



नव मंगलूरु बंदरु षुद्धिकरु
नव मंगलूरु पत्तन प्राधिकरण
NEW MANGALORE PORT AUTHORITY
(Fully Solar Powered)

भरत सरकर (पत्तन, पोत परिवहन और जलमार्ग मंत्रालय)
Govt of India (Ministry of Ports, Shipping and Waterways)
ಪಣಂಬೂರು ಪणಂಬೂರು Panambur / ಮಂಗಳೂರು ಮंगलूर Mangalore - 575010



REQUEST FOR PROPOSAL (RFP)

FOR

**“Appointment of Project Management Advisory for
Providing Consultancy Services to New Mangalore
Port Authority”**

NIT No. CIVIL/CE(C)/EE(C)/84/2022-23

E Procure Tender ID: 2022_NMPT_729616_1

19-12-2022

ದೂರವಾಣಿ / ದೂರಭಾಷೆ / Phone : 0824- 2407341, 2887399
आईएसओ 9001:2015, 14001:2015 एवं आईएसपीएस अनुपालनकर्ता पत्तन
An ISO 9001:2015, 14001:2015 & ISPS Compliant Port

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 the Authority or any of its 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 or an offer by the Authority 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 the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority 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 the Authority, 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 maybe on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirement and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Authority, 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 any way in this Selection Process.

The Authority 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.

The Authority 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 the Authority is bound to select an Applicant or to appoint the Selected Applicant, as the case maybe, for the Consultancy and the Authority 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 the Authority or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation for submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

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New Mangalore Port Authority

I - NOTICE INVITING E-TENDER

NIT No. CIVIL/CE(C)/EE(C)/84/2022-23, dt. **19-12-2022**

[e Procure Tender ID: 2022_NMPT_729616_1]

“RFP FOR APPOINTMENT OF PROJECT MANAGEMENT ADVISORY FOR PROVIDING CONSULTANCY SERVICES TO NEW MANGALORE PORT AUTHORITY”

1.1 **New Mangalore Port Authority** Invites Proposals (the “Proposals”) through E-Procurement System <https://eprocure.gov.in/cppp/> for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority (the “Consultant”) who shall in accordance with the Terms of Reference specified at Schedule-1 (the “TOR”), prepare tender documents, assist the Authority in the bidding process PPP and GIS work etc. (collectively the “Consultancy”)

The Authority intends to select the Consultant through a competitive online bidding in accordance with the procedure set out herein.

1.2 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Authority, sending written queries, and attending a Pre-Proposal Conference on the date and time specified in **Clause 1.7**.

1.3 Schedule of Selection Process

The complete RFP document can be downloaded from NMPA website: www.newmangaloreport.gov.in and <https://eprocure.gov.in/cppp/> submit as application on or before the due date and time of submission.

Earnest Money Deposit	Rs. 1,95,000/- EMD shall be paid by NEFT in favour of FA&CAO, NMPA.
Cost of Tender	Rs. 1,120/- (including GST @12%) shall be paid by NEFT in favour of FA&CAO, NMPA.
Date of tender document available to parties to download	19.12.2022 at 16:00 HRS
Last date for receiving Pre bid queries/clarifications	26.12.2022 at 15:30 HRS
Pre-bid meeting	26.12.2022 at 15:30 HRS
Starting date of e-Tender for submission of on-line Techno-	02.01.2023 at 11:00 HRS

Commercial Bid and price Bid	
Proposal Due Date (PDD) Closing date of online e-tender for submission of Techno-Commercial Bid & Price Bid	09.01.2023 at 15:30 HRS
Part-I: Date of Opening of Technical Proposal Part-II -Financial Proposal:	10.01.2023 at 15:30 HRS Shall be communicated separately.
Validity of Tender	180 days from the closing date of online submission of e-tender.

Note: The EMD shall be in the form of Insurance Surety Bonds, Account Payee Demand draft, Fixed Deposit Receipt, Bankers Cheque, Bank Guarantee as per Annexure 9 or shall be paid by RTGS in favour of F.A. & C.A.O., NMPA. Scanned copy should be uploaded along with bid.

The benefit of Exemption of EMD / Cost of Tender to all Micro and small Enterprises (MSE) will be allowed. The bidder shall upload with their offer, proof of their being MSE registered with District Industries Centre (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Scale Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or Udyam Registration Certificate or any other body specified by Ministry of MSME, will be considered.

NMPA Bank Details

1. **Name of the Bank: State Bank of India, Panambur, Mangalore - 575 010.**
2. **Bank A/C No. 10205649448**
3. **IFSC Code: SBIN0002249**
4. **MICR Code: 575002011**

1.4 Validity of the Proposal

The Proposal shall be valid for a period of not less than 180 days from the Proposal Due Date (the "PDD").

1.5 Brief description of the Selection Process

The Authority has adopted a two-stage selection process (collectively the "**Selection Process**") in evaluating the Proposals comprising technical and financial bids through online bidding process. **Scanned copies of Technical Bid shall be submitted on <https://eprocure.gov.in/cppp/> and**

also one hard copy of the same shall be submitted to address given at Clause 1.8 immediately after the PDD.

In the first stage, a technical evaluation will be carried out as specified in **Clause 2.1**. Based on this technical evaluation, a list of qualified applicants shall be prepared. In the second stage, a financial evaluation will be carried out as specified in **Clause 2.2** of the technically qualified applicant. Proposals will finally be ranked according to their combined technical and financial scores as specified in **Clause 2.3**. The first ranked Applicant will be selected (the "**Selected Applicant**") shall be called for negotiation, if necessary.

1.6 Deleted

1.7 Pre-Proposal Conference

The date, time and venue of Pre-Proposal Conference shall be: **Date: 26.12.2022 at 15:30 Hrs.**

Venue: Office of the Chief Engineer (Civil), 2nd floor, Administration Office Building, New Mangalore Port Authority, Panambur, Mangalore -575010

The Prospective Applicant who needs clarifications on any specific issue, if any, shall submit to the Chief Engineer (Civil), New Mangalore Port Authority, Panambur, Mangaluru-575010 before the date and time indicated in Online bid reference in writing and a copy of the same shall also be submitted through Email provided in **Clause 1.8. No queries / clarifications shall be entertained after** the date and time indicated in Online bid reference.

Clarification / Amendments / further information etc. pertaining to the tender, if any shall be uploaded only on websites www.newmangaloreport.gov.in and <https://eprocure.gov.in/cppp/>, may have to be referred by the prospective applicant from time to time.

1.8 Communications

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

Chief Engineer (Civil)
Civil Engineering Department
New Mangalore Port Authority
Panambur,
Mangalore – 575 010
Karnataka (India)
Phone : 0824 2407493
Fax :0824 2407493
Email :chiefengineer@nmpt.gov.in

1.9 **The Official Website of the Authority is:**
www.newmangaloreport.gov.in

Executive Engineer (CIVIL)

II – SPECIAL INSTRUCTIONS TO THE BIDDERS FOR THE E-SUBMISSION OF THE BIDS ONLINE THROUGH E-PROCUREMENT PORTAL

1. Bidder should do Online Enrolment in the Portal using the option Click Here to Enroll available in the Home Page. Then the Digital Signature enrollment has to be done with the e-token, after logging into the portal.
2. Bidder then logs into the portal giving user id / password chosen during enrollment.
3. The e-token that is registered should be used by the bidder and should not be misused by others.
4. DSC once mapped to an account cannot be remapped to any other account. It can only be inactivated.
5. The Bidders can update well in advance, the documents such as certificates, purchase order details etc., under My Documents option and these can be selected as per tender requirements and then attached along with bid documents during bid submission. This will ensure lesser upload of bid documents.
6. After downloading / getting the tender schedules, the Bidder should go through them carefully and then submit the documents as per the tender document; otherwise, the bid will be rejected.
7. The BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filling the relevant columns, else the bidder is liable to be rejected for that tender. Bidders are allowed to enter the Bidder Name and Values only.
8. If there are any clarifications, this may be obtained online through the e-Procurement Portal, or through the contact details given in the tender document. Bidder should take into account of the corrigendum published before submitting the bids online on the portal or on <http://eprocure.gov.in/eprocure/appor> www.newmangalore-port.com Bidder, in advance, should prepare the bid documents to be submitted as indicated in the tender schedule and they should be in PDF formats.
9. Bidder should arrange for the EMD and tender fee as specified in the tender. The original should be posted/couriered/given in person to the Tender Inviting Authority, within the bid submission date and time for the tender.
10. The bidder should read the terms and conditions and accepts the same to proceed further to submit the bids.
11. The bidder has to submit the tender document(s) online well in advance before the prescribed time to avoid any delay or problem during the bid submission process. There is no limit on the size of

- the file uploaded at the server end. However, the upload is decided on the Memory available at the Client System as well as the Network bandwidth available at the client side at that point of time. In order to reduce the file size, bidders are suggested to scan the documents in 75-100 DPI so that the clarity is maintained and the size of file gets reduced. This will help in quick uploading even at very low bandwidth speeds.
12. It is important to note that, the bidder has to click on the Freeze Bid Button, to ensure that, he/she completes the Bid Submission Process. Bids, which are not frozen, are considered as Incomplete/Invalid bids and are not considered for evaluation purposes.
 13. The Tender Inviting Authority (TIA) will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders due to local issues.
 14. The bidder may submit the bid documents online mode only, through this portal. Offline documents will not be handled through this system. Only hard copy of the Technical Bid should reach immediately after PDD to the Chief Engineer (Civil), NMPA
 15. At the time of freezing the bid, the e-Procurement system will give a successful bid updating message after uploading all the bid documents submitted and then a bid summary will be shown with the bid no., date & time of submission of the bid with all other relevant details. The documents submitted by the bidders will be digitally signed using the e-token of the bidder and then submitted.
 16. After the bid submission, the bid summary has to be printed and kept as an acknowledgement as a token of the submission of the bid. The bid summary will act as a proof of bid submission for a tender floated and will also act as an entry point to participate in the bid opening event.
 17. Successful bid submission from the system means, the bids as uploaded by the bidder is received and stored in the system. System does not certify for its correctness.
 18. The bidder should see that the bid documents submitted should be free from virus and if the documents could not be opened, due to virus, during tender opening, the bid is liable to be rejected.
 19. The time that is displayed from the server clock at the top of the tender Portal, will be valid for all actions of requesting bid submission, bid opening etc., in the e-Procurement portal. The Time followed in this portal is as per Indian Standard Time (IST) which is GMT+5:30. The bidders should adhere to this time during bid submission.

20. The bidders are requested to submit the bids through online e-Procurement system to the Tender Inviting Authority (TIA) well before the bid submission end date and time (as per Server System Clock).
21. Tender form Fee and EMD shall be submitted with the Part I- Technical BID. BID submitted without fees, as mentioned above will not be considered for evaluation and shall be rejected summarily. The benefit of Exemption of EMD to all Micro and small Enterprises (MSE) will be allowed. The bidder shall upload with their offer, proof of their being MSE registered with District Industries Centre (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Scale Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or Udyam Registration Certificate or any other body specified by Ministry of MSME, will be considered. Also, necessary document for having registered with similar category should be submitted along with Technical Bid.
22. The EMD of un-successful Bidders shall be refunded only after the contract has been awarded to the successful Bidder. No interest shall be paid on the EMD.
23. The EMD of successful Bidder will be discharged upon the Bidder's accepting the award & signing the Agreement, and furnishing the Contract Performance Security/Bank Guarantee. No interest shall be paid on the EMD. If the successful bidder fails to sign the agreement within the stipulated time, the EMD shall be forfeited to NMPA.
24. The bidder/Tenderer/contractor shall file the applicable returns with Tax departments in time and submit the same as documentary proof.
25. The GST applicable shall be shown as separate line items in the Tax invoices to avail input credit to Port.
26. In the event of forfeiting the EMD/LD/SD, GST is applicable and while imposing penalty, applicable GST shall be collected.

1 INTRODUCTION

1.1 Background

The New Mangalore Port, the only Major Port of Karnataka was declared as the 9th Major Port on 4th May 1974 and was formally inaugurated on 11th January 1975. The provisions of the Major Port Trust Act 1963 were applied to NMPT with effect from 1.4.1980. Since then, the Port has been functioning as a centre of activities for Importers and Exporters of this region. New Mangalore Port Trust is now renamed as New Mangalore Port Authority w.e.f. 31-01-2021 under Major Port Authority Act 2021. The major commodities exported through the Port are POL Products, iron ore pellets, containerized cargo, etc. The major commodities imported through the Port are POL Crude for MRPL, Cement, coal, fertilizer, edibleoil, liquid chemicals, containerized cargo etc. The Port is providing all the facilities for handling the cargo of mega Industries like MRPL, ONGC, OMPL, KIOCL, TOTAL GAZ, MCF, HPCL, IOC, UPCL, etc. Over the years the Port has grown from the level of handling less than a lakh tonne of traffic to 39.33 million tonnes handled during the last financial year 2021-22. The core activity of the Port is to facilitate berthing of vessels for handling import/export cargo.

New Mangalore Port Authority (NMPA) intends to engage Firms / Consultants (GIS and PPP expert). The authority required assistance in executing the PPP and GIS related work along with the coordination support with Ministry / IPA /BISAG and other government agencies like Indian Railways, Consultancy agencies, etc.

1.2 Objective

Authority wishes to engage Project management agency (the "Consultant") for period of **3 years** which may be extendable on mutual consent.

The objective of this Consultancy (the "Objective") is to provide PPP related advice, GIS related works and necessary assistance to the authority: Other key conditions include (Details in SCHEDULE – 1)

- i. The Key Specialists/Experts shall be available on fulltime basis to advise and assist as may be required under the Consultancy;
- ii. For avoidance of doubt, fulltime basis shall for the purpose of this Consultancy mean all working days of the Authority and the prescribed working hours.

INSTRUCTIONS TO APPLICANTS

A. GENERAL

1.3 Scope of Proposal

1.3.1 Detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Consultancy are specified in this RFP. In case an applicant firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it shall participate in the Selection Process individually (**the "Sole Firm"**) in response to this invitation. The term applicant (**the "Applicant"**) means the Sole Firm. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

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

1.3.3 Key Personnel

The Consultant's team (**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
PPP Specialist (Dy. Manager PPP)	The specialist will be in charge of leading, coordinating, and managing all the Consultancy Team with the responsibility of selecting a specific model for PPP functioning. Defining the concession time and income up sharing options and prepare bid documents for PPP developer selection and analyze technical and financial bids. Expertise in government Guidelines. All works related to PPP Projects, communication with Ministry and all other works entrusted by NMPA. Monitoring compliances of all PPP Projects

<p style="text-align: center;">GIS Specialist (Dy. Manager GIS)</p>	<p>To undertake the work of satellite/GIS data collection, generation of thematic maps, maintenance of digitized data and carryout the statistical analyses with furnishing the reports/ briefs as required for satisfactorily functioning of Geo-spatial activities of NMPA. Including communication with Ministry and updation in respective portals (LIDAR Survey, BISAG, GIS based land allotment , ERP, E Office etc.), AutoCAD.</p>
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1.4 Conditions of Eligibility of Applicants

1.4.1 Applicants must read carefully the minimum conditions of eligibility (the "Conditions of Eligibility") provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility will be considered for evaluation.

1.4.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfill the following:

S. No	Criteria	Requirement
A	The firm should be in continuous existence for a period of at least 3 years.	<ul style="list-style-type: none">• Incorporation certificate
B	The firm should have an average annual turnover of not less than Rs. 25 lakhs per annum during the past 3 years i.e., 2018-19, 2019-20 and 2020-21. For those purposes, they should enclose last 3 years Audited Annual Accounts	<ul style="list-style-type: none">• Audited Balance sheet for the past 3 years.
C	The Bidder shall have completed consultancy services for at least TWO (2) projects related to Ports and Maritime sector for the last seven years.	<ul style="list-style-type: none">• Work order and Completion Certificate of the projects.

1.4.3 The Applicants who satisfies the above criteria at (A) to (C) shall be considered for further evaluation in accordance with the method of selection specified in **Clause 1.3.2** of this document.

1.4.4 The Applicant shall enclose with its Proposal, certificate(s) from its Statutory Auditors stating its **total revenues from professional fees during each of the past three financial years** and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Applicant does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Applicant.

- 1.4.5 The Applicant should submit a **Power of Attorney as per the format at Form - 4 of Appendix-I; provided**, however, that such Power of Attorney would not be required if the Application is signed by a partner or Director (on the Board of Directors) of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 1.4.6 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Proposal, would not be eligible to submit a Proposal either by itself or through its Associate
- 1.4.7 An Applicant or its Associate should have, during the last three years, 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 or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate
- 1.4.8 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.

1.5 **Conflict of Interest**

- 1.5.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "Conflict of Interest"). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Performance Security, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

1.5.2 The Authority requires that the Consultant provides professional, objective, and impartial advice and at all times hold the Authority's interests paramount, avoid conflicts with other assignments or its own 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 clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority

1.5.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:

(a) the Applicant, its consortium member (the "Member") or Associates (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this **Clause 1.5.3(a)**, indirect shareholding held through one or more intermediate persons shall be computed as follows:

(aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and

(bb) subject always to Sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this Sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the

- subscribed and paid up equity shareholding of such intermediary; or
- (b) a constituent of such Applicant is also a constituent of another Applicant;
or
 - (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
 - (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (e) 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 other's' information about, or to influence the Application of either or each of the other Applicant; or
 - (f) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and other members, if any) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
 - (g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided **in Clause 1.5.4**; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
 - (h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-

contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act 1956. For the purposes of this Sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of Sub-clause (a) above.

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant, or is deemed or published as an **"Associate Office"**; or has a formal arrangement such as tie up for client referral or technology sharing, joint venture with the Applicant (the **"Associate"**); provided, however, that if the Applicant has any formal arrangement such as consortium membership in a consortium of advisers/ consultants for a particular assignment/project, not being this project, with any other person, then such other person shall not be treated to be an Associate of the Applicant solely due to the reason of forming such consortium. As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

1.5.4 An Applicant eventually appointed to provide Consultancy for this Project, its Associates and affiliates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 3 (three) years from the completion of this assignment or to any consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof. For the avoidance of doubt, in the event that: (a) an Applicant/ Consultant was a partner or an employee of another firm, which attracts the provisions relating to Conflict of Interest hereunder; and (b) was directly or indirectly associated with any assignment that causes a Conflict of Interest hereunder, then such Specialist shall be deemed to suffer from Conflict of Interest for the purpose hereof.

1.5.5 In the event that the Consultant, its Associates or affiliates are auditors or financial advisers to any of the bidders for the Project, they shall make a disclosure to the Authority as soon as any potential conflict comes to their notice but in no case later than 7 (seven) days from the opening of the RFP applications for the Project and any breach of this obligation of disclosure shall be construed as Conflict of Interest. The Authority shall, upon being notified by the Consultant under this **Clause 1.5.5**, decide whether it wishes to terminate this Consultancy or otherwise, and convey its decision to the Consultant within a period not exceeding 15 (fifteen) days.

1.6 **Number of Proposals**

No Applicant or its Associate shall submit more than one Application for the Consultancy. An Applicant applying individually or as an Associate shall not be entitled to submit another application either individually or as a member of any consortium, as the case may be.

1.7 **Cost of Proposal**

The Applicants shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the

Selection Process including subsequent negotiation, visits to the Authority, Project site etc. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

1.8 Visit to the Authority and verification of information

Applicants are encouraged to submit their respective Proposals after visiting the office of the Authority and ascertaining for themselves the availability of documents and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them.

1.9 Acknowledgement by Applicant

1.9.1 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 the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in **Clause 1.8** above;
- (d) satisfied itself about all matters, things and information, including matters referred to in **Clause 1.8** herein above, necessary and required for submitting an informed Application and performance of all of its obligations there under;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

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

1.10 Right to reject any or all Proposals

1.10.1 Notwithstanding anything contained in this RFP, the Authority 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.

1.10.2 Without prejudice to the generality of **Clause 1.10.1**, the Authority reserves the right to reject any Proposal if:

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

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If the Applicant is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest-ranking Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

1.11 Integrity Pact

Integrity Pact (IP) shall cover this RFP throughout its various phases, and IP would be deemed as a part of the contract. The Applicant should sign and submit a 'Integrity Pact' to be executed between the Applicant and the Authority as per the format at Form-12, and shall be submitted along with the Bid Enclosure in the manner provided in this RFP. IP would be implemented through the following Independent External Monitor ("IEM") for this Bid:

Sri Prem Chand Pankaj,
Ex-CMD, NEEPCO.
M 402, Pioneer Park,
Sector-61, Golf Course,
Extn. Road, Gurgaon
Mob: 9717433886
Email: prempankaj@gmail.com

B. DOCUMENTS

Contents of the RFP

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 1.13**

Request for Proposal

- I Notice Inviting Online Tender
- II Instructions to Applicants for Online Bid Submissions
- III Sections
 - 1. Introduction
 - 2. Instructions to Applicants

3. Criteria for Evaluation
4. Fraud and corrupt practices
5. Pre-Proposal Conference
6. Miscellaneous

Schedules

1 Terms of Reference

2 Form of Agreement

Annex-1: Terms of Reference

Annex-2: Deployment of Personnel

Annex-3: Payment Schedule

Annex-4: Bank Guarantee for Performance Security

3 Guidance Note on Conflict of Interest

4 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 Applicant

Form 6: Particulars of Key Personnel

Form 7: Abstract of Eligible Assignments of the Applicant

Form 8: Abstract of Eligible Assignments of Key Personnel

Form 9: Eligible Assignments of Applicant

Form 10: Eligible Assignments of Key Personnel

Form 11: CVs of Professional Personnel

Form 12: Integrity Pact

Form 13: Proposed Deployment Schedule

Form 14: E-Payment Form

Appendix – II – Reference Format of Financial Proposal

Appendix –III – Project Information Memorandum

1.12 Clarifications

- 1.12.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing before the date mentioned in the Schedule of Selection Process at **Clause 1.3** of I - Notice Inviting Online Tender. The envelopes shall clearly bear the following identification:

"QUERIES/REQUEST FOR ADDITIONAL INFORMATION CONCERNING RFP FOR APPOINTMENT OF PROJECT MANAGEMENT ADVISORY FOR PROVIDING CONSULTANCY SERVICES TO NEW MANGALORE PORT AUTHORITY.

The Authority shall endeavor to respond to the queries and will post the reply to all such queries on the E-Tender portal and Official Website and copies thereof will also be circulated by e-mail to all Applicants who have purchased the RFP document without identifying the source of queries.

- 1.12.2 The Authority reserves the right not to respond to any queries or provide any clarifications, in its sole discretion, and nothing in this **Clause 1.12** shall be construed as obliging the Authority to respond to any question or to provide any clarification.

1.13 **Amendment of RFP**

- 1.13.1 At any time prior to the deadline for submission of Proposal, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the E-Tender portal and Official Website.

- 1.13.2 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Authority may, in its sole discretion, extend the PDD.

C. **PREPARATION AND SUBMISSION OF PROPOSAL**

1.14 **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 is in another language, it must be accompanied by an accurate translation of all the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

1.15 **Format and signing of Proposal**

- 1.15.1 The Applicant shall provide all the information sought under this RFP. The Authority would evaluate only those Proposals that are received in the specified forms and complete in all respects.

- 1.15.2 Deleted

1.15.3 The Proposal shall be typed or written in indelible ink and signed by the authorised signatory of the Applicant who shall have initials on each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal. The Proposals must be properly signed by the authorised representative (the "Authorised Representative") as detailed below:

- (a) by the proprietor, in case of a proprietary firm; or
- (b) by a partner, in case of a partnership firm and/or a limited liability partnership; or
- (c) by a duly authorised person holding the Power of Attorney, in case of a Limited Company or a corporation; or
- (d) by the authorised representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified by a notary public in the form specified in Appendix-I (Form-4) shall accompany the Proposal (if required).

1.15.4 Applicants should note the PDD, as specified in **Clause 1.3** of I-Notice Inviting Online Tender, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority, and that evaluation will be carried out only on the basis of Documents received online by the closing time of PDD as specified in **Clause 1.19.1**.

1.16 Technical Proposal

1.16.1 Applicants shall submit the technical proposal in the formats at Appendix (the "Technical Proposal").

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

- (a) all forms are submitted in the prescribed formats and signed by the prescribed signatories;
- (b) power of attorney, if applicable, is executed as per Applicable Laws;
- (c) CVs of all Key Personnel have been included;
- (d) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at **Clause 1.4** of the RFP;
- (e) the CVs have been recently signed and dated, in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned/countersigned CVs shall be rejected;
- (f) the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified

- in the RFP;
- (g) it contains sealed and signed copy of RFP and addendums if any; also an undertaking shall be furnished for no change made in RFP document.
- (h) Key Personnel proposed have good working knowledge of English language;
- (i) Key Personnel would be available for the period indicated in the TOR;
- (j) No Key Personnel should have attained the age 50 of Years at the time of submitting the proposal;**
- (k) Proposed methodology and work plan.
- (l) the proposal is responsive in terms of **Clause 1.23.3**
- (m) the proposal shall include copies of payment made towards EMD and Tender document fee.

1.16.3 Failure to comply with the requirements spelt out in this **Clause 1.16** shall make the Proposal liable to be rejected.

1.16.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, he shall be liable to be debarred for any future assignment of the Authority for a period of 3 (three) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event.

1.16.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.

1.16.6 The proposed team shall include 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 1.3.3** shall be included in the proposed team of Professional Personnel. The team shall comprise other competent and experienced professional personnel in the relevant areas of expertise (where applicable) as required for successful completion of this Consultancy. The CV of each such professional personnel, if any, should also be submitted in the format at Form-11 of Appendix-I.

1.16.7 Deleted.

1.16.8 The Authority reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by 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 there under.

1.16.9 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 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 Selected 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 without the Authority being liable in any manner whatsoever to the Selected Applicant or Consultant, as the case may be.

In such an event, the Authority shall forfeit and appropriate the Performance Security, if available, as mutually agreed pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

1.17 Financial Proposal

1.17.1 Financial Proposal should be quoted in file available in e-portal only (website www.eprocure.gov.in/eprocure/app) any indication of 'Quoted price' in the online technical bid documents shall lead to rejection of the bid outright.

1.17.2 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, additional personnel's, telephone/fax, photocopying, courier and postage, collection, deliveries, stationery, cost of support staff and counsel fee, stamping agreement, cost towards making 10 sets of complete agreement copies, accommodation, traveling

expenses, 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 GST. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- (iii) Costs (including break down of costs) shall be expressed in INR.

1.18 Submission of Proposal

Bidders shall submit their bid through E-tenders <https://eprocure.gov.in/cppp/> of CPP.

1.19 Proposal Due Date

1.19.1 Proposal must be uploaded in the website <https://eprocure.gov.in/cppp/> not later than the time and date indicated in the online bid reference.

1.19.2 The Authority may, in its sole discretion, extend the PDD by issuing an Addendum in accordance with **Clause 1.13** uniformly for all Applicants.

1.19.3 Since the bid document is downloaded from web site and uploaded through e- Tender, the bidder shall give an undertaking that no changes have been made in document.

1.19.4 For both Technical and Financial evaluation purpose, e-tender only will be considered. In case the Applicant unable to upload the supporting documents through e-tender mode in case of Technical Proposal only, the hard copy of the supporting documents submitted before the due date also considered for technical evaluation.

1.20 Deleted

1.21 Modification/ substitution/ withdrawal of Proposals

1.21.1 The Applicant may modify, substitute or withdraw their tender after submission by giving notice in writing before the deadline prescribed in **clause 1.3** of I - Notice Inviting online Tender through e-Tender Mode.

1.22 **The Applicant, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Authority's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, inter alia, time, cost and effort of the Authority in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:**

- (a) If an Applicant engages in any of the Prohibited Practices specified in Section 4 of this RFP;
- (b) If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;
- (c) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in **Clause 1.30 and 1.31** respectively; or
- (d) If the Applicant is found to have a Conflict of Interest as specified in **Clause 1.5**

D. EVALUATION PROCESS

1.23 Evaluation of Proposals

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

- a. It is received by the Proposal Due Date (PDD) and Time.
- b. It is Digitally Signed.
- c. It contains the information and documents as required in the RFP Document.
- d. It contains information in formats specified in the RFP Document.
- e. It mentions the validity period as set out in the document.
- f. It provides the information in reasonable detail. The Port Authority reserves the right to determine whether the information has been provided in reasonable detail.
- g. There are no significant inconsistencies between the proposal and the supporting documents.
- h. The Technical qualification conforms to as specified in the qualification criteria.
- i. It contains sealed and signed copy of RFP document, amendments and addendum (if any) issued by New Mangalore Port are submitted with initials on all pages.
- j. the EMD and Tender document fee have been paid.

- 1.23.2 The Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Proposals.
- 1.23.3 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Section 3 of this RFP.
- 1.23.4** After the technical evaluation, the Authority shall prepare a list of pre-qualified Applicants in terms of **Clause 2.1.1** 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. The opening of Financial Proposals will be through E-Tender. The Authority will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of **Clauses 2.2 and 2.3**
- 1.23.5 Applicants are advised that Selection shall be entirely at the discretion of the Authority. Applicants shall be deemed to have understood and agreed that the Authority shall not be required to provide any explanation or justification in respect of any aspect of the Selection Process or Selection.
- 1.23.6 Any information contained in the Proposal shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

1.24 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 the Authority in relation to matters arising out of, or concerning the Selection Process. The Authority shall treat all information, submitted as part of the Proposal, in confidence and shall require all those who have access to such material to treat the same in confidence. The Authority 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 to enforce or assert any right or privilege of the statutory entity and/or the Authority or as may be required by law or in connection with any legal process.

1.25 Clarifications

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

1.25.2 If an Applicant does not provide clarifications sought under **Clause 1.25.1** above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Authority 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 such interpretation of the Authority.

E. APPOINTMENT OF CONSULTANT

1.26 Negotiations

The Selected Applicant may, if necessary 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 a deployment of Key Personnel, understanding of the Scope of Work, methodology and quality of the work plan shall be discussed during the negotiations. In case, the Selected Applicant fails to reconfirm its commitment, the Client reserve the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.

The Authority will examine the CVs of all other Key Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the Client.

1.27 Substitution of Key Personnel

1.27.1 The Authority will not normally consider any request of the Selected Applicant for substitution of Key Personnel, as the ranking of the Applicant is based on the evaluation of 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 or due to health or due to conditions beyond the consultant's control, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

1.27.2 Notwithstanding to **Clauses 1.27.1**, since this is a long term contract some staff turnover in the core team and resource pool is normal. The Consultant will fill a vacancy with equally qualified and experienced staff immediately. In cases when a critical vacancy cannot be filled immediately, due to conditions beyond the consultant's control, the consultant will be allowed to fill the critical vacancy for temporary periods up to 3 months but only with Authority approval and assessment that the replacement personnel is of equivalent qualifications. The remuneration payable for such temporary personnel shall not exceed 90% of the remuneration which would have been payable for the personnel replaced, for the remaining period. For avoidance of doubt, the Authority will not consider any staff turnover as the basis for any project delays – the Consultant is expected to meet every deliverable due date, and the project completion milestones as approved by the Authority.

1.28 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify the Authority, for an amount not exceeding 3 (three) times the value of the Agreement, for any direct loss or damage that is caused due to any deficiency in Services.

1.29 Award of Consultancy

After selection, 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 Authority may, unless it consents to extension of time for submission thereof, cancel the LOA and the next highest-ranking Applicant may be considered.

1.30 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within **15 (Fifteen)** days from the date of issue of LoA. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

The successful Bidder shall prepare and submit agreement format in line with the draft enclosed to the proposal document. On Approval of the Authority the agreement shall be signed by both the Bidder and Authority, after payment of stamp duties as may be necessary by the successful Bidder. The successful bidder shall also bear the cost for making of 10 sets of Agreement copies.

1.31 **Commencement of Assignment**

The Consultant shall commence the Consultancy within seven days of the date of the Agreement, or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in **Clause 1.30** or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the LOA or the Agreement, as the case may be, may be cancelled /terminated.

1.32 **Proprietary data**

Subject to the provisions of **Clause 1.24**, all documents and other information provided by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. The Authority will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to the Authority in relation to the Consultancy shall be the property of the Authority.

2 CRITERIA FOR EVALUATION

2.1 Evaluation of Technical Proposals

2.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, the experience of Key Personnel and proposed methodology and Work Plan. Only those Applicants whose Technical Proposals score 60 points or more out of 100 shall be qualified for further consideration, and shall ranked from highest to the lowest on the basis of their technical score (ST).

2.1.2 The scoring criteria to be used for Technical Proposal evaluation shall be as follows.

S. No	Parameter	Technical Scoring Criteria	Maximum Marks
1	Applicant's experience	<p>Number Consultancy Projects related to PPP in Ports or Maritime sector completed in last seven years ending last day of month previous to the one in which applications are invited.</p> <p>Minimum 2 Projects - 10 marks 3 projects - 15 marks 4 projects - 20 marks 5 projects - 25 marks 6 projects - 30 marks</p> <p>Completion Certificate/Letter of award from the Client has to be submitted.</p>	30
2	Relevant Experience of the Key Personnel	<p>Expert Team of 2 personnel(1 PPP Specialist and 1 GIS Specialist)</p> <p>PPP Specialist Experience – at least 7 (SEVEN) years of Consulting Experience with minimum Three (3) PPP projects executed in Ports and Maritime sector</p> <p style="text-align: right;">3. Projects - 20 marks 4 projects - 30 marks 5 projects - 40 marks</p> <p>Education : - MBA/PGDM from institutions of National Importance.</p>	40

S. No	Parameter	Technical Scoring Criteria	Maximum Marks
		<p><u>GIS Specialist</u> Experience – at least 7 (seven) years of Consulting Experience with minimum Three (3) projects executed in Ports or Maritime sector</p> <p style="text-align: right;">3.projects - 15 marks 4 projects - 20 marks 5 projects - 30 marks</p> <p><u>Education:-</u> First Class Graduate in Civil Engineering or M.Sc (Geo-informatics) or M.Plan or Graduation in Remote Sensing or related subjects from a recognized University With</p> <ol style="list-style-type: none"> 1. Working Knowledge on GIS application & related Civil Engineering Software 2. Working Knowledge in Auto Cad with latest version. 	30

2.2 Evaluation of Financial Proposal

- 2.2.1 In the second stage, the financial evaluation will be carried out as per this Clause. Each Financial Proposal will be assigned a financial score (S_F) as specified in **Clause 2.2.3**
- 2.2.2 For financial evaluation, the total cost (excluding GST) indicated in the Financial Proposal will be considered.
- 2.2.3 The Authority 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 Consultant 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 (FM) will be given a financial score (SF) 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)

2.3 Combined and Final Evaluation

- 2.3.1 Proposals will finally be ranked according to their combined technical (ST) and financial (SF) 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 Proposal and Financial Proposal that shall be 0.8 and 0.2 respectively.

- 2.3.2 The Selected Applicant shall be the Applicant having the highest combined score. The second highest Applicant shall be kept in reserve and may be invited in its discretion for negotiations in case the first-ranked Applicant withdraws, or fails to comply with the requirements specified in **Clauses 2.2 and 2.3** as the case may be.

3. FRAUD AND CORRUPT PRACTICES

- 3.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Authority 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 (collectively the "Prohibited Practices") in the Selection Process. In such an event, the Authority shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Performance Security, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, in regard to the RFP, including consideration and evaluation of such Applicant's Proposal.
- 3.2 Without prejudice to the rights of the Authority under **Clause 3.1** hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the Authority 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 the Authority during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by the Authority to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 3.3 For the purposes of this Clause, 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 the Authority 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 there from, 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) save as provided herein, 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 consultant/ 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 persons 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 the Authority 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.

4. PRE-PROPOSAL CONFERENCE

- 4.1 Pre-Proposal Conference of the Applicants shall be convened at the designated date, time and place. Only those Applicants who have purchased the RFP document or downloaded the same from the Official Website of the Authority, shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.

- 4.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor 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.

5. MISCELLANEOUS

- 5.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Mangalore shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 5.2 The Authority, 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 the Authority 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.
- 5.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Authority, 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.
- 5.4 All documents and other information supplied by the Authority or submitted by an Applicant shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 5.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

SCHEDULES

SCHEDULE – 1 **Terms of Reference**

**“RFP for Appointment of Project Management Advisory for Providing
Consultancy Services to New Mangalore Port Authority”**

TERMS OF REFERENCE (TOR)

1.1 Objectives of assignment

The Project Management Agency will work in tandem with the Department staff with the focus on new and existing projects of the department. The aim of this consultancy service is to provide technical assistance in the domain of PPP and GIS related work of the New Mangalore Port Authority.

1.2 Scope of the consultants

The scope of the experts under the RFP shall include but not necessarily be limited to the following activities;

Public-Private Partnership Specialist

- Procurement and PPP transaction advisory support for Projects
- Provide handholding support on various procurement requirements.
- Provide transaction advisory and bid process management support in development and operations of various maritime projects on PPP mode and procurement activities covering scope such as:
 - Feasibility assessment
 - PPP options structuring
 - Bid documents preparation
- Assistance in bid process till the signing of concession agreement
- The specialist will lead, co-ordinate and supervise the Consultancy Team for delivering the Consultancy in a timely manner as envisaged in this RFP.
- Prepare bid documents for selection of Developers on PPP mode.
- Assistance in evaluation of Technical Bids and Financial Bids.
- Preparation of MOU, Concessionaire Agreements and relevant documentation.
- Selection of specific PPP model.
- Define concession period and revenue up sharing options.
- Attending references received from the Ministry/ other authorities and submission of reply
- Updation of project status in the respective Portals
- Any other tasks assigned by NMPA from time to time.

GIS Specialist

- Maintenance of geographical data and mapping projections for database utilization and map generation.
- Verification and assuring quality of GIS data being received from various agencies.
- Integration and analysis of the GIS data as required.

- Creation of the Geo spatial database with the help of non-spatial and spatial data.
- Prepare the thematic layers especially land use, land classification, soil texture layer, geomorphology layer, geo hydrology, groundwater layer, soil erosion etc.
- Assessment of design, development, testing, and documentation of GIS based applications.
- Attending references received from the Ministry/ other authorities and submission of reply
- Updation of relevant project status in the respective Portals
- Any other tasks assigned by NMPA from time to time.

1.3 Expert/ key personnel deployment Schedule

The composition and duration of the Services for the Specialists will be as per the Table given below

Sl. No.	Description	No. of persons	Estimated person days per week	Estimated minimum man month
1	PPP Specialist	01	5 days	1X36 = 36 months
2	GIS Specialist	01	5 days	1X36 = 36 months

Note:

- (i) *Minimum number and man months of key personnel to be deployed of the assignment are mentioned in the above table.*
- (ii) *Minimum Remuneration to PPP specialist Rs. 1,50,000/- Per Month and GIS Specialist Rs. 80,000/- Per Month*

1.4 Payment to the Consultants

In consideration of the Services performed by the Consultants under this Contract, the New Mangalore Port shall make to the Consultants eligible payments and in such manner as is provided by clause appendix II, of this Contract. Payment shall be made to the Bank directly as per the details given in Form-14, E-Payment form of this tender document.

1.4.1 Remuneration towards Performance of Assignment by the Consultant

1. The Authority shall pay consultancy fees in Indian Rupees only as per terms and conditions of accepted "Financial Proposal" against invoices of the Consultant.
2. The monthly payment will be made @ 100% of the accepted man

month rates as per actual deployment of Personnel duly certified by Authority or his representative.

3. Remuneration shall be determined on the basis of time spent by the personnel listed in the Staffing Schedule in performance of the Services after the Effective Date at the rates specified in "Financial Proposal", in respect of the personnel.
4. Remuneration for periods of less than one month shall be calculated on a calendar day basis for the time spent in the field for part of the month. The personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave. The Consultant's remuneration shall be deemed to cover these items. Any taking of leave by personnel shall be subject to the prior approval of the Authority and the Consultant shall ensure that absence for leave purpose will not delay the progress and adequate supervision of the Services. The period for which the Consultant's personnel will be on leave shall not be charged on the bill and the bill must be accompanied with the attendance record for the period. The work of the personnel of the Consultants will have to be adjusted for proper supervision at all times when the work is in progress, without any over time according to the requirement at site. If any person of consultant is on a continuous leave exceeding 7 days, suitable substitute person shall be arranged for the leave period. The substitute person should be equal to or better qualified than the designated person. The substitute is only for the temporary leave period of the designated personnel.
5. Payments to be made by the Authority hereunder shall be strictly subject to, and representative of, satisfactory progress achieved by the Consultant.
6. The Consultant shall, on a monthly basis, submit to the Authority, in a format acceptable to the Authority, a Bill related to BOQ quantities stating personnel movements, inputs in the previous month compared to those shown in the Staffing Schedule.

As soon as practicable and not later than (15) fifteen days after the end of each calendar month during the period of the Services, the Consultant shall submit to the Authority, in duplicate, itemized statements, accompanied by receipted invoices, vouchers if any and other appropriate supporting materials including the attendance record for the period., of the amounts payable to the consultant for such month.

7. As soon as practicable after the completion of the Services or termination of the Contract, the Consultant shall submit to the Authority the Final Statement of Eligible payments referred in Financial Proposal.

8. Authority shall pay to the Consultants the amounts claimed within twenty-one (21) calendar days after receipt of satisfactory statements and supporting documents. The Authority may add to or subtract from any subsequent payment any amount to cover the difference between the amount paid and the cost authorized to be incurred.
9. Payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.
10. Payments shall be made in accordance with **Clause 1.4**.
No interest is admissible on outstanding amounts by the Authority.

1.5 Remuneration

It is understood that the fee quoted by Consultants cover (A) such salaries and allowances as the Consultants shall have agreed to pay to the Personnel as well as factors for social charges and overhead, and (B) the cost of back supporting by home office staff not included in the Personnel listed and (C) the Consultants' fee, (D) bonuses or other means of profit-sharing, if any, and (E) all other expenditure involved in providing the services as per the agreement which are not specifically stated herein above.

1.6 TIME AND PAYMENT SCHEDULE

The Process for appointment will be for a period of 3 years i.e., subject to satisfactory performance in the first year of the Contract.

The payment will be made on monthly basis after deducting applicable taxes on receipt of the claim after satisfactory completion of the work certified by the Officer In-Charge (OIC). **Each non-compliance (absence of key person) certified by the OIC shall attract a penalty of Rs. 3,000/-.**

In case for any reason the Consultancy is foreclosed, will be made as indicated above for completed days and the Authority's decision in this regard shall be final.

SCHEDULE – 2

AGREEMENT

FOR

**Appointment of Project Management Advisory for Providing
Consultancy Services to New Mangalore Port Authority**

AGREEMENT

RFP for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority

AGREEMENT No. _____ This AGREEMENT (hereinafter called the "Agreement") is made on the _____ day of the month of _____ 2022, between, on the one hand, the New Mangalore Port Authority (NMPA) (hereinafter called the "Authority" 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

The Authority vide its Request for Proposal for appointment of project management consultancy services (called the "Consultancy") for **Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority.**(hereinafter called the "project");

- (A) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (B) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award No. _____ dated _____ (the "LOA"); and
- (C) 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. "Agreement" means this Agreement, together with all the Annexes;
 - b. "Agreement Value" shall have the meaning set forth in **Clause 6.1.2**;
 - c. "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;
 - d. "Confidential Information" shall have the meaning set forth in **Clause 3.3**;
 - e. "Conflict of Interest" shall have the meaning set forth in **Clause 3.2** read with the provisions of RFP;
 - 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 consortium of more than one entity, means any of these entities, and "Members" means all of these entities;
 - l. "Party" means the Authority or the Consultant, as the case may be, and Parties means both of them;
 - m. "Personnel" means persons hired by the Consultant or by any Sub-Consultant as employees or retainers and assigned to the performance of the Services or any part thereof;
 - n. "Resident Personnel" means such persons who at the time of being so hired had their domicile inside India;
 - o. "RFP" means the Request for Proposal document in response to which the Consultant's proposal for providing Services was accepted;
 - p. "Services" means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
 - q. "Third Party" means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant.
 - r. 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 another would be as laid down below beginning from the highest

priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP and Corrigendum's if any; 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 the Authority 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 the Authority 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) the Authority 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 Mangalore shall have exclusive 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 tables 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 or e-mail 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 Authority; provided that notices or other communications to be given to an address outside may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number/address as the Consultant may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below **in Clause 1.10** or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Mangalore it may send such notice by facsimile or e-mail 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 and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the -working days following the date of its delivery.

1.8 Location

1.8.1 The Services shall be performed at the offices of the Consultant in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Authority.

1.8.2 The Authority may require the expert to spend the required man hours at the offices of the Authority and the Consultant agrees and undertakes to provide such services on a best effort basis and without any unreasonable delay.

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 the Authority under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

1.10 Authorized 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 the Authority 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 The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

Chief Engineer (Civil)
Civil Engineering Department
New Mangalore Port Authority
Panambur,
Mangalore – 575 010
Karnataka (India)
Phone : 0824 2407493
Fax :0824 2407493
Email : chiefengineer@nmpt.gov.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: -----
Mobile: -----
Fax: -----
E-mail: -----

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 the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

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, the Authority may, by not less than 1 (one) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to **Clauses 2.3 or 2.9** hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 60 (sixty) days after the delivery of the final Deliverable to the Authority; and (ii) the expiry of 1 (one) year from the Effective Date. Upon Termination, the Authority shall make payments of all amounts due to the Consultant hereunder.

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 provisions of the RFP shall continue to subsist and shall be deemed to form 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.

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 fulfill 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 14 (fourteen) 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 minimize 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

The payment shall be made to the Consultant as specified in the **Clause 1.4 of Terms of Reference**.

2.7.6 Consultation

Not later than 30 (thirty) 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

The Authority 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 15 (fifteen) days

after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 15 (fifteen) 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 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority 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 9.4** hereof;
- (d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority 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 60 (sixty) days; or
- (g) the Authority, 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 30 (thirty) days' written notice to the Authority, 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) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to **Clause 9** hereof within 45 (forty-five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority 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 60 (sixty) days; or
- (d) the Authority 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, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in **Clause 3.3** hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in **Clause 3.5**, as relate to the Consultant's Services provided under this Agreement, and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

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 or 2.9.2** 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 materials furnished by the Authority, the Consultant shall proceed as provided respectively by **Clauses 3.8 or 3.9** hereof.

2.9.5 Payment upon Termination

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

- (i) Deleted
- (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** 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 9.4** 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 the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Sub-consultants or Third Parties.

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant is 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 and any Sub-Consultant, comply with the Applicable Laws.

3.2 Conflict of Interest

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 or any Associate thereof, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of three years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall

include a partner in the firm of the Consultant or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

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 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 not have 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 Authority 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 Authority shall forfeit and appropriate the Performance Security, if any, as

mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the Authority under **Clause 3.2.5** above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority 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 the Authority 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 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 the Authority 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 the Authority 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 the Authority under this Agreement;
- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority 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, its Sub-Consultants and the Personnel of either of them 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, design 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 the Authority to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; 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 the Authority.

Notwithstanding the aforesaid, the Consultant, its Sub-Consultants 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-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultants 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 Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultants 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 The Consultant shall, subject to the limitation specified in **Clause 3.4.3**, be liable to the Authority 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 any 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 the Authority's property, shall not be liable to the Authority:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement

Value set forth in **Clause 6.1.2** of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher.

3.4.4 This limitation of liability specified in **Clause 3.4.3** 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 subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5 Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and standards such as Indian Accounting Standards, GAAP, etc 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
- (b) Permit the Authority 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 the Authority.

3.6 Consultant's actions requiring the Authority's prior approval

The Consultant shall obtain the Authority'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) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-consultant and the terms and conditions of the subcontract shall have been approved in writing by the Authority prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its

Personnel pursuant to this Agreement; or

(c) any other action that is specified in this Agreement.

3.7 Reporting obligations

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

3.7.2 Deleted

3.8 Documents prepared by the Consultant to be property of the Authority

3.8.1 All reports and other documents (collectively referred to as "Consultancy Documents") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.

3.8.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.8.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as "Claims") which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.9 Materials furnished by the Authority

Materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the Authority.

3.10 Providing access to Project Office and Personnel

The Consultant shall ensure that the Authority and officials of the Authority are provided unrestricted access to the office of the Consultant and to all Personnel during office hours. The Authority's official, who has been authorized by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.11 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, estimates and all other details prepared by it as part of these services. Subject to the provisions of **Clause 3.4**, it shall indemnify the Authority 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 practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

4 CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

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

The designations, names and other particulars of each of the Consultant's Key Personnel required in carrying out the Services

are described in **Annex-2 of this Agreement**.

4.3 Approval of Personnel

4.3.1 The Key Personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other Key Personnel shall be engaged without prior approval of the Authority.

4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-11) of the RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this **Clause 4.3**, it shall be deemed to have been approved by the Authority.

4.4 Substitution of Key Personnel

4.4.1 The Authority will not normally consider any request of the Selected Applicant for substitution of Key Personnel, as the ranking of the Applicant is based on the evaluation of 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 or due to health or due to conditions beyond the consultants control, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

4.4.2 Notwithstanding to **Clauses 4.4.1**, since this is a long term contract some staff turnover in the core team and resource pool is normal. The Consultant will fill a vacancy with equally qualified and experienced staff immediately. In cases when a critical vacancy cannot be filled immediately, due to conditions beyond the consultants control, the consultant will be allowed to fill the critical vacancy for temporary periods up to 3 months but only with Authority approval and assessment that the replacement personnel is of equivalent qualifications. The remuneration payable for such temporary personnel shall not exceed 90% of the remuneration which would have been payable for the personnel replaced, for the remaining period. For avoidance of doubt, the Authority will not consider any staff turnover as the basis for any project delays – the Consultant is expected to meet every

deliverable due dates, and the project completion milestones as approved by the Authority.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

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

- (a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultants 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

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project 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 6.1.3.**

5.3 Change in Applicable Law

All service tax and other taxes other than income tax, as may be applicable from time to time, on the payment of the professional fees to the Consultant, shall be borne by the Authority.

5.4 Payment

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

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

6.1.1 Deleted.

6.1.2 Except as may be otherwise agreed under **Clause 2.6** and subject to **Clauses 1.4. and 1.6 of Schedule-1**, 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.....).

6.1.3 Deleted.

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) The Consultant shall be paid for its services as per the Payment Schedule at Annex-3 of this Agreement, and **Clauses 1.6** of the TOR of this RFP, 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 the Authority the work pertaining to the preceding stage; and
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the "**Due Date**").
- (c) The final payment under this **Clause 6.3** shall be made only after the final Deliverable shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the final Deliverable shall be deemed approved by the Authority as satisfactory upon expiry of 60 (sixty) days after receipt of the final Deliverable unless the Authority, within such 60 (sixty) day period, gives written notice to the

Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Authority shall make the final payment upon acceptance or deemed acceptance of the final Deliverable by the Authority.

(d) Any amount which the Authority 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 the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with **Clause 6.3** I. Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ PLR SBI +2% (two per cent) per annum.

(e) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

Within **ten days** of the receipt of the award letter from Authority, the successful bidder/s shall furnish to the Authority a performance security in the form of Demand Draft/ Pay Order/Bank Guarantee of a Nationalized/ Scheduled Bank, enforceable and encashable at Mangalore for an amount equivalent to **3% of the awarded cost/ fee plus GST and rounded off to nearest highest 1000 as per the draft proforma specified at Annex-4** of the proposal document. Failure of the successful bidder to lodge and subsequently renew the required Bank Guarantee shall be constitute sufficient grounds for the termination of the contract and forfeiting of "Bid security". The performance security shall remain in force until the satisfactory completion of the contract and will be discharged thereafter. The obtaining of such guarantee (and the cost of guarantee) shall be at the expense of the Bidder/s.

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 the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum 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 0.5% (zero point five per cent) per week of the activity specified in Time & Payment Schedule - **Clause 1.6** of TOR, subject to a maximum of 10% (ten per cent) of Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. 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

The Authority shall have the right to invoke 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**.

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 the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

In the event of forfeiting the EMD/SD/Performance Security and imposition of liquidated damages, GST is applicable and while imposing penalty GST shall be collected. The GST shall be shown claimed as a separate line item in Tax Invoice. The Consultant shall file the applicable returns with Tax Dept. in time and submit the same as a documentary proof. In case, input Tax credit lost due to non-filing of returns will be recovered from Consultant.

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 true70authorized70ion of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognize 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 failure to agree on any action pursuant to this **Clause 8.2** shall not 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 Chairman, New Mangalore Port Authority and the Managing Partner/ Chairman of the Board of Directors of the Consultant or a substitute thereof 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 an Arbitral Tribunal 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 (Amendment) Act, 2015. The venue of such arbitration shall be Mangalore and the language of arbitration proceedings shall be English. There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules

9.4.2 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 Authority agree and undertake to carry out such Award without delay.

9.4.3 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.

9.4.4 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, DELIVERED For and on behalf of Consultant (Signature) (Name) (Designation) (Address) (Fax No.) In the presence of 1.	SEALED	AND	SIGNED, SEALED AND For and on behalf of Authority (Signature) (Name) (Designation) (Address) (Fax No.) In the presence of 1.
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Annex -1

Terms of Reference

(Refer Clause 3.1.2)

(Reproduce Schedule-1 of RFP)

Annex-2

Deployment of Key Personnel

(Refer Clause 4.2)

(Reproduce as per Form-6 of Appendix-I)

Annex-3
Payment Schedule
(Refer Clause 6.3)

The payment will be made on monthly basis after deducting applicable taxes on receipt of the claim after satisfactory completion of the work certified by the Officer In-Charge (OIC). The payment schedule will be as follows:

S.no.	Description	Amount(INR)
1	Progress report – month 1	As per APPENDIX -II
2	Progress report – month 2	
3	Progress report – month 3	
4	Progress report – month 4	
5	Progress report – month 5	
6	Progress report – month 6	
7	Progress report – month 7	
8	Progress report – month 8	
9	Progress report – month 9	
10	Progress report – month 10	
11	Progress report – month 11	
12	Progress report – month 12	
13	Progress report – month 13	
14	Progress report – month 14	
15	Progress report – month 15	
16	Progress report – month 16	
17	Progress report – month 17	
18	Progress report – month 18	
19	Progress report – month 19	
20	Progress report – month 20	
21	Progress report – month 21	
22	Progress report – month 22	
23	Progress report – month 23	
24	Progress report – month 24	
25	Progress report – month 25	
26	Progress report – month 26	
27	Progress report – month 27	
28	Progress report – month 28	
29	Progress report – month 29	
30	Progress report – month 30	
31	Progress report – month 31	
32	Progress report – month 32	
33	Progress report – month 33	
34	Progress report – month 34	
35	Progress report – month 35	
36	Progress report – month 36	

Annex-4

Bank Guarantee for Performance Security

(Refer Clause 7.1)

To

Board of Trustees New
Mangalore Port
Authority acting
through

Chairman New
Mangalore Port
Authority

In consideration of Chairman acting on behalf of the New Mangalore Port Authority (hereinafter referred as the "Authority", 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), vide the Authority's Agreement no. dated valued at Rs.(Rupees), (hereinafter referred to as the "Agreement") for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs..... (Rupees) to the Authority 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 the Authority an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority 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 the Authority stating that the amount/claimed is due by way of loss or damage caused to or would

be caused to or suffered by the Authority 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, (indicate the name of Bank) undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court

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 the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Authority 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 the Authority that the Authority 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 the Authority 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 the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the 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 the Authority in writing

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees ***** crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date specified in the RFQ/RFP for the Project)]

Dated, the day of 20

FI.....

(Name of Bank)

(Signature, name and designation
Authorized 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.

SCHEDULE-3

(See Clause 1.5.3)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of **Clause 1.5** of the RFP and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a conflict-of-interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the Authority and a consultant or between consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:

(a) Authority and consultants:

- (i) Potential consultant should not be privy to information from the Authority which is not available to others.

Potential consultant should not have defined the project when earlier working for the Authority.

Potential consultant should not have recently worked for the Authority overseeing the project.

(b) Consultants and concessionaires/contractors:

- (i) No consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ contractor save and except relationships restricted to project-specific and short-term assignments.

No consultant should be involved in owning or operating entities resulting from the project.

No consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of the Authority who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the consultants become aware of them.
5. Another approach towards avoiding a conflict of interest is through the use of "Chinese walls" to avoid the flow of commercially sensitive information from one part of the consultant's company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of "Chinese walls" may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, "Chinese walls" have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, "Chinese walls" should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the Authority.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called "scope-creep" arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest; they should report any present/ potential conflict of interest

to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

APPENDICES

APPENDIX-I
(See Clause 1.3.3)
TECHNICAL PROPOSAL
Form-1

Letter of Proposal
(On Applicant's letter head)

(Date and Reference) -----

Sub: RFP for Appointment of Project Management Advisory
for Providing Consultancy Services to New Mangalore
Port Authority

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 the RFP for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority (the Consultant")

. The proposal is unconditional and unqualified.

1. I/We acknowledge that the Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the Proposal and in the Appendices is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
3. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as

evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

I/We declare that:

- (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;
 - (b) I/We do not have any conflict of interest in accordance with **Clause 1.5** of the RFP Document;
 - (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 3.3** of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority 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 Section 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.
6. I/We understand that you may cancel the Selection Process at any time 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 1.10** of the RFP document.
 7. I/We declare that we are not a member of any other Consortium applying for Selection as a Consultant.
 8. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates 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.
 9. 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.

10. 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.
11. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority [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.
12. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we 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 or rejected.
13. I/We agree to keep this offer valid for 90 (ninety) days from the PDD specified in the RFP.
14. A Power of Attorney in favor authorized signatory to sign and submit this Proposal and documents is attached herewith in Form 4.
15. In the event of my/our firm being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule-2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
16. In the event of my/our firm being selected as the Consultant, I/we agree and undertake to provide the services of the Team Leader /Resident Engineer in accordance with the provisions of the RFP and that the Team Leader cum Resident Engineer shall be responsible for providing the agreed services himself and not through any other person or Associate.
17. I/We have studied RFP and all other documents carefully. 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 the Authority or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.

18. 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.

19. 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, name and designation Authorized signatory)

(Name and seal of the Applicant/ Lead Member)

APPENDIX-I
Form-2
Particulars of the Applicant

1	Title of Consulting services: Project Management Consultancy
2	Title of Project: RFP for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority
3	<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>Name, designation, address and phone numbers of Authorized 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>E-mail address::</p>
4	<p>For the Applicant, state the following information:</p> <p>(i) In case of non-Indian company, does the company have business presence in India? Yes/No If so, provide the office address(es) in India.</p> <p>(ii) Has the Applicant been penalized by any organization for poor quality of work or breach of contract in the last five</p>

	<p>years? Yes/No</p> <p>(iii) Has the Applicant ever failed to complete any work awarded to it by any public authority/ entity in last five years? Yes/No</p> <p>(iv) Has the Applicant been blacklisted by any Government department/Public Sector Undertaking in the last five years? Yes/No</p> <p>(v) Has the Applicant, suffered bankruptcy/insolvency in the last five years? 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 assignment.</p>
5	<p>(Signature, name and designation of the Authorized Signatory) For and on behalf of</p>

APPENDIX-I
Form-3

Statement of Legal Capacity

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

Ref. Date:

To
Chief Engineer
Administrative Office Building
2nd Floor, New Mangalore Port Authority
Panambur

Mangalore 575010

Dear Sir,

Sub: RFP for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority

I/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 down in the RFP document.

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

I/We have agreed that (insert individual's name) will act as our Authorized Representative/ will act as the Authorized Representative of the consortium on our behalf and has been duly authorized to submit our Proposal. Further⁸⁹ Authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours
faithfully,

(Signature, name and designation Authorized signatory
For and on behalf of

*Please strike out whichever is not applicable

APPENDIX-I
Form-4
Power of Attorney

Know all men by these presence, I/ We, (Name of Firm and address of the registered office) do hereby constitute, nominate, authorized Mr / Ms.....son/daughter/wife and presently siding at, who is presently employed with/ retained by 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 the project "Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority" including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Authority 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 the Authority. AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized 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 Authorized 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 POWIOF ATTORNEY ON THIS

..... DAY OF,
..... 20**

For
(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarized
Accepted

.....

(Signature, name, designation 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 authorized documents of the executants (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favor 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 have to be legalized / authorized by Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention are not required to be legalized/ authorized by the Indian Embassy if it carries a conforming Apostille certificate.

APPENDIX-I
Form-5
 Financial Capacity of the Applicant

(Refer Clause 2.2.2 (B))

Sl. No.	Financial Year	Annual Revenue (Rs.)
1.		
2.		
3.		

Certificate from the Statutory Auditor^{\$}
 This is to certify that (name of the Applicant) has received the payments shown above against the respective years on account of professional fees.

(Signature, name and designation of the authorized signatory)

Date: _____ Name and seal of the audit firm: _____

^{\$} In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

APPENDIX-I

Form-6

Particulars of Key/ other Personnel

Sl. No	Designation of Key/ other Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignment	Remuneration of Key personnel
					Name of Firm	Employed Since		
1	2	3	4	5	6	7	8	9
1	PPP Specialist							
2	GIS Specialist							

#Refer Form 8 of Appendix I Eligible Assignments of Key Personnel

APPENDIX-I

Form-7

Abstract of Eligible Assignments of the Applicant[#]

(Refer Clause 3.1)

S.No.	Name of Project	Name of Client	Estimated capital cost of Project (in Rs crore/ US\$ million)	Professional fee ^{##} received by the Applicant (in Rs crore)
(1)*	(2)	(3)	(4)	(5)
1				
2				
3				
4				

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

Exchange rate should be taken as Rs. 75 per US \$ for conversion to Rupees.

Copy of Contract/work orders along with completion certificate/Letter of Award indicating the details of previous assignment completed, client, value of assignment/proportionate value in use of projects/ assignment in process date and year of award.

* The names and chronology of Eligible Assignments included here should conform to the project-wise details submitted in Form-9 of Appendix-I.

Certificate from the Statutory Auditor[§]

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/ or the clients.

(Signature, name and designation of the authorized signatory)

Date:

Name and seal of the audit firm:

[§] In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

APPENDIX-I

Form-7A

Abstract of other relevant experience of the Applicant#

(Refer Clause 3.1.5)

S.No	Name of Project	Name of Client	Estimated capital cost of Project (in Rs crore/ US\$ million)	Professional fee## received by the Applicant (in Rs crore)£
(1)*	(2)	(3)	(4)	(5)
1.				
2.				
3.				
4.				

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

Exchange rate should be taken as Rs. 75 per US \$ for conversion to Rupees.

Copy of Contract/work orders along with completion certificate/ Letter of Award indicating the details of previous assignment completed, client, value of assignment/proportionate value in use of projects/ assignment in process date and year of award.

* The names and chronology of the projects included here should conform to the project-wise details submitted in Form-9A of Appendix-I.

Certificate from the Statutory Auditor[§]

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/ or the clients.

(Signature, name and designation of the authorized signatory)

Date:

Name and seal of the audit firm:

§ In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

APPENDIX-I

Form-8

Deleted

APPENDIX-I

Form-8A

Deleted

APPENDIX-I
Form-9
 Eligible Assignments of Applicant
 (Refer Clause 3.1.4)

Name of Applicant:	
Name of the Project:	
Project size particulars:	
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 of Project (in Rs crore or US\$ million):	
Payment received by the Applicant as professional fees (in Rs. crore):	
Start date and finish date of the services (month/ year):	
Brief Description of the Project	

Notes:

1. Use separate sheet for each Eligible Assignment.
2. Exchange rate should be taken as Rs. 75 per US \$ for converting to Rupees.

APPENDIX-I

Form-9A

Other relevant assignments of Applicant

(Refer Clause 3.1.5)

Name of Applicant:	
Name of the Project:	
Project size particulars:	
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 of Project (in Rs crore or US\$ million):	
Payment received by the Applicant as professional fees (in Rs. crore):	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	

Notes:

1. Use separate sheet for each assignment.
2. Exchange rate should be taken as Rs. 75 per US \$ for converting to Rupees.

APPENDIX-I
Form-10

Deleted

APPENDIX-I
Form-10A

Deleted

APPENDIX-I

Form -11

Curriculum Vitae (CV) of Professional Personnel

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:

(Starting with present position, list in reverse order every employment held.)

7. List of projects on which the Personnel has worked
 - a) Name of Project
 - b) Description of responsibilities

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 my qualifications, my experience and me.

(Signature and name of the Professional Personnel)

Place.....

(Signature and name of the authorized signatory of the Applicant)

Notes:

1. Use separate form for each Key Personnel and Professional Personnel.
1. In the case of PPP Specialist, only those assignments shall be included where the PPP Specialist worked as the Team Leader or the leader of the Financial/PPP Team in the relevant assignment.
2. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-7 or Form-7A, as the case may be, of Appendix-I.
3. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorized Representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.

Integrity Pact

General

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on _____ day of the month of _____ 20__, between, on one hand, the Board of Trustees of New Mangalore Port Authority acting through Shri. _____, Chief Engineer (Civil), New Mangalore Port 'rust (hereinafter called the 'AUTHORITY', which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s. _____ represented by Shri. _____, Chief Executive Officer (hereinafter called the "APPLICANT" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the AUTHORITY has invited bids for the project of "Request for Proposal (RFP) for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority(hereinafter referred to as the "Work") and the "APPLICANT" is submitting its Bid for the Project, and

WHEREAS the APPLICANT is a Private Limited Company/ Public Limited Company/ Government undertaking/ registered partnership firm/ Joint Venture/ Consortium, constituted in accordance with the relevant law in the matter.

AUTHORITY NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling APPLICANTS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the AUTHORITY will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

Commitments of the AUTHORITY

1.1 The AUTHORITY undertakes that no official of the AUTHORITY, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the APPLICANT, either for themselves or for any person, organisation or third party related to the contract in

- exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The AUTHORITY will, during the pre-contract stage, treat all APPLICANTS alike and will provide to all APPLICANTS the same information and will not provide any such information to any particular APPLICANT which could afford an advantage to that particular APPLICANT in comparison to other APPLICANTS.
 - 1.3 All the officials of the CONCESSIONING AUTHORITY will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
 2. In case any such preceding misconduct on the part of such official(s) is reported by the APPLICANT to the AUTHORITY with full and verifiable facts and the same is prima facie found to be correct by the AUTHORITY necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the AUTHORITY and such a person shall be debarred from further dealings related to the contract process. In such a case, while an enquiry is being conducted by the AUTHORITY the proceedings under the contract would not be stalled.

Commitments of APPLICANTS

3. The APPLICANT commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-
 - 3.1 The APPLICANT will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the AUTHORITY connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
 - 3.2 The APPLICANT further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the AUTHORITY or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.

- 3.3* APPLICANTS shall disclose the name and address of agents and representatives and Indian APPLICANTS shall disclose their foreign principals or associates.
- 3.4* APPLICANTS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
- 3.5* The APPLICANT further confirms and declares to the AUTHORITY that the APPLICANT has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the AUTHORITY or any of its functionaries, whether officially or unofficially to the award of the contract to the APPLICANT, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The APPLICANT, either while presenting the bid or during pre-contract negotiations or before signing the contract/ Concession Agreement, shall disclose any payments he has made, is committed to or intends to make to officials of the AUTHORITY or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The APPLICANT will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The APPLICANT will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The APPLICANT shall not use impropriety for purposes of competition or personal gain, or pass on to others, any information provided by the AUTHORITY as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The APPLICANT also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The APPLICANT commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The APPLICANT shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the APPLICANT or any employee of the APPLICANT or any person acting on behalf of the APPLICANT, either directly or indirectly, is a relative of any of the officers of the AUTHORITY, or alternatively, if any relative of an officer of the AUTHORITY has financial interest/stake in the APPLICANT's firm, the same shall be disclosed by the APPLICANT at the time of filing of tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.

3.13 The APPLICANT shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the AUTHORITY.

4. Previous Transgression

4.1 The APPLICANT declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Applicant's exclusion from the tender process.

4.2 The APPLICANT agrees that if it makes incorrect statement on this subject, APPLICANT can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

5. Sanctions for Violations

5.1 Any breach of the aforesaid provisions by the APPLICANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the APPLICANT) shall entitle the AUTHORITY to take all or any one of the following actions, wherever required: -

- a. To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the APPLICANT. However, the proceedings with the other APPLICANT(s) would continue.
- b. The Bid Security (in pre-contract stage) and/or /Performance Security (after the contract is signed) shall stand forfeited either fully or partially, as decided by the AUTHORITY and the AUTHORITY shall not be required to assign any reason therefore.
- c. To immediately cancel the contract, if already signed, without giving any compensation to the APPLICANT.
- d. To cancel all or any other Contracts with the APPLICANT. The APPLICANT shall, be liable to pay compensation for any loss or damage to the AUTHORITY resulting from such cancellation/rescission and the AUTHORITY shall be entitled to deduct the amount so payable from the money(s) due to the APPLICANT.
- e. To debar the APPLICANT from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the AUTHORITY.
- f. To recover all sums paid in violation of this Pact by APPLICANT(s) to any middleman or agent or broker with a view to securing the contract.

- g. Forfeiture of Performance Security in case of a decision by the AUTHORITY to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 6.2 The AUTHORITY will be entitled to take all or any of the actions mentioned at para 6.1(a) to (g) of this Pact also on the Commission by the APPLICANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the APPLICANT), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the AUTHORITY to the effect that a breach of the provisions of this Pact has been committed by the APPLICANT shall be final and conclusive on the APPLICANT. However, the APPLICANT can approach the Independent Monitor(s) appointed for the purposes of this Pact.

7. Fall Clause

- 7.1 The APPLICANT undertakes that it has not performed /is not performing similar project at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar project was performed by the APPLICANT to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the APPLICANT to the AUTHORITY, if the contract has already been concluded.

8. Independent Monitors

- 8.1 The AUTHORITY has appointed the following Independent Monitors (hereinafter referred to as Monitor) for this Pact in consultation with the Central Vigilance Commission.

**Sri Prem Chand Pankaj,
Ex-CMD, NEEPCO.
M 402, Pioneer Park,
Sector-61, Golf Course,
Extn. Road, Gurgaon
Mob: 9717433886
Email: prempankaj@gmail.com**

- 8.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.

- 8.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 8.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/bidding, including minutes of meetings.
- 8.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the AUTHORITY,
- 8.6 The APPLICANT(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the AUTHORITY including that provided by the APPLICANT. The APPLICANT will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the APPLICANT/Subcontractor(s) with confidentiality.
- 8.7 The AUTHORITY will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 8.8 The Monitor will submit a written report to the designated Authority of AUTHORITY within 8 to 10 weeks from the date of reference or intimation to him by the AUTHORITY / APPLICANT and, should the occasion arise, submit proposals for correcting problematic situations.

9. Facilitation of Investigation

In case of any allegation of violation of any provisions of this pact or payment of commission, the AUTHORITY or its agencies shall be entitled to examine all the documents including the Books of Accounts of the APPLICANT and the APPLICANT shall provide necessary information and documents in English and shall extend all possible help for thee of such examination.

10. Law and Place of Jurisdiction

This 'act is subject to Indian Law.' The place of performance and jurisdiction seat of the AUTHORITY.

11. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

12. Validity

12.1 The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the AUTHORITY and the APPLICANT, including warranty period, whichever is later. In case APPLICANT is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

13. The parties hereby sign this Integrity Pact at _____on_____

APPLICANT

CONCESSIONING AUTHORITY

Name of the Officer.

Chief Engineer (Civil)

Designation

Dept./MINISTRY/PSU

Witness

Witness

1. _____

1. _____

2. _____

2. _____,

* Provisions of these clauses would need to be amended/ deleted in line with the policy of the AUTHORITY in regard to involvement of Indian agents of foreign applicants.

APPENDIX
Form - 13

Deleted

APPENDIX
FORM - 14
E- PAYMENT FORM

To

The FA&CAO,
New Mangalore Port Authority
Panambur- 575010.

Through Chief Engineer (Civil)

Sir,

We hereby give particulars for payment of the Works bill / Advance etc

Sl No	Particulars	
1	Name of the consultant	
2	Address of the consultant	
3	Name of the work for which payment is made	
4	Agreement dated : Work order No.	
5	Name of the bank in which consultant operating account.	
6	Address of the Bank	
7	Branch Code No	
8	Type of Account (Whether SB A/c or Current A/c)	
9	Account No :	
10	PAN No.	
11	GST Registration No.	

Yours Sincerely

(Signature of Authorized representative of
consultant)

APPENDIX -II
[FOR REFERENCE ONLY]
Reference Format of FINANCIAL PROPOSAL
[Shall be submitted in E-Tender only]

BOQ:

Sl. No.	Description of Consultancy Services	QTY	Unit	Rate in Rs per month (Figures and in words)	Amount in INR (Figures and in words)
1	RFP for Appointment of Project Management Advisory for Providing Consultancy Services to New Mangalore Port Authority for providing one Dy. Manager (PPP) & Dy. Manager (GIS) please refer terms of reference as per schedule I	36 months	Lump Sum		

Note:

(1) Rate quoted shall be inclusive of all local travelling, conveyance, and all other taxes and duties excluding GST. The applicable percentage of Goods & service tax shall be paid as applicable. The price offered is valid for Two Years from the date of commencement of work. The quoted price is lump sum in nature and all the liabilities for the resources appointed will be solely borne by the Consultant.