety) days has elapsed after all payments due under this Agreement, have been made.

2.5 Entire Agreement

- 2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the RFP shall continue to subsist and shall be deemed as part of this Agreement.
- 2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause 4.2(c) and 6.1(c) hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Sub-Consultant or agents or employees, nor (ii) any event which a diligent

Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement and (B) avoid or overcome in the carrying out of its obligations hereunder.

- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

2.7.4 Extension of time

Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.7.5 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period

for the purposes of the Services and in reactivating the Services after the end of such period.

2.7.6 Consultation

Not later than thirty (30) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8 Suspension of Agreement

Planning Commission may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By Planning Commission

Planning Commission may, by not less than thirty (30) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as Planning Commission may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;

- (d) the Consultant submits to Planning Commission a statement which has a material effect on the rights, obligations or interests of Planning Commission and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (g) Planning Commission, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

The Consultant may, by not less than thirty (30) day's written notice to Planning Commission, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- (a) Planning Commission fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue;
- (b) Planning Commission is in material breach of its obligations pursuant to this Agreement and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by Planning Commission of the Consultant's notice specifying such breach;
- (c) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) Planning Commission fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Consultant's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 3.6 (ii) hereof, and any right which a Party may have under the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1, 2.9.2 or 2.9.3 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Planning Commission, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1, 2.9.2 or 2.9.3 hereof, Planning Commission shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to Planning Commission):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 or in Clause 2.9.3 hereof has occurred, such Party may, within 30 (thirty)

days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to Planning Commission, and shall at all times support and safeguard Planning Commission's legitimate interests in any dealings with Sub-Consultant or Third Parties.

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant are specified in the Terms of Reference (the “**TOR**”) at Annex-1 of this Agreement. The Consultant shall provide the deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel and agents of the Consultant comply with the Applicable Laws.

3.2 Conflict of Interest and Prohibited Practices

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Sub-Consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities in India which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and have not engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”). Notwithstanding anything to the contrary contained in this Agreement, the Planning Commission shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the

Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Planning Commission shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to Planning Commission towards, inter alia, time, cost and effort of the Planning Commission, without prejudice to the Planning Commission's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the Planning Commission under Clause 3.2.5 above and the other rights and remedies which the Planning Commission may have under this Agreement, if the Consultant is found by Planning Commission to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by Planning Commission to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of Planning Commission who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal,

financial or technical adviser Planning Commission in relation to any matter concerning the Project;

- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process ;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by Planning Commission under this Agreement;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by Planning Commission with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant and its Personnel shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, designs software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by Planning Commission to the Consultant, its Personnel; any information provided by or relating to Planning Commission, its technology, technical processes, business affairs or finances or any information relating to Planning Commission’s employees, directors, officers or other professionals or suppliers, customers, or contractors of Planning Commission, and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (**“Confidential Information”**) without the prior written consent of Planning Commission.

Notwithstanding the aforesaid, the Consultant, its Sub-Consultant and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, its Sub-Consultant and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultant and the Personnel of either of them;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Law or judicial or administrative or arbitral process or by any Governmental Instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultant and the Personnel of either of them shall give Planning Commission, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment ;
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultant or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultant or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4 Liability of the Consultant

3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 Consultant's liability towards Planning Commission

The Consultant shall be liable to Planning Commission for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to

damage caused to Planning Commission's property, shall not be liable to Planning Commission:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds the total payments made or expected to be made to the Consultant hereunder.

This limitation of liability shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services.

3.5 Accounting, inspection and auditing

The Consultant shall,

- (i) keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges), and
- (ii) permit Planning Commission or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by Planning Commission.

3.6 Consultant's actions requiring Planning Commission's prior approval

The Consultant shall obtain Planning Commission's prior approval in writing before taking any of the following actions:

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2.
- (b) any other action that may be specified in this Agreement.

3.7 Reporting obligations

The Consultant shall submit to Planning Commission the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.8 Documents prepared by the Consultant to be property of Planning Commission

3.8.1 All plans, drawings, specifications, designs, reports and other documents prepared by the Consultant in performing the Services shall become and remain the property of Planning Commission, and the Consultant shall, not later than termination or expiration of this Agreement, deliver all such documents to Planning Commission, together with a detailed inventory thereof. The Consultant may retain a copy of such documents. Restrictions about the future use of these documents shall be as specified in the Agreement.

3.8.2 The Consultant shall not use these documents for purposes unrelated to this Agreement without the prior written approval of Planning Commission.

3.9 Equipment and materials furnished by Planning Commission

Equipment and materials made available to the Consultant by Planning Commission shall be the property of Planning Commission and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to Planning Commission, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of Planning Commission. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by Planning Commission in writing, insure them for an amount equal to their full replacement value.

3.10 Providing access to Project Office and Personnel

The Consultant shall ensure that Planning Commission, and officials of Planning Commission having authority from Planning Commission, are provided unrestricted access to the Project Office and to all Personnel during office hours. Planning Commission's any such official shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records for his satisfaction.

3.11 Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. It shall indemnify Planning Commission against any inaccuracy in its work which might surface during implementation of the project, if such inaccuracy is the

result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practices. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4 CONSULTANT'S PERSONNEL

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2 Deployment of Personnel

- (a) The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in Annex-2 of this Agreement. The estimate of Personnel costs and manday rates are specified in Annex-3 of this Agreement.
- (b) Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-3 may be made by the Consultant by written notice to Planning Commission, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 20% (twenty percent) or one week, whichever is greater, and (ii) that the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement Value set forth in Clause 6.1 (b) of this Agreement. Any other adjustments shall only be made with the written approval of Planning Commission.
- (c) If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between Planning Commission and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1(b).

4.3 Approval of Personnel

- 4.3.1 The Professional Personnel listed in Annex-2 of the Agreement are hereby approved by Planning Commission. No other Professional Personnel shall be engaged without prior approval of Planning Commission.
- 4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to Planning Commission its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. Planning Commission may approve or reject such proposal within 10 (ten) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for Planning Commission's consideration. In the event Planning Commission does not reject a proposal within fourteen (14) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by Planning Commission.

4.4 Substitution of Key Personnel

Planning Commission expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. Planning Commission will not consider any substitution of Key Personnel except under exceptional circumstances. Such substitution shall be limited to one Key Personnel and subject to equally or better qualified and experienced personnel being provided. Substitution of a Key Personnel shall be permitted subject to reduction of remuneration equal to 20% (twenty percent) of the remuneration specified for the original Key Personnel.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the mandays of service set forth in Annex-2. Any taking of leave by any Personnel for a period exceeding 7 days shall be subject to the prior approval of Planning Commission, and the Consultant shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

4.6 Team Leader and Project Manager

The person designated as Procurement Expert shall serve as the Team Leader of the Consultant's Personnel. In addition, the Consultant shall designate a

suitable person as Project Manager who shall be responsible for day to day performance of the Services.

5. OBLIGATIONS OF PLANNING COMMISSION

5.1 Assistance in clearances etc.

Unless otherwise specified in the Agreement, Planning Commission shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, its Sub-Consultant and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultant or Personnel to perform the Services;
- (b) facilitate prompt clearance through customs of any property required for the Services; and
- (c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;

5.2 Access to land and property

Planning Commission warrants that the Consultant shall have, free of charge, unimpeded access to all land and property (highways) in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1(c).

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Agreement Value specified in Clause 6.1(b).

5.4 Payment

In consideration of the Services performed by the Consultant under this Agreement, Planning Commission shall make to the Consultant such payments and in such manner as is provided by Clause 6 of this Agreement.

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

- (a) An abstract of the cost of the Services payable to the Consultant is set forth in Annex-4 of the Agreement.
- (b) Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1(c), the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. _____ (Rs. _____), which does not include the Additional Costs specified in Annex-4 (the “**Additional Costs**”).
- (c) Notwithstanding anything to the contrary contained in Clause 6.1(b), if pursuant to the provisions of Clauses 2.6 & 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1(a) above, the Agreement Value set forth in Clause 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:-

- (a) Payment Schedule

The Consultant shall be paid for its services as per the Payment Schedule at Annex-5 of this Agreement, subject to the Consultant fulfilling the following conditions:

- (i) No payment shall be due for the next stage till the Consultant completes to the satisfaction of Planning Commission the work pertaining to the preceding stage.
 - (ii) Planning Commission shall pay to the Consultant, only the undisputed amount.
- (b) Planning Commission shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by Planning Commission of duly completed bills with necessary particulars (the "Due Date"). Interest at the rate of 10% (ten per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (c) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by Planning Commission. The Services shall be deemed completed and finally accepted by and the final report and final statement shall be deemed approved by Planning Commission as satisfactory upon expiry of 90 (ninety) days after receipt of the final report and final statement by Planning Commission unless Planning Commission, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final statement. The Consultant shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which Planning Commission has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to Planning Commission within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by Planning Commission for reimbursement must be made within 1 (one) year after receipt by Planning Commission of a final report and a final statement in accordance with this Clause 6.3 (c).
- (d) All payments under this Agreement shall be made to the account of the Consultant as may be notified to Planning Commission by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

7.1.1 Planning Commission shall retain by way of performance security (the “**Performance Security**”), 5% (five percent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2 herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of six months after the expiration of this Agreement pursuant to Clause 2.4 hereof.

7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-6 of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by Planning Commission in a reasonable manner and recovered from the Consultant by way of liquidated damages, subject to a maximum of 10% (ten percent) of the Agreement Value.

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.1% (zero point one percent) of the Agreement Value per day, subject to a maximum of 5% (five percent) of the Agreement Value will be imposed and shall be recovered from the Performance Security. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

7.2.3 Encashment and appropriation of Performance Security

Planning Commission shall have the right to encash and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

In the event any portion of the Performance Security is appropriated by Planning Commission, then immediately following such appropriation, the Consultant shall replenish the Performance Security within 1 (one) month of its appropriation, and in the event of default by the Consultant, Planning Commission shall have the right to take such steps as it may deem necessary, including termination of this Agreement.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of Planning Commission, other penal action including debarring for certain period may also be initiated as per policy of Planning Commission.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realisation of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognise that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

9.2 Dispute resolution

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon Adviser to Deputy Chairman, Planning Commission and the Chairman of the Board of Directors of the Consultant for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such

arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

- 9.4.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Government agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Government agree that an Award may be enforced against the Consultant and/or the Government, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

For and on behalf of
Consultant:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of
Planning Commission
Government of India

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of:

1.

2.

Annex -1

Terms of Reference

(Refer Clause 3.1.2)

[Reproduce Schedule-1 of RFP]

Annex - 2

Deployment of Personnel

(Refer Clause 4.2)

[Reproduce as per Form - 13 of Appendix-I]

Annex-3

Estimate of Personnel Costs

(Refer Clause 4.2)

[Reproduce as per Form-3 of Appendix-II]

Annex-4

Cost of Services

(Refer Clause 6.1)

[Reproduce as per Form-2 of Appendix-II]

Annex-5

Payment Schedule*(Refer Clause 6.3)*

S.No	Description of deliverables	Date of submission (i.e.No.of days from Effective Date)	Payment
KD1	Inception Report	7	-
KD2	Draft EPC Contract	49	40%
KD3	EPC Contract	91	40%
KD4	Completion of Services	125	20%
Total			100%

Notes:

1. *The Above payments shall be made to the Consultant provided that the payments to be made at any time shall not exceed the amount certified by the Consultant in its Statement of Expenses.*
2. *The Consultancy assignment shall be completed in 125 days.*
3. *Final payment of 20% (twenty percent) shall be released upon completion of Services in their entirety.*
4. *At the request of the Consultant, payment of 10% of the total Agreement Value may be made at the Inception Stage against Bank Guarantee of a Scheduled Bank. The amount shall be adjusted equally over the next three installments payable under this Agreement.*

Annex- 6

Bank Guarantee for Performance Security*(Refer Clause 7.1.2)*

To

The President of India
 (acting through Director (Infrastructure))
 Planning Commission
 Yojana Bhawan
 Sansad Marg
 New Delhi – 110001 (India)

In consideration of Planning Commission acting on behalf of the President of India (hereinafter referred as the “Planning Commission”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s _____, having its office at _____ (hereinafter referred as the “Consultant” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a consultancy by issue of Planning Commission’s Agreement no. _____ dated _____ valued at Rs. _____ (Rupees _____) for providing Consultancy Services for preparing Model EPC contract for Highways (hereinafter referred to as the “Agreement”), and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. _____ (Rupees _____) to Planning Commission for performance of the said Agreement.

We, _____ (hereinafter referred to as the “Bank”) at the request of the Consultant do hereby undertake to pay to Planning Commission an amount not exceeding Rs. _____ (Rupees _____) against any loss or damage caused to or suffered or would be caused to or suffered by Planning Commission by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2. We, _____ (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from Planning Commission stating that the

amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by Planning Commission by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant'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. _____ (Rupees _____).

3. We undertake to pay to Planning Commission any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or Tribunal 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 thereunder and the Consultant 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 Planning Commission under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till Planning Commission certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before a period of [one year] from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, _____ (indicate the name of Bank) further agree with Planning Commission that Planning Commission shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by Planning Commission against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of Planning Commission or any indulgence

by Planning Commission to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us .

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7. We, _____ (indicate the name of Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of Planning Commission in writing.

Dated the _____ day of _____ 200*

For _____

(Name of Bank)

(Signature, Name and Designation of the Authorised Signatory)

Seal of the Bank:

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

APPENDICES

APPENDIX-I

TECHNICAL PROPOSAL

Form-1

Letter of Proposal

(Refer Clause 2.13.1)

(On Applicant's letter head)

(Date and Reference)

To,

Director (Infrastructure)
Planning Commission
Room No 361
Yojana Bhawan
Sansad Marg
New Delhi – 110001 (India)

Sub: Appointment of consultant for preparing Model EPC contract for Highways

Dear Sir,

With reference to your RFP Document dated *****, I/We, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Consultant for preparing the Model EPC contract for highways. The proposal is unconditional and unqualified.

2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/We shall make available to Planning Commission any additional information it may find necessary or require to supplement or authenticate the Proposal.

5. I/We acknowledge the right of Planning Commission to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. We certify that in the last three years, we/ any of the consortium members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Document, including any Addendum issued by Planning Commission;
 - (b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with Planning Commission or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Selection Process at any time and and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants.in accordance with Clause 2.7 of the RFP document.
9. I/We declare that We/any member of the consortium, are/ is not a Member of a/any other Consortium applying for Selection as a Consultant.

10. I/We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
13. I/We hereby irrevocably waives any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Planning Commission and / or the Government of India in connection with the selection of Consultant or in connection with the Selection Process itself, in respect of the above mentioned Project.
14. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, I/We shall have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened.
15. I/We agree to keep this offer valid for 90 days from the Proposal Due Date specified in the RFP.
16. A Power of attorney in favour of the authorised signatory to sign and submit this Proposal and documents is also attached herewith in Form 4.
17. In the event of my/our being selected as the Consultant, I/We agree to enter into an Agreement in accordance with the format at Schedule – II of the RFP. We agree not to seek any changes in the aforesaid format and agree to abide by the same.
18. I/We have studied RFP and all other documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by Planning

Commission or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.

19. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
20. I/We agree and undertake to abide by all the terms and conditions of the RFP Document.

In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature of the Authorised Signatory)

(Name and designation of the Authorised Signatory)

(Name and seal of the Applicant / Lead Member)

APPENDIX-I

Form-2**Particulars of the Applicant**

1.1	<p>Title of Consultancy:</p> <p>Consultant for preparing the Model EPC contract for Highways</p>
1.2	<p>Title of Project: Preparing the Model EPC contract for Highways</p>
1.3	<p>State whether applying as Sole Firm or Lead Member of a consortium:</p> <p>Sole Firm</p> <p>or</p> <p>Lead Member of a consortium</p>
1.4	<p>State the following:</p> <p>Name of Company or Firm:</p> <p>Legal status (e.g. incorporated private company, unincorporated business, partnership etc.):</p> <p>Country of incorporation:</p> <p>Registered address:</p> <p>Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>Brief description of the Company including details of its main lines of business</p> <p>Particulars of individual(s) who will serve as the point of contact/ communication with Planning Commission:</p> <p>(a) Name:</p> <p>(b) Designation:</p> <p>(c) Company:</p> <p>(d) Address:</p> <p>(e) Telephone Number:</p>

	<p>(f) E-Mail Address :</p> <p>(g) Fax Number:</p> <p>Name, Designation, Address and Phone Numbers of Authorised Signatory of the Applicant:</p> <p>Name:</p> <p>Designation:</p> <p>Company:</p> <p>Address:</p> <p>Phone No.:</p> <p>Fax No.:</p>
<p>1.5</p>	<p>If the Applicant is Lead Member of a consortium, state the following for each of the other Member Firms:</p> <p>(i) Name of Firm:</p> <p>(ii) Legal Status and country of incorporation</p> <p>(iii) Registered address and principal place of business.</p>
<p>1.6</p>	<p>For the Applicant, (in case of a consortium, for each Member), state the following information:</p> <p>i) In case of non Indian company, does the company have business presence in India?</p> <p style="text-align: right;">Yes/No</p> <p>If so, provide the office address(es) in India.</p> <p>ii) Has the Applicant or any of the Members in case of a consortium been penalized by any organization for the poor quality of work in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p>iii) Has the Applicant/ member ever failed, in last five years, to complete any work awarded to it by any public authority/ entity in last five years?</p> <p style="text-align: right;">Yes/No</p> <p>iv) Has the Applicant or any member of the consortium been blacklisted by any Govt. department/Public Sector Undertaking in the last five years?</p>

	<p style="text-align: right;">Yes/No</p> <p>v) Has the Applicant or any of the members, in case of a consortium, suffered bankruptcy/insolvency in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p>Note: If answer to any of the questions at ii) to v) is yes, the Applicant is not eligible for this consultancy assignment.</p>
<p>1.7</p>	<p>Does the Applicant's firm/company (or any member of the consortium) combine functions as a consultant or designer along with the functions as a contractor and/or a manufacturer?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, then for this work does the Applicant (and other member of the Applicant's consortium) agree to limit the Applicant's role only to that of a consultant/ designer and to disqualify themselves, their associates/ affiliates and/or parent organization subsequently from work on this project in any other capacity (including tendering relating to any goods or services for any part of this project) other than that of consultant and/or designer for Planning Commission?</p> <p style="text-align: right;">Yes/No</p>
<p>1.8</p>	<p>Does the Applicant intend to borrow or hire temporarily, personnel from contractors, manufacturers or suppliers for performance of the Consulting Services?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, does the Applicant agree that it will only be acceptable as Consultant, if those contractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this project (including tendering relating to any goods or services for any other part of the project) other than that of the Consultant?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this project and they agree to limit their role to that of consultant/ designer for Planning Commission only?</p> <p style="text-align: right;">Yes/No</p>

APPENDIX-I

Form-3

Statement of Legal Capacity

(To be forwarded on the letter head of the Applicant)

Ref. Date:

To,

Director (Infrastructure)
Planning Commission
Room No 361
Yojana Bhawan
Sansad Marg
New Delhi – 110001 (India)

Dear Sir,

We hereby confirm that we, the Applicant (along with other members in case of consortium, constitution of which has been described in the Proposal*), satisfy the terms and conditions laid out in the RFP process.

We have agreed that _____ (insert Applicant's name) will act as the Lead Member of our consortium.

We have agreed that _____ (insert individual's name) will act as our Authorised Representative/ will act as the Authorised Representative of the consortium on our behalf and has/have been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Yours faithfully,

Authorised Signatory

For and on behalf of _____

**Please strike out whichever is not applicable*

APPENDIX-I

Form-4**Power of Attorney**

(Refer Clause 2.2.3)

Know all men by these presents, We, _____ (name of firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms _____ son/daughter/wife and presently residing at _____, who is presently employed with us and holding the position of ***** as our true and lawful attorney (hereinafter referred to as the “Authorised Representative”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Consultant for preparing bid documents including the EPC contract for Highways but not limited to signing and submission of all applications, proposals and other documents and writings, participate in pre-bid and other conferences and providing information/ responses to Planning Commission, representing us in all matters before Planning Commission, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with Planning Commission in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with Planning Commission.

AND we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorised Representative 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 Authorised Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, _____ THE ABOVE NAMED
PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS
_____ DAY OF _____, 200*For

(Signature)

(Name, Title and Address)

Witnesses:

1.

[Notarised]

2.

Accepted

(Signature)

(Name, Title and Address of the Attorney)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant :

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

APPENDIX-I

Form-5**Financial Capacity of the Applicant**

(Refer Clause 2.2.2 (B) of RFP)

S. No.	Financial Year	Annual Revenue (Rs./US \$ in million)
1.		
2.		
3.		

<p>Certificate from the Statutory Auditor</p> <p>This is to certify that ***** (name of the Applicant) has received the payments shown above against the respective years on account of professional fees.</p> <p>Name of Authorised Signatory:</p> <p>Designation:</p> <p>Name of firm:</p> <p style="text-align: right;">(Signature of the Authorised Signatory)</p> <p style="text-align: right;">Seal of firm</p>
--

Note:

1. Please do not attach any printed Annual Financial Statement.

APPENDIX-I

Form-6

Particulars of Key Personnel

Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Assignments [#]
				Name of Firm	Employed Since	
Procurement Expert						
Technical Expert						
Legal Expert						

[#]Refer Form 9 of Appendix I Experience of Key Personnel

APPENDIX-I

Form-7**Proposed Methodology and Work Plan**

The descriptive part of submission under this will be detailed precisely under the following topics.

1) Understanding of TOR [not more than two pages]

The Applicant will submit his understanding of the TOR specified in the RFP in a brief manner underlying the crucial and important aspects of it. The Applicant may supplement various requirements of the TOR if he considers this would bring more clarity and improvements over the existing requirements and assist in achieving the Objectives laid down in the TOR.

2) Methodology and Work Plan [not more than three pages]

The Applicant will submit his methodology for carrying out this assignment, outlining his approach toward achieving the Objectives laid down in the TOR. The Applicant will submit a brief write up on their proposed team and organization of personnel explaining how various areas of expertise needed for this assignment have been fully covered by their proposal. In case the Applicant is a consortium, it should specify how expertise of each firm is proposed to be utilized for this assignment. The Applicant should specify the sequence and locations of important activities, and quality assurance plan for carrying out the Consultancy Services.

Note: Marks will be deducted for writing lengthy and out of context responses.

APPENDIX-I

Form-8**Experience of the Applicant[#]**

(Refer Clause 3.1)

S.No	Name of Project	Description of Assignment
1	(2)	(3)
1		
2		
3		
4		
5		
6		
7		

The Applicant should provide details of only those projects that have been undertaken by it under its own name.

Exchange rate should be taken as Rs. 40 per US \$ for converting to Rs.

* The names and chronology of Projects included here should conform to the project-wise details submitted in Form-10 of Appendix-I.

APPENDIX-I

Form-9

Experience of Key Personnel[@]

(Refer Clause 3.1)

Name of Key Personnel:

Designation:

S.No	Name of Project	Description of the assignment	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the project	Date of completion of project assignment	Mandays spent
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						
3						
4						

5						
6						

@ Use separate Form for each Key Personnel. The Applicant should provide details of only those projects that have been undertaken by the Key Personnel as team leader.

APPENDIX-I

Form-10**Assignments of Applicant**

(Refer Clause 3.1.4)

Name of Applicant:	
Name of the Project:	
Description of services performed by the Applicant firm:	
Name of client and Address:	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost (in Rs cr. or US\$ million):	
Duration of the maintenance component of the Project.	
Start date and finish date of the services (month/ year):	
Brief description of the project:	

Notes:

Use separate sheet for each Eligible Project.

Attach a single page summary containing the brief particulars of each project.

Exchange rate should be taken as Rs.40 per US \$ for converting in Indian Rupees.

APPENDIX-I

Form-11**Assignments of Key Personnel**

Name of Key Personnel:	
Designation of Key Personnel:	
Name of the Project:	
Name of Consulting Firm where employed:	
Description of services performed by the Key Personnel (including designation):	
Name of client and Address:	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost (in Rs cr. or US\$ million)	
Duration of the maintenance component of the Project.	
Start date and finish date of the services (month/ year)	
Brief description of the project:	

Notes:

Use separate sheet for each Project.

Attach a single page summary containing the brief particulars of each project alongwith a photograph thereof.

Exchange rate should be taken as Rs. 40 per US \$ for converting in Indian Rupees.

APPENDIX-I

Form -12

Curriculum Vitae (CV) of Professional Personnel

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualification:
6. Employment Record:
(Starting with present position, list in reverse order, every employment held.)

7. List of projects on which the Personnel has worked

Project Name	Description of assignment performed
--------------	-------------------------------------

8. Details of the current assignment and the time duration for which services are required for the current assignment.

Certification:

- 1 I am willing to work on the project and I will be available for entire duration of the project assignment as required.
- 2 I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.

Signature of the Professional _____

Place _____

Date _____

Counter signature of the Authorised Representative

of the firm _____

Place _____

Date _____

Notes:

Use separate form for each Professional Personnel

Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised Representative of the Applicant firm. Photocopies will not be considered for evaluation.

APPENDIX-I

Form - 13

Deployment of Personnel

Designation	Name	Man-Days (MD)		Week Numbers																				
		At Delhi	Firm's office	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18			
Total Mandays																								

APPENDIX-II

FINANCIAL PROPOSAL

(Refer Clause 2.14.1)

Form - 1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

Director (Infrastructure)
Planning Commission
Room No 361
Yojana Bhawan
Sansad Marg
New Delhi – 110001 (India)

Dear Sir,

Subject: Appointment of Consultant for preparing EPC Contract for Highway

I/We, ***** (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for above.

I/We agree that this offer shall remain valid for a period of 90 (ninety) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Authorised Representative)

Name:

Designation:

Address:

Note: The Financial Proposal is to be filled strictly as per the forms given in RFP.

APPENDIX-II

Form – 2(Refer Clause 2.14)**Financial Proposal**

Item No.	Description	Amount (Rs.)
A.	PERSONNEL AND LOCAL COSTS	
I	Remuneration for Professional Personnel (inclusive of all personnel allowances)	
II	Remuneration of Support Personnel (inclusive of all personal allowances)	
III	Office Rent	
IV	Office Consumables like Utilities and Communication etc.	
V	Office Furniture and Equipment (Rental)	
VI	Reports and Document Printing	
VII	Miscellaneous Expenses	
VIII	Remuneration for Peer Reviewer	
	Total Cost of Personnel & Local Costs: (Net of Tax)	
B	OVERHEAD EXPENSES @ ____% of A	
C	TOTAL COST (A+B) (in Rs.)	
D	ADDITIONAL COSTS	
I	Travel from Firm's Office to Delhi (restricted to three return full fare economy class air fares for each Personnel)	
II	Taxes and Duties	
	a. All taxes payable by Expatriate Personnel in India on their income	
	b. Service Tax	
	Total of Additional Costs (D)	
E	TOTAL COST OF THE CONSULTANCY (C+D) In Indian Rupees in Figures In Words _____	

Note:

1. Estimate of Costs for Item A shall be as per Form- 3.
2. Miscellaneous Expenses in Item A VII shall not exceed 10% (ten percent) of the total amount in Item A.
3. Air Fare in Item D I shall not be payable to the Consultant's Personnel who are normally stationed in Delhi.
4. The financial evaluation shall be based on the above Financial Proposal, excluding Additional Costs. The total in Item C shall, therefore, be the amount for purposes of evaluation. Additional Costs in Item D shall not be reckoned for purposes of financial evaluation. However, payment in respect of additional costs shall be due and payable to the Consultant by the Planning Commission.
5. All costs shall be reimbursed on production of a Statement of Expenses, duly certified by the Authorised Representative. However, no details of expenditures would be sought for overhead expenses, which will be reimbursed in proportion to the total expenses under Item A.
6. The reimbursement of expenses shall be limited to the amounts indicated above.
7. Savings of upto 20% (twenty percent) under any head of expenditure specified in the summary of Financial Proposal may be reappropriated by the Consultant and added to any other head of expenditure, subject to a ceiling of 10% (ten percent) in respect of the recipient head of expenditure. Upon Notification of such reappropriation to Planning Commission, the Financial Proposal shall be deemed to be amended, and payment shall be made accordingly.
8. No escalation on any account will be payable on the above amounts.
9. Any other charges not shown here are considered included in the man day rate/ overhead/ miscellaneous expenses.
10. Planning Commission may require the Key Personnel to visit the Planning Commission's offices for further consultations after completion of their assignment. Planning Commission may require upto 7 extra days of consultation with any or all Key Personnel on payment of additional charges. For the aforesaid services, payment shall be computed solely on the basis of relevant man day rates specified in the financial proposal. In all cases, return full fare economy class airfare shall be reimbursed in addition, as per actuals.
11. All payments shall be made in Indian Rupees and shall be subject to applicable Indian withholding taxes if any.
12. For the purposes hereof "**Statement of Expenses**" means a statement of the expenses incurred on each of the heads indicated in the Financial Proposal; provided that in relation to expenses on Personnel, the Statement of Expenses

shall be accompanied by the particulars of Personnel and the man-days spent on the Consultancy.

APPENDIX-II

Form – 3

(Refer Clause 2.14)

Estimate of Personnel Costs

ID No.	Position	Name	Manday Rate (Rs.)	Total Man Days	Amount (Rs.)
A I. Remuneration for Professional Personnel (including all personal allowances)					
Total					
A II. Remuneration for Support Personnel (including all personal allowances)					

Total					
Grand Total:					