

**NEW MANGALORE PORT AUTHORITY, MANGALORE
MINISTRY OF PORTS, SHIPPING AND WATERWAYS
GOVERNMENT OF INDIA**

NIT No. CIVIL/CE(C)/EE(C)/18/2024-25, date. 13/09/2024



**TENDER DOCUMENT
(NOT TRANSFERABLE)**

REQUEST FOR PROPOSAL (RFP)

PROVIDING PROJECT MANAGEMENT CONSULTANCY SERVICES (SUPERVISION CONSULTANT) FOR STRENGTHENING AND WIDENING TO FOUR LANES OF EXISTING ROAD FROM KK GATE TO BAIKAMPADY TANK BUND ROAD WITH PAVEMENT QUALITY CONCRETE

[SEPTEMBER 2024]

**CHIEF ENGINEER (CIVIL)
NEW MANGALORE PORT AUTHORITY**

For any further clarifications / queries on e-Tendering, Chief Engineer (Civil), New Mangalore Port Authority can be contacted at: Phone No. 0824-2887301/0824-2407493/0824-2887306/308 email: chiefengineer@nmpt.gov.in, praveenkumar.kn@nmpt.gov.in

NOTICE INVITING TENDERS (NIT)

NIT No. CIVIL/CE(C)/EE(C)/18/2024-25, dt. 13/09/2024

1. The Board of Major Port Authority of New Mangalore Port Authority (NMPA), Karnataka (the "**Authority**") having office at Panambur, Mangalore-575010, hereby invites Technical and Financial Proposals from the short listed firms only, under this single stage two envelopes offline mode selection process, being undertaken through the good offices of the Chief Engineer (Civil), New Mangalore Port Authority, Karnataka, for provide qualitative technical and administrative services for implementation and management for the work of "Strengthening and widening to four lanes of existing road from kk gate to baikampady tank bund road with pavement quality concrete" during execution (collectively the "Consultancy") in accordance with the terms and conditions of this RFP.

2. Schedule of Activities

The Authority shall endeavor to adhere to the following schedule. However, the Authority may, at its own discretion, revise or extend any of the timelines set out in Clause 1.8 of this RFP.

3. The Bidders can submit their tender through offline mode only on or before the key dates given in clause 1.8 of this RFP.

Chief Engineer (Civil)
New Mangalore Port Authority

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Disclaimer

The information contained in this Request for Proposals document (“RFP”) or subsequently provided to Bidders, 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 Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders 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 Bidder 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 Bidder 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 Bidders is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. 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 Bidder 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, howsoever caused, arising from reliance of any Bidder 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 Bidder or to appoint the Selected Bidder, as the case may be, for the Consultancy and the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Bidder 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 Bidder 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 Bidder in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

Glossary

Addendum/Amendment	As defined in Clause 2.11.1
Agreement	As defined in Clause 1.1.1(a) of Schedule-2
Agreement Value	As defined in Clause 1.1.1(b) of Schedule-2
Applicable Laws	As defined in Clause 1.1.1(c) of Schedule-2
Bidder	As defined in Clause 1.2
Associate	As defined in Clause 2.3.3
Authorised Representative	As defined in Clause 2.13.4
Authority	As defined in Clause 1.1.1
Change of Scope	As defined in the Concession Agreement
Coercive Practice	As defined in Clause 4.3(c)
Commercial Operations Date	As defined in the Concession Agreement
Completion Certificate	As defined in the Concession Agreement
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conditions of Eligibility	As defined in Clause 2.2.1
Conflict of Interest	As defined in Clause 2.3.1
Construction Period	As defined in the Concession Agreement
Construction Works	As defined in the Concession Agreement
Consultancy	As defined in Clause 1.1.3
Consultant	As defined in Clause 1.1.3
Control	As defined in Clause 2.3.3
Corrupt Practice	As defined in Clause 4.3(a)
CV	Curriculum Vitae
Development Period	As defined in the Concession Agreement
Documents	As defined in Clause 2.12
Drawings	As defined in the Concession Agreement
Earnest Money Deposit	As defined in Clause 2.20.1
Effective Date	As defined in Clause 1.1.1(s) of Schedule-2
Eligible Assignments	As defined in Clause 3.1.4
Expatriate Personnel	Personnel who at the time of being hired had their domicile outside India
Financial Proposal	As defined in Clause 2.15.1
Financial Score	As defined in Clause 3.3.3
Form of Agreement	Form of Agreement as in Schedule-2

Fraudulent Practice	As defined in Clause 4.3(b)
INR, Re, Rs.	Indian Rupee(s)
Inspection Report	As defined in Paragraph 3.3 of Schedule-1
Key Personnel	As defined in Clause 2.1.4
LOA	As defined in Clause 2.28
Pre-Proposal Conference	As defined in Clause 1.3
Professional Personnel	As defined in Clause 2.14.6
Prohibited Practices	As defined in Clause 4.1
Project	As defined in Clause 1.1.1
Project Completion Schedule	As defined in the Concession Agreement
Project Milestones	As defined in the Concession Agreement
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	Date specified in Clause 1.8, as may be extended by the Authority
Resident Personnel	Personnel who at the time of being hired had their domicile in India
Restrictive Practice	As defined in Clause 4.3(e)
RFP	As defined in Disclaimer
RFP Document Fee	As defined in Clause 1.4.2
Scheduled Bank	As defined under Section 2(e) of the Reserve Bank of India Act, 1934
Selected Bidder	As defined in Clause 1.6.2
Selection Process	As defined in Clause 1.6.1
Services	As defined in Clause 1.1.1(jj) of Schedule-2
Site	Physical area of Project
Specifications & Standards	As defined in the Concession Agreement
Sub-Consultant	As defined in Clause 1.1.1(kk) of Schedule-2
Subject Person	As defined in Clause 2.3.3(a)
Support Personnel	As defined in Clause 2.14.6
Team Leader	As defined in Clause 2.1.4
Technical Proposal	As defined in Clause 2.14.1
Technical Score	As computed under Clause 3.1.3
Tests	As defined in the Concession Agreement
TOR	As defined in Clause 1.1.3
Undesirable Practice	As defined in Clause 4.3(d)
US\$	United States Dollar

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

The words and expressions beginning with capital letters and not defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1. INTRODUCTION

1.1 Background

- 1.1.1 The New Mangalore Port Authority (NMPA), Karnataka (the “Authority”) is New Mangalore Port Authority (NMPA) intends strengthening and widening to four lanes of existing road from KK gate to Baikampady Tank Bund road with Pavement Quality Concrete (the “Project”) in a phased manner.
- 1.1.2 New Mangalore Port Authority in the Board Meeting held on 21.12.2023 accorded approval to invite the tender for finalization of bids for the proposal of “Strengthening and widening to four lanes of existing road from KK gate to Baikampady Tank Bund Road with Pavement Quality Concrete”. Presently, Presently the LOA has been issued to the eligible contractor. The accepted tender amount for the subject work is 22.53 Crores and it is required to appoint the agency for Project Management Consultant during execution of the work to check/monitor quality, progress and any co-ordination with NMPA in respect of project for smooth and early completion
- 1.1.3 In pursuance of above, the Authority has decided to invite offline Proposals for selection of an PMC for the short listed consultants consultancy service is to provide qualitative technical and administrative services for implementation and management for the work of “Strengthening and Widening of Existing road from KK gate to Baikampady Tank Bund road with Pavement Quality Concrete”. As per Terms of Reference specified at Schedule-1 (the “TOR”). The Consultant shall review designs & drawings, construction methodology and monthly progress reports furnished by the contractor and undertake other activities in conformity with the TOR (the “Consultancy”).
- 1.1.4 The main feature of Project Management Consultant Framework formulated for the execution of the proposed project “Strengthening and widening to four lanes of existing road from KK gate to Baikampady Tank Bund Road with Pavement Quality Concrete are:
- i. The New Mangalore Port will administer the project. As a representative of Board of Members, acting through its Chairman, Chief Engineer (Civil), of the Port or any other Officers so nominated by the Board will administer the project.
 - ii. To administer the Contracts under the Project, NMP will be the contractual employer and Chief Engineer (Civil) will act on behalf of the ‘Employer’.
 - iii. The Consultant shall be the ‘Engineer’ for the project. The “Engineer for the Project” shall make the necessary measurements and control the quality of works and shall make all engineering decisions required during the implementation of the Contract. **However, the Engineer shall seek prior approval of the Employer with regard to the following:**
 - a. Variation order with financial implications.
 - b. Variations in work quantities which attract for fixation of rates.
 - c. Sanction of additional items, sums or costs and variations of rates and

prices.

- d. Approve the subletting of any part of works
- e. Approve any extension of contractual time limits
- f. Stopping and/or termination of the Contract for Works

1.2 Request for Proposals

The Authority hereby invites offline proposals (the “**Proposals**”) for selection of the Consultant only from the shortlisted consultants (“**Bidders**”) as listed below:

1. National Technology Centre for Ports, Waterways and Coasts, New Academic Complex, 6th Floor, #604 to # 607, Indian Institute of Technology Madras, Chennai-600 036, Tamilnadu, ntcpwc@iitm.ac.in, murali@iitm.ac.in, murali@ntcpwc.iitm.ac.in, sasaraj@iitm.ac.in, rskannan@ntcpwc.iitm.ac.in.
2. R.K.Rathi, Executive Director, Marketing & Business Development, Engineers India Limited, 1 Bhaikai Cama Place, New Delhi-110 066 India, Email: rk.rathi@eil.co.in,
3. RITES LTD, Regional Project Office (south), 5th Floor, Industry House,45, Fair Field Layout, Race Course Road, Bengaluru-560 001, ro.south@rites.com Phone: 080-22257118,22280268,080-22266557
4. MECON Ltd. Dr. R.K Dutta Sr. General Manager i/c (Marketing) 15th floor North tower, SCOOE minar, Laxmi Nagar, Center Delhi, Email: Mktg-delhio@mecon.in, delhi@meconlimited.co.in
5. NBCC(INDIA) Limited, Pradeep Sharma, Chief-General Manager (Engg), HOD-Business Development Division , Corporate Office, NBCC Bhawan, Lodhi Road, New Delhi-110 003, Tel.EPABX:91-11-24367314-15, CIN-L74899DL1960GO1003335, Email: pradeep.sharma@nbccindia.com
6. Hindustan Steelworks Construction Limited, Ramya A S, Zonal Head(South), 1/Bangalore (A Government of India Undertaking), A Subsidiary of NBCC (India) Limited, No.301, 3rd Floor, 4th cross, opp. Vidyasagarschool, RMV 2nd stage post, Bengaluru-560094, Contact:8527096507/9880779531, Landline:080-28564468, CIN:U27310WB1964G01026118, Email: bdsouth.hscl@gmail.com Email:sz1bnghscl@gmail.com
7. The Senior Vice President & Chief Surveyor, Head-offshore & Special Projects, IRCLASS, Indian Register of Shipping, AdiShankaracharya Marg, Powal Lake, Powai, Mumbai-400 072, India, Email: venu@irclass.org

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

1.3 Due diligence by Bidders

Bidders are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Authority and the Site, sending written queries to the Authority.

1.4 Sale of RFP Document

1.4.1 The RFP is available for download downloaded from the Official Website of NMPA i.e., <https://www.newmangaloreport.gov.in>

1.4.2 The Bidder shall pay to the Authority a non-refundable sum of INR 1,120 (Indian Rupees One Thousand One Hundred and Twenty Only) towards RFP Document Fee inclusive of GST by way of Demand Draft/NEFT/RTGS payable to “FA&CAO, New Mangalore Port Authority” (“**RFP Document Fees**”). The payment can also be made online through RTGS/NEFT in the following account:

In Favour of- The FA&CAO, NMPA, Panambur, Mangalore

A/C No. - 10205649448

Bank Name- STATE BANK OF INDIA

IFSC CODE- SBIN0002249

BRANCH- Panambur, Mangalore - 575010

In case of online payment of RFP Document Fee, self-attested copy of the receipt of payment of the RFP Document Fees shall be submitted by the Bidder along with its Technical Proposal. In case of payment through Demand Draft/ NEFT/RTGS, original copy of the Demand Draft and payment receipt shall be submitted along with the Technical Proposal.

1.5 Validity of the Proposal

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

1.6 Brief description of the Selection Process

1.6.1 The Authority has adopted a single stage two envelopes offline mode selection process (collectively the “**Selection Process**”) for evaluating the Proposals comprising Technical (Resume/CVs of the Key Personnels) and Financial Proposals to be submitted offline in hard copy.

1.6.2 In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. Based on this technical evaluation, a list of short-listed Bidders shall be prepared as specified in Clause 3.2. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and Financial scores as specified in Clause 3.4. The first ranked Bidder shall be selected for negotiation (the “**Selected Bidder**”) while the second ranked Bidder will be kept in reserve.

1.7 Currency conversion rate and payment

1.7.1 For the purposes of technical evaluation of Bidders, Rs. 83.50 (Rupees eighty-three and fifty paise) per US\$ shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to

US\$ as on the date 60 (sixty) days prior to the Proposal Due Date, and the amount so derived in US\$ shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

- 1.7.2 All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP. The Consultant may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Consultant.

1.8 Schedule of Selection Process

The Authority would endeavour to adhere to the following schedule:

Event Description	Date
1. RFP issue date	13.09.2024
2. Proposal Due Date or PDD	23.09.2024; 02:00PM
3. Opening of Technical Proposal	23.09.2024; 03:00PM
4. Opening of Financial Proposal	Will be intimated separately
5. Letter of Award (LOA)	Within 15 days of PDD
6. Signing of Agreement	Within 21 days of LOA
7. Validity of Proposals	90 days of Proposal Due Date

1.9 Pre-Proposal visit to the Site and inspection of data

Prospective Bidders may visit the Site and review the available data at any time prior to PDD. For this purpose, they shall provide at least 2 (two) days' notice to the office of Chief Engineer (Civil) as specified below:

The Chief Engineer (Civil),
New Mangalore Port Authority,
Panambur, Mangalore -575010
Phone: 0824-2887301/ 0824-2407493
Email: chiefengineer@nmpt.gov.in

1.10 Pre-Proposal Conference (Deleted)

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

Date:

Time:

Venue:

1.11 Communications

1.11.1 All communications in writing, including the Letter of Proposal should be addressed to:

The Chief Engineer (Civil),
New Mangalore Port Authority,
Panambur, Mangalore -575010
Phone: 0824-2887291/ 0824-2887743
Email: chiefengineer@nmpt.gov.in

1.11.2 The **Official Website** of the Authority is : <http://www.newmangaloreport.gov.in/>

1.11.3 All communications, including the queries, should contain the following information, to be marked as subject of the e-mail in bold letters:

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“RFP for PROVIDING PROJECT MANAGEMENT CONSULTANCY SERVICES (SUPERVISION CONSULTANT) FOR STRENGTHENING AND WIDENING TO FOUR LANES OF EXISTING ROAD FROM KK GATE TO BAIKAMPADY TANK BUND ROAD WITH PAVEMENT QUALITY CONCRETE”

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Scope of Proposal

2.1.1 Detailed description of the objectives, scope of Services, deliverables and other requirements relating to this Consultancy are specified in this RFP. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2 Bidders 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. Bidders 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.

2.1.3 The Bidder shall submit its Proposal in the form and manner specified in this Section 2 of the RFP. The Technical proposal shall be submitted offline ONLY in the form at Appendix-I and the Financial Proposal shall be submitted in separate envelop offline ONLY in the form at Appendix-II. Upon selection, the Bidder shall be required to enter into an agreement with the Authority in the form specified at Schedule-2.

2.1.4 Key Personnel

The team of the Consultant shall consist of the following key personnel (the “**Key Personnel**”) who shall discharge their respective responsibilities as specified below, as per the Project requirement as notified by the Authority.

The Consultants shall ensure that at all times during the Consultants performance of the Services all key personnel's acceptable to the Authority, shall take charge of the performance of such Services. The consultant has to work as per entered agreement between contract and NMPA, Highway Manual, IRC codes, MORTH specifications.

1. **Team Leader Cum Resident Engineer** shall be responsible for the overall performance and administration of the Consultant's Team. He will be responsible for planning of various facilities of Strengthening and Widening of existing road from KK gate to Baikampady Tank Bund road with Pavement Quality including supervise the site management.

The major tasks for the Team leader shall include but not limited to the following:

- a. Review and approve detailed drawings submitted by the contractor.
- b. Review and approve the working or drawings pertaining to temporary

works prepared by the contractor.

- c. Team Leader Cum Resident Engineer shall also be responsible for the overall performance and administration of the Consultant's Team at the Project Site. The Resident Engineer will also act as the Engineer's Representative and shall be overall in-charge for the Consultant's Supervision team for the entire project.
- d. The major tasks for the Resident Engineer shall include but not limited to the following:
 1. Establishment of Site offices and assist in establishment of Laboratories;
 2. Assist the Authority with the Review of the Contractors' securities, insurance and safety plans;
 3. Scrutiny of the Contractor's work programme, and scheme for the deployment of plant, equipment and machinery for approval of the Chief Engineer(civil);
 4. Assist the Authority/ Chief Engineer (Civil) in the interpretation of provisions in the Contract documents and technical specification;
 5. Assist the Authority/Chief Engineer(Civil)in handing over the site and issuing order to commence the works;
 6. Liaisoning with the local authorities for shifting of utilities wherever required;
 7. Regular Supervision of works
 8. Evolve and implement Quantity and Quality control procedures;
 9. Evolve criteria for the acceptance of works;
 10. Prepare and issue variation orders after the approval of the Authority;
 11. Assist the Authority in the evaluation of Contractor's claims;
 12. Verify and certify Contractor's Interim Certificates and bills for approval of the Engineer –in – charge of the project
 13. Assist the Chief Engineer (Civil) in monitoring Physical and Financial Progress of the works;
 14. Prepare quarterly project budgets and estimates;
 15. Assist NMPA in conducting monthly progress meetings;
 16. Compile monthly progress reports and prepare Quarterly Reports;

17. Strictly monitor the progress of work for timely completion of the project.
18. Verify and certify Contractor's Statements at completion;
19. Prepare Project Completion Report;
20. Time schedule and management of Team's resources; and
21. Advising the Authority / Chief Engineer (Civil) in all matter related to the progress of works, with particular reference to delays, possible reasons and mitigating measures.

2. **Assistant Resident Engineer** shall assist the Resident Engineer in day today work and report directly to the Resident Engineer. Ensure performance of the work in strict accordance with the drawings, plans and specifications. Maintain a detailed diary of the day work activities, issues, work approved or rejected, hours of operation, labour and equipment used, etc. Coordinate with the Contractor's in charge of the work on a frequent basis to ensure that no issues are encountered. Coordinate with the discipline Engineers to ensure that the relevant sections of works are managed, supervised and inspected correctly. Review and comment appropriately to RFI's as received from the Contractor, when directed by the Resident Engineer. Review and comment appropriately to RFA's as received from the Contractor, when directed by the Resident Engineer. Report to the Resident Engineer any failure of the Contractor to conform to drawings, plans and specifications and to provide good workmanship. Review and comment appropriately to drawings received from the Contractor, when directed by the Resident Engineer. Ensure that the works are being constructed to the latest construction and shop drawings. Liaise with the design office Engineer(s) when required. Assist the Resident Engineer in monitoring the Contractor's progress of the works. Ensure that works are compliant with the Contractor's HSE plans at all times.

2.2 Conditions of Eligibility of Bidders

2.2.1 To be eligible for evaluation of its Proposal, the Bidder shall fulfil the following criteria:

Conditions of Eligibility for Key Personnel: Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

- i. **Team Leader CUM Resident Engineer:** having educational qualification Master or bachelor in Civil Engineering and construction management. 15 years in roads and highways sector. He should have led the team in

consultancy work for not less than 5 (five) Project viz design of roads, execution and quality control and other civil works out of 5 project at least one project shall be related to construction of road.

ii. **Assistant Resident Engineer (in two shifts) to work on all days:** having educational qualification master / bachelor in civil engineering. 10 years' experience in road and highways sector. He should have worked as Asst. Resident Engineer in not less than 3 (three) projects viz execution, supervision and quality control and other civil works. Out of 3 projects at least one project shall be related to construction of Roads

- 2.2.3 The Bidder shall enclose with its Technical Proposal, the CV's of the Key Personnel.
- 2.2.4 The Bidder should submit a Power of Attorney as per the format at Form-4 of Appendix-I duly supported by the board resolution in favour of the executant of such POA; provided, however, that such Power of Attorney would not be required if the Proposal is signed by a partner of the Bidder, in case the Bidder is a partnership firm or a limited liability partnership or proprietor in case of sole proprietorship and in such a case the Bidder shall submit a copy of the charter document to demonstrate that the person signing the Proposal is a partner or proprietor, as the case may be.
- 2.2.5 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 Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.2.6 An Bidder or its Associate should have, during the last 3 (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 Bidder or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder or its Associate.
- 2.2.7 While submitting a Proposal, the Bidder 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, Bidders may format the specified forms making due provision for incorporation of the requested information.

2.3 Conflict of Interest

- 2.3.1 An Bidder shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "**Conflict of Interest**"). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Earnest Money Deposit 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 Bidder's Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

- 2.3.2 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.
- 2.3.3 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 Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Bidder, or Associate (or any constituent thereof) and any other Bidder, 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 Bidder, 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 Bidder, or Associate, as the case may be) in the other Bidder, or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.3.3(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 Bidder is also a constituent of another Bidder; or
 - (c) such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or
 - (d) such Bidder has the same legal representative for purposes of this Selection Process as any other Bidder; or

- (e) such Bidder has a relationship with another Bidder, 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 Proposal of either or each of the other Bidder; or
- (f) there is a conflict among this and other consulting assignments of the Bidder (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing Services to the Authority for this Project, 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 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
- (h) the Bidder, its 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 Bidder, its 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 Bidder, 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 2(72) of the Companies Act, 2013. 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 Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the “**Associate**”). 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.

- 2.3.4 An Bidder eventually appointed to provide Consultancy for this Project, and its Associates, 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 5 (five) 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 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.

2.4 Number of Proposals

No Bidder or its Associate shall submit more than one Proposal for the Consultancy. An Bidder applying individually or as an Associate shall not be entitled to submit another Proposal.

2.5 Cost of Proposal

The Bidders 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, Site etc. The Authority will not be responsible or in any way be liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.6 Site visit and verification of information

Bidders are encouraged to submit their respective Proposals after visiting the Site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, access to the site, availability of drawings and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them. Site visits shall be organised for the benefit of prospective Bidders on date and time as specified in Clause 1.9.

2.7 Acknowledgement by Bidder

2.7.1 It shall be deemed that by submitting the Proposal, the Bidder has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Authority;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in Clause 2.6 above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Proposal and performance of all of its obligations thereunder;
- (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.

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

2.8 Right to reject any or all Proposals

2.8.1 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.

2.8.2 Without prejudice to the generality of Clause 2.8.1 above, the Authority reserves the right to reject any Proposal if:

(a) at any time, a material misrepresentation is made or discovered, or

(b) the Bidder 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 Bidder may lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Bidder gets disqualified / rejected, then the Authority reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

B. DOCUMENTS

2.9 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 2.11:

Request for Proposal

- 1 Introduction
- 2 Instructions to Bidders
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre-Proposal Conference (Deleted)
- 6 Miscellaneous

Schedules

1 Terms of Reference

2 Form of Agreement

Annex-1: Terms of Reference

Annex-2: Deployment of Personnel

Annex-3: Tests

Annex-4: Approved Sub-Consultant(s)

Annex-5: Cost of Services

Annex-6: Payment Schedule

Annex-7: Bank Guarantee for Performance Security

3 Guidance Note on Conflict of Interest

Appendices

Appendix-I: Technical Proposal

Form-1: Letter of Proposal

Form-2: Particulars of the Bidder

Form-3: Statement of Legal Capacity

Form-4: Power of Attorney

Form-5: Power of Attorney for Lead Member (deleted)

Form-6: Particulars of Key Personnel

Form-7: Proposed Methodology and Work Plan

Form-8: Eligible Assignments of Key Personnel

Form-9: Curriculum Vitae (CV) of Key Personnel

Form-10: Deployment of Personnel

Form-11: Survey and Field Investigations

Form-12: Proposal for Sub-Consultant(s)

Form 13: Pre-Contract Integrity Pact

Form 14: Proposal Check List

Appendix-II: Financial Proposal

Form-1: Covering Letter

Form-2: Financial Proposal

2.10 Queries and Clarifications (Deleted)

2.11 Amendment of RFP

- 2.11.1 At any time prior to the Proposal Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Bidder, modify the RFP document by the issuance of an addendum/ amendment (“**Addendum/Amendment**”).
- 2.11.2 All such Addenda/Amendments will be sent to the shortlisted bidders through email.
- 2.11.3 In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, the Authority may, in its sole discretion, extend the Proposal Due Date.
- 2.11.4 The Applicants are advised to regularly check for Addenda /Amendment on the e-Procurement Portal (Deleted)

C. PREPARATION AND SUBMISSION OF PROPOSAL

2.12 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 the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.13 Format and signing of Proposal

- 2.13.1 The Bidder shall provide all the information sought under this RFP. The Authority would evaluate only those Proposals that are received offline on the address mentioned in Clause 2.16 on or before the Proposal due Date in the specified forms and complete in all respects. Incomplete and/or conditional Proposals or Proposals not submitted offline in hard copy shall be rejected.
- 2.13.2 The Bidders shall submit both the Technical Proposal as well as the Financial Proposal, along with all the annexures thereto, in hard copy offline. Each page of the Proposal shall be signed by the authorised signatory of the Bidder.
- 2.13.3 The Bidders shall also be required to submit a hard copy of the Technical Proposal in accordance with the terms specified in this RFP. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. For avoidance of doubt, it is clarified that Financial Proposal has to be submitted in a separate envelop offline only.
- 2.13.4 The Proposals must be properly signed by the authorised representative of the Bidder (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 company incorporated under the Companies Act.
- (d)

2.13.5 Bidders should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority, and evaluation will be carried out only on the basis of Documents received in hard copy offline by the closing time of Proposal Due Date as specified in Clause 2.17.1. Bidders will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Authority reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.24.

2.14 Technical Proposal

2.14.1 Bidders shall submit the technical proposal offline in the hard copy in accordance with the Clause 2.16 in the formats at Appendix-I (the “**Technical Proposal**”). The Technical Proposal shall comprise of the Letter of Proposal in the prescribed format (Form-1 of Appendix-I) along with Forms 2 to 14 of Appendix-I, scanned copy of DD/ NEFT/RTGS proof of payment of RFP Document Fee and other supporting documents.

2.14.2 While submitting the Technical Proposal, the Bidder shall, in particular, ensure that:

- (a) The Earnest Money Deposit is furnished;
- (b) all forms (including the Pre-Contract Integrity Pact and Proposal Check List) are submitted in the prescribed formats and signed by the Authorized Representative;
- (c) Power of Attorney for the authorised signatory, is executed as per Applicable Laws;
- (d) CVs of all Professional Personnel have been included;
- (e) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.2.1 of the RFP;
- (f) no alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- (g) the CVs have been recently signed and dated in blue ink by the respective Personnel and countersigned by the Bidder. Photocopy or unsigned / countersigned CVs shall be rejected;
- (h) the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;

- (i) Professional Personnel proposed have good working knowledge of English and Hindi / Kannada language;
- (j) Key Personnel would be available for the period indicated in the TOR;
- (k) no Key Personnel should have attained the age of 75 (seventy five) years at the time of submitting the proposal;
- (l) the Proposal is responsive in terms of Clause 2.22.3,; and
- (m) Original Demand Draft or NEFT/RTGS (payment receipt) towards payment of RFP Document Fee.

2.14.3 For the avoidance of any doubt, original hard copied of the documents at Appendix-I as mentioned in Clause 2.14.1 and 2.14.2 shall be submitted offline as part of the Technical Proposal on the address mentioned in Clause 2.16 on or prior to the Proposal Due Date. Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the Authority for a period of 5 (five) years. The award of this Consultancy to the Bidder may also be liable to cancellation in such an event.

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

2.14.6 The proposed team shall be composed of experts and specialists (the “**Professional Personnel**”) in their respective areas of expertise and managerial/support staff (the “**Support Personnel**”) such that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the format at Form-9 of Appendix-I.

2.14.7 An Bidder may, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise. Credentials of such Sub-Consultants should be submitted in Form-12 of Appendix-I. A Sub-Consultant, however, shall not be a substitute for any Key Personnel.

2.14.8 The Authority reserves the right to verify all statements, information and documents, submitted by the Bidder 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 Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.14.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the Conditions of Eligibility have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder 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 Bidder 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 Bidder or Consultant, as the case may be.

In such an event, the Authority shall forfeit and appropriate the Earnest Money Deposit 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.

2.15 Financial Proposal

2.15.1 Bidders shall submit the financial proposal in the formats at Appendix-II (the “**Financial Proposal**”) offline clearly indicating the total cost of the resources for Consultancy (Form-2 of Appendix-II) in both figures and words, in Indian Rupees, and signed by the Bidder’s Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.15.2 While submitting the Financial Proposal, the Bidder 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 (Expatriate and Resident, in the field, office etc.), accommodation, air fare, equipment, printing of documents, surveys, geo-technical investigations 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. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- (iii) Costs shall be expressed in INR. GST as applicable shall be claimed as separate line item in tax invoice and the same will be paid separately as applicable.

- 2.15.3 The Financial Proposal shall be submitted offline only. Any submission of the Financial Proposal in the same envelop as Technical proposal shall lead to the Proposal being rejected in its entirety and declared as non-responsive.

2.16 Submission of Proposal

- 2.16.1 The Bidders shall submit the Proposal offline with all original/ scanned documents numbered serially and by giving an index of Documents. Each page of the Documents shall be initialled by the Authorised Representative of the Bidder as per the terms of the RFP.

- 2.16.2 The hard copy of the Technical Proposal shall be placed in a sealed separate envelope bearing the subject **“Technical Proposal for providing project management consultancy services (supervision consultant) for Strengthening and widening to four lanes of existing road from kk gate to baikampady tank bund road with pavement quality concrete”**, addressing the person designated at Clause 1.11.1, and shall clearly indicate RFP Notice number and the name and address of the Bidder. It shall bear on top, the following:

“Do not open, except in presence of the Authorised Person of the Authority”

If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Technical Proposal submitted and consequent losses, if any, suffered by the Bidder.

The Bidder shall obtain a receipt of acknowledgement from the person designated at Clause 1.11.1 upon submission of hard copy of the Enclosures of Proposal.

- 2.16.3 In the event of any discrepancy between the soft copy/scanned copy of the Technical Proposal uploaded to the e-Procurement Portal and the hard copy of the Technical Proposal, the soft copy/scanned copy will prevail (Deleted)

- 2.16.4 The Financial Proposal shall be submitted offline in hard copy only in a sealed separate envelope bearing the subject **“Financial Proposal for providing project management consultancy services (supervision consultant) for Strengthening and widening to four lanes of existing road from kk gate to baikampady tank bund road with pavement quality concrete”** addressing the person designated at Clause 1.11.1, and shall clearly indicate RFP Notice number and the name and address of the Bidder. It shall bear on top, the following:

“Do not open, except in presence of the Authorised Person of the Authority”.

- 2.16.5 The completed Proposal must be submitted offline on or before the specified time on Proposal Due Date. The Bidder will receive a acknowledgement of its Proposal submission from the Authority representative to confirm successful submission of its Proposal. Proposals submitted by online, fax, telex, telegram or e-mail shall not be entertained.

- 2.16.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information

that is directly relevant should be provided. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.

- 2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment and discharge of all obligations of the Consultant under the Agreement.

2.17 Proposal Due Date

- 2.17.1 Proposal should be submitted offline at or before [14:00 hrs] on the Proposal Due Date specified in Clause 1.8 in hard-copy to the person designated at Clause 1.11.1 by such time) in the manner and form as detailed in this RFP.
- 2.17.2 The Authority may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum/Amendment in accordance with Clause 2.11 uniformly for all Bidders.

2.18 Late Proposals

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

2.19 Modification/ substitution/ withdrawal of Proposals (Deleted)

2.20 Earnest Money Deposit

- 2.20.1 The Bidder shall furnish as part of its Proposal, an Earnest Money Deposit of INR 1,84,000 [Indian Rupee one lakhs eighty four thousand Only] in the form of a demand draft or bank guarantee issued by one of the Nationalised/ Scheduled Banks in India having a branch in Mangalore, in favour of “FA & CAO, New Mangalore Port Authority” and payable at Mangalore (the “**Earnest Money Deposit**”), returnable not later than 30 (thirty) days from the Proposal Due Date except in case of the two highest ranked Bidders as specified in Clause 2.25.1. In the event that the first ranked Bidder commences the assignment as required in Clause 2.30, the second ranked Bidder, who has been kept in reserve, shall be returned its Earnest Money Deposit forthwith, but in any case not later than 120 (one hundred and twenty) days from Proposal Due Date. The Selected Bidder’s Earnest Money Deposit shall be returned, upon the Bidder signing the Agreement and furnishing the Performance Security.
- 2.20.2 Any Proposal not accompanied by the Earnest Money Deposit shall be rejected by the Authority as non-responsive. As part of the Selection Process and for the avoidance of any confusion, the Bidder shall submit an original copy of the bank guarantee in respect of the Earnest Money Deposit along with hard copy submission of the Technical Proposal.
- 2.20.3 The Authority shall not be liable to pay any interest on the Earnest Money Deposit and the same shall be interest free.
- 2.20.4 The Bidder, by submitting its Proposal 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 Earnest Money Deposit shall be

forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, *inter alia*, the 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 Bidder submits a non-responsive Proposal;
- (b) If an Bidder engages in any of the Prohibited Practices specified in Section 4 of this RFP;
- (c) If an Bidder withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Bidder from time to time;
- (d) In the case of the Selected Bidder, if the Bidder fails to reconfirm its commitments during negotiations as required vide Clause 2.25.1;
- (e) In the case of a Selected Bidder, if the Bidder fails to sign the Agreement or commence the assignment as specified in Clauses 2.29 and 2.30 respectively; or
- (f) If the Bidder is found to have a Conflict of Interest as specified in Clause 2.3.

2.21 Performance Security

2.21.1 The Selected Bidder, by submitting its Proposal 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, its Performance Security shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damages payable to the Authority for, *inter alia*, the 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 Bidder engages in any of the Prohibited Practices specified in Section 4 of this RFP after return of the Earnest Money Deposit;
- (b) if the Bidder is found to have a Conflict of Interest as specified in Clause 2.3 after return of the Earnest Money Deposit; and
- (c) if the Selected Bidder commits a breach of the Agreement.

2.21.2 An amount equal to 5% (Five per cent) of the Agreement value shall be deemed to be the Performance Security for the purposes of this Clause 2.21, which may be forfeited and appropriated in accordance with the provisions hereof.

D. EVALUATION PROCESS

2.22 Evaluation of Proposals

2.22.1 The Authority shall open the Proposals at [15:30] hours on the Proposal Due Date at the place specified in Clause 1.11.1 and in the presence of the Bidders who choose to attend.

- 2.22.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened (Deleted)
- 2.22.3 Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the RFP. The Authority may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:
- (a) the Technical Proposal is received offline in hard copy, in the form specified in Appendix-I;
 - (b) the hard copy submission of Proposal is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.17;
 - (c) it is accompanied by the Earnest Money Deposit as specified in Clause 2.20.1 as well as the self-attested receipt of the RFP Document Fee paid by way of NEFT/RTGS or original DD in physical form;
 - (d) it is signed, sealed, delivered/uploaded and marked as stipulated in Clauses 2.13 and 2.16;
 - (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.4 and the Pre-Contract Integrity Pact in the format prescribed in Form 16 of Appendix I;
 - (f) it contains all the information (complete in all respects) as requested in the RFP;
 - (g) it does not contain any condition or qualification; and
 - (h) it is not non-responsive in terms hereof.
- 2.22.4 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.
- 2.22.5 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.
- 2.22.6 After the technical evaluation, the Authority shall prepare a list of pre-qualified and shortlisted Bidders in terms of Clause 3.2 for opening of their Financial Proposals. A date, time and venue will be notified to all Bidders for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified and shortlisted Bidders along with their Technical Score will be read out. The opening of Financial Proposals shall be done offline in presence of respective representatives of Bidders who choose to be present. The Authority will not entertain any query or clarification from Bidders 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 3.3 and 3.4, respectively.

- 2.22.7 Bidders are advised that the Selection Process shall be entirely at the discretion of the Authority. Bidders 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.
- 2.22.8 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 Bidder if the Consultancy is subsequently awarded to it.

2.23 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Bidders 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 is 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.

2.24 Clarifications

- 2.24.1 To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek clarifications from any Bidder 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.
- 2.24.2 If an Bidder does not provide clarifications sought under Clause 2.24.1 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 Bidder shall be barred from subsequently questioning such interpretation of the Authority.

E. APPOINTMENT OF CONSULTANT

2.25 Negotiations

- 2.25.1 The Selected Bidder 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 as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 60% (sixty per cent) marks as required under Clause 3.1.2 shall be replaced by the Bidder with a better candidate to the satisfaction of the Authority. In case the Selected Bidder fails to reconfirm its commitment, the

Authority reserves the right to designate the next ranked Bidder as the Selected Bidder and invite it for negotiations.

2.25.2 The Authority will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Bidder to the satisfaction of the Authority.

2.25.3 The Authority will examine the credentials of all Sub-Consultants proposed for this Consultancy (Deleted)

2.26 Substitution of Key Personnel

2.26.1 The Authority expects all the Key Personnel to be available during implementation of the Agreement. The Authority will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. As a condition to such substitution, a sum equal to 20% (twenty per cent) of the remuneration specified for the original Key Personnel shall be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be 50% (fifty per cent) of the remuneration specified for the original Key Personnel. Any further substitution may lead to disqualification of the Bidder or termination of the Agreement.

2.26.2 Substitution of the Team Leader will not normally be considered. However, Authority and Concessionaire jointly on the basis of genuine reasons of ill health or any other considerable reasons may consider replacement.

2.27 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.

2.28 Award of Consultancy

After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder 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 Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Earnest Money Deposit of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Bidder to acknowledge the LOA, and the next highest ranking Bidder may be considered.

2.29 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Bidder shall not be entitled to seek any deviation in the Agreement.

2.30 Commencement of assignment

The Consultant shall commence the Services at the Site of the Project within 7 (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 2.29 or commence the assignment as specified herein, the Authority may invite the second ranked Bidder for negotiations. In such an event, the Earnest Money Deposit of the first ranked Bidder shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

2.31 Proprietary data

Subject to the provisions of Clause 2.23, all documents and other information provided by the Authority or submitted by an Bidder to the Authority shall remain or become the property of the Authority. Bidders 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.

3. CRITERIA FOR EVALUATION

3.1 Evaluation of Technical Proposals

3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of the experience of Key Personnel. Only those Bidders whose Technical Proposals get a score of 60 (sixty) marks or more out of 100 (one hundred) shall qualify for further consideration and shall be ranked from highest to the lowest on the basis of their Technical Score (S_T).

3.1.2 Each Key Personnel must score a minimum of 60% (sixty per cent) marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 60% (sixty per cent) marks. In case the Selected Bidder has one Key Personnel, other than the Team Leader, who scores less than 60% marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the Authority, would score 60% (sixty per cent) or above.

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

Sl. No.	Description	Maximum Marks	Breakup of Scoring System	MARKS
1	Experience of Key personnel	100		
A	Team Leader CUM Resident Engineer	60		
i.	Total Work Experience	30	More than 18 years of experience	30
			15-18 years of experience	25
ii.	Qualification	20	Master	20
			Bachelor	15
iii.	Adequacy in Assignment /Job Experience in carrying out Eligible assignment	10	Greater than 5 Projects	10
			5 Projects	8
B	Assistant Resident Engineer (1)	20		
i.	Total Work Experience	10	More than 13 years of experience	10
			10-13 years of experience	8
ii.	Qualification	5	Master	5
			Bachelor	3
iii.	Adequacy in Assignment /Job Experience in carrying out Eligible assignment	5	Greater than 3 Projects	5
			3 Projects	3
C	Assistant Resident	20		

Sl. No.	Description	Maximum Marks	Breakup of Scoring System	MARKS
	Engineer (2)			
i.	Total Work Experience	10	More than 13 years of experience	10
			10–13 years of experience	8
ii.	Qualification	5	Master	5
			Bachelor	3
iii.	Adequacy in Assignment /Job Experience in carrying out Eligible assignment	5	Greater than 3 Projects	5
			3 Projects	3
	Overall Maximum marks for Technical Qualification	100		

3.1.4 Eligible Assignments

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, the eligible assignments (the “**Eligible Assignments**”) for experience of Key Personnel are as follows:

- (i) Design of roads, execution and quality control and other civil works of project value not less than Rs 22.50 Crores

3.2 Short-listing of Bidders

The Bidders who have scored at least 60 (sixty) points shall be ranked as specified in Clause 3.1.3 and shall be pre-qualified and short-listed for evaluation of their Financial Proposal in the second stage. However, if the number of such pre-qualified Bidders is less than 2 (two), the Authority may, in its sole discretion, pre-qualify the Bidder(s) whose Technical Score is less than 60 (sixty) points even if such Bidder(s) do(es) not qualify in terms of Clause 3.1.3; provided that in such an event, the total number of pre-qualified and short-listed Bidders shall not exceed 2 (two).

3.3 Evaluation of Financial Proposal

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

3.3.2 For financial evaluation, the total cost indicated in the Financial Proposal, will be considered.

3.3.3 The Authority will determine whether the Financial Proposals are complete and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of Services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the

Consultant. The lowest Financial Proposal (F_M) will be given a Financial Score (S_F) of 100 points. The Financial scores of other Proposals will be computed as follows:

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

(F = amount of Financial Proposal)

3.4 Combined and final evaluation

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

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

Where S is the combined score, and T_w and F_w are weights assigned to Technical Proposal and Financial Proposal, which shall be 0.70 and 0.30 respectively.

- 3.4.2 The Selected Bidder shall be the first ranked Bidder (having the highest combined score). The second ranked Bidder shall be kept in reserve and may be invited for negotiations in case the first ranked Bidder withdraws or fails to comply with the requirements specified in Clauses 2.25, 2.29 and 2.30, as the case may be.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders 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 Bidder, if it determines that the Bidder 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 Earnest Money Deposit or Performance Security, as the case may be, 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 Bidder’s Proposal.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Bidder 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 Bidder 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 Bidder 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.
- 4.3 For the purposes of this Section, 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 therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (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 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 Bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process.

5. PRE-PROPOSAL CONFERENCE (DLETED)

6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 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 Bidder 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 Bidder; 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 Bidder.
- 6.3 It shall be deemed that by submitting the Proposal, the Bidder 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.
- 6.4 All documents and other information supplied by the Authority or submitted by an Bidder shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Bidders are required to treat all such documents and information as strictly confidential.
- 6.5 The Authority reserves the right to make inquiries with any of the clients listed by the Bidders in their previous experience record.

SCHEDULES

SCHEDULE-1
(See Clause 1.1.3)

TERMS OF REFERENCE (TOR)

1.1 Objectives of assignment

The aim of this consultancy service is to provide qualitative technical and administrative services for implementation and management for the work of “Strengthening and Widening of Existing road from KK gate to Baikampady Tank Bund road with Pavement Quality”.

1.2 Project Management Consultant Framework

The main feature of Project Management Consultant Framework formulated for the execution of the proposed project “Strengthening and widening to four lanes of existing road from KK gate to Baikampady Tank Bund Road with Pavement Quality Concrete are:

- i. The New Mangalore Port will administer the project. As a representative of Board of Members, acting through its Chairman, Chief Engineer (Civil), of the Port or any other Officers so nominated by the Board will administer the project.
- ii. To administer the Contracts under the Project, NMP will be the contractual employer and Chief Engineer (Civil) will act on behalf of the ‘Employer’.
- iii. The Consultant shall be the ‘Engineer’ for the project. The “Engineer for the Project” shall make the necessary measurements and control the quality of works and shall make all engineering decisions required during the implementation of the Contract. **However, the Engineer shall seek prior approval of the Employer with regard to the following:**
 - a. Variation order with financial implications.
 - b. Variations in work quantities which attract for fixation of rates.
 - c. Sanction of additional items, sums or costs and variations of rates and prices.
 - d. Approve the subletting of any part of works
 - e. Approve any extension of contractual time limits
 - f. Stopping and/or termination of the Contract for Works

1.3 Scope of consultancy services

The scope of Project Management Consultancy services shall include but not

necessarily be limited to the following activities:-

1.3.1 Detailed Engineering and Administration

- a. Consultant shall identify the various elements of work, their interdependencies and drawing of action plan.
- b. Consultant shall scrutinize the construction methods and activity proposed by the contractor, keeping in view, Road construction plan to ensure that these are satisfactory with particular reference to the technical requirements, project implementation schedule and environmental aspect as well as safety of works, personnel and the general public.
- c. Consultant shall prepare detailed implementation methodology including but not limited to, co-ordination procedure with Employer and contractor/vender.
- d. To administer and manage the project.
- e. Scrutinize the Contractor's detailed work programme, suggest modifications, if any, in the work programme after a careful study keeping in view the overall interest of the project and recommend the same for approval of the employer.
- f. Scrutinize Contractor's superintendence, personnel and suggest modifications, if any.
- g. Initiate advance actions for handing over of site and timely issue of drawings.
- h. Actual setting out data and issue the same for execution.
- i. Assist contractor in Liaoning and coordinating with the local authorities.
- j. Scrutinize and approve the Contractors charts and drawings as required for execution.
- k. Certify, the design basis report/detail engineering report, Road designs and as executed drawings/charts for each component furnished by the contractor.
- l. The consultant shall provide technical assistance and furnish information as may be required by the employer in connection with audit comments and queries from Central Vigilance Commission,

Government of India and any other statutory bodies etc.

- m. Consultants shall Prepare and monitor Project network, bar chart, monthly progress report format, purchase procedure, import etc. Consultant shall also prepare implementation package based on the approval.
- n. Consultant shall provide assistance/services for obtaining necessary clearances from the Government and any other statutory bodies.

1.3.2 Man power deployment Schedule

The implementation of the Projects shall be scheduled so as to complete the work in all respect within the time schedule. The composition and duration for the Supervision Services for the Supervision Team will be as per the Table given below

Sl. No.	Description	No. of persons	Estimated person days per month	Estimated minimum man month
1	Team Leader Cum Resident Engineer	01	1X26 = 26	1X12 = 12
2	Assistant Resident Engineer (In two shifts) to work on all days	02	2X30 = 60	2X12 =24

Note:

- (i) Minimum number and man months of key personnel and support technical staff to be deployed of the assignment are mentioned in the above table.
- (ii) Consultant shall deploy additional key personnel and other support staff for effective and efficient execution of the assignment as per the TOR.
- (iii) Deployment of staff at site shall be made with prior approval of Employer. Deployment should be adjusted such that at lease one engineer shall be available at site during executions of works.
- (iv) Above mention requirements are tentatively assessed. In case progress of work demands additional personnel to cope with the situation, Consultants have to deploy additional personnel for supervision and same will be paid extra as per the rate quoted.
- (v) The above stated personnel are the requirements during execution of

construction work when work commence on 24 hours basis. Any external/internal experts as and when required for tackling technical/environmental/legal matter, same have to be arranged by consultant at no extra cost.

1.3.3 Construction Supervision:

The construction Supervision shall be as follows.

- i) Carry out detailed checking and verification of the setting-out data available in possession of Employer like contract document with the working drawings for execution.
- ii) Review the monthly progress report furnished by the contractor and send its comments thereon to the Authority and contractor within 7 (seven) days receipt of such report.
- iii) Inspect the Construction works and shall submit a monthly Inspection Report bringing out the results of inspection and the remedial action taken by the contractor in respect of Defects or deficiencies. In particular, the consultant shall include in its Inspection Report, the compliance of the recommendations made by the Safety Consultant.
- iv) Carry out regular inspection of the Contractor's equipment, plant, machinery, installations, housing, medical facilities etc and ensure they are adequate and are in accordance with the terms and conditions of the Contract in respect all complying with statutory requirements pertain to construction, labour, insurance and any other requirements imposed by the statutory bodies time to time.
- v) Direct the Contractor to carry out all such works or to do all such things as may be necessary to avoid or to reduce the risk in case of any emergency affecting the safety of life or of the works or of the adjoining property and advise the Employer thereof as soon thereafter as is reasonably practicable.
- vi) In the event that the Contractor fails to achieve any of the Milestones, the Consultant shall undertake a review of the progress of construction and identify potential delays, if any. If the Consultant shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Contractor to indicate within 15

(fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Contractor, the Consultant shall review the same and send its comments to the Authority and the Contractor forthwith.

- vii) Supervise the Contractor in all matters concerning safety and care of the work including environmental aspects and labour welfare.
- viii) Inspect the Works on substantial Completion before taking over and indicate to the Chief Engineer any outstanding work to be carried out by the Contractor before issue of completion certificate by the Employer.
- ix) On completion of Construction work, before issuing of completion certificate to the Contractor, consultant shall provide to the Employer, photographs, detailed calculations, specifications of equipment installed etc. and obtain certificate from Employer in respect of satisfactory completion of work.

1.3.4 Testing of Material and works:

- i) Review Quality Assurance Plan submitted by the contractor and shall convey its comments to the Contractor within a periods of 21 days stating the modification, if any required there to. The sampling methods and the acceptance criteria shall be as per the Indian/international practices.
- ii) Inspect the performance of works with regard to workmanship and compliance with the specifications, order/supervise/perform tests on materials and/or work and approve/disapprove the Contractor's plant and equipment.
- iii) Associate with the work tests being carried out by the Contractor and undertake additional tests as necessary to assess the nature of material.
- iv) Carry out comprehensive technical supervision of the works to ensure their quality and conformity with the standards and specifications as per contract. In addition to assessing and checking the laboratory and field tests carried out by the Contractor, the Consultants shall carry

- out independent tests as necessary to establish their nature of material.
- v) Maintain a permanent record of all measurements for the work quantities to be paid for and the results of all tests carried out for monitoring the quality of works.
 - vi) Shall conduct the pre-construction review of manufacturer's test reports and standard and samples of manufactured material, and such other material as the Consultatns may require.
 - vii) Consultant shall test check at least 20 (twenty) percent of the quality or number or tests prescribed for each category or type of test for quality control by the Contractor.

1.3.5 Measurement and Payment:

- i) Measurement of all civil and concrete works shall be as per Bureau of Indian Standard Specifications, which are vogue in practice.
- ii) With regard to the road construction, identification of the layers proposed in the contract and associating with the test of soil being carried out by contractor at approved laboratories.
- iii) Associate with Road surveys being carried out by contractor for the field measurement of completed works and quantities of materials incorporated in the work and maintain up to date book containing such computations.
- iv) Maintain up to date records of remaining quantities in the work and monitor the expected project cost based upon the remaining quantities. General records of all labour, insurances, labour licenses, security passes issued for the contractor's workers, wage rates paid by the contractor shall be maintained.
- v) Check and certify all monthly bills, interim bills and final bill of the contractor.
- vi) scrutinize and advise Employer upon the claims raised by the contractor if any
- vii) Advise Employer during arbitration proceedings if any
- viii) Plan and monitor expected payment schedule for the entire project for arrangement of cash flow from employer in order to avoid hindrance to the project.

1.3.6 Progress of Work:

- i) Implement a system for monitoring the progress of work based on the computer-based project management techniques.
- ii) Systematically check the progress of work and order the initiations of work which is the part of the contract.
- iii) Maintain up to date status of all the various activities and other allied works against the original schedule for completion of work.
- iv) Shall investigate and initiate early actions with regard to the delays in the execution of works. The Team Leader of the Consultants' Supervision Team shall explain in his monthly progress and special reports the reasons for delays and explain the actions to be taken/already taken to correct the situation. All reports prepared by the Consultants' Team shall be objective and shall substantiate any event/recommendation with factual data and information. The Progress Reports shall contain the pertinent data and chart form and shall clearly bring out the comparison between the projected and the actual work done using "S" curves and/or any other widely accepted superior methods of representation.

1.3.7 Third Party Inspection Agency

The Authority will appoint a third party agency to carryout inspection of the executed works and provide expert advice on workmanship, progress and any other quality oriented services for smooth implementation and execution of the work. Any observations and instruction of the third party shall be complied both by PMC as well as the contractor. All the drawings, documents and report related to the subject work shall be provided to the third party as and when requested and it is the responsibility of the PMC to provide the same.

1.4 Facilities to be provided by the consultant & the Employer.

1.4.1 Facilities to be provided by the consultant

The Consultants shall make their own arrangements for transport (vehicle) at the project site. The Consultants shall also provide at their own cost all facilities, equipment (engineering and office), transport, supplies, computer hardware and peripherals, computer software, communication

system, (telephone, fax, e-mail/Internet) furniture and support staff which they consider to carry out the Services. After completion of the Service, all such articles deployed by the Consultant shall remain as their property.

1.4.2 Facilities to be provided by the Employer

The Employer shall make available to the consultant temporary office accommodation measuring up to 500 Sqfts area anywhere in the Employer's estate free of rent, electricity charges, & water charges.

1.5 Reports

1.5.1 Reports to be submitted during the supervision stage

All reports and documents prepared by the Consultants for supervision shall be professional, precise and objective. The report formats shall be finalised in Consultation with the Employer officials. The Consultants shall provide three copies/sets each of the following reports to the Employer:

- a. Commencement Report within 30 days after commencement of works,
- b. Construction Supervision Manual within 30 days after Commencement of works;
- c. Quality Assurance (QA) Document within 30 days after Commencement of works;
- d. Monthly Progress Report by the 10th day of every month;
- e. Quarterly Progress Report by the 10th day of the month of submission; and,
- f. Final Report at the completion of services.

1.5.2 The Commencement Report shall contain the details of all meetings held with the Employer and the Contractor and decisions taken therein, the resources mobilised by the Consultants as well as the Contractor and the Consultants' perception in the management and supervision of the project. The report shall also include the Master Work Programme and Resource Mobilisation for the Project.

1.5.3 The Progress Reports (Monthly and Quarterly) shall contain details of all meetings, decisions taken therein, mobilisation of resources (Consultants' and the Contractors'), physical and financial progress and the projected progress for the forthcoming periods. The Report shall clearly bring out

the delays, if any reasons for such delay(s) and the recommendations for corrective measures. The Report shall also contain the performance data for Contractor's plant and equipment. The broad scope of progress reporting is as given under:

1.5.4 Report on progress of work for each activity stating:

- percentage progress of the activity
- deviation from the schedule
- status of the activity (critical, sub-critical, non-critical);
- cash-flow for each item of works as well as for the total project;
- monthly summary of percentage progress; and,
- monthly summary of cash flow

1.5.5 Projections

- monthly projections of percentage progress; and,
- monthly projections for cash-flow

1.5.6 Critical Activity

- report on the progress and status of critical activities;
- change of status from non/sub-critical to critical activity due to slippage;
- statement on slippage and remedial actions taken; and
- Effectiveness of the remedial action(s) taken in the previous month.

1.5.7 Responsibilities of Key personnel

The Consultants shall ensure that at all times during the Consultants performance of the Services all key personnel's acceptable to the Authority, shall take charge of the performance of such Services.

1.5.8 Team Leader Cum Resident Engineer shall be responsible for the overall performance and administration of the Consultant's Team. He will be responsible for planning of various facilities of Strengthening and Widening of existing road from KK gate to Baikampady Tank Bund road with Pavement Quality including supervise the site management.

The major tasks for the Team leader shall include but not limited to the following:

- a. Review and approve detailed drawings submitted by the contractor.
- b. Review and approve the working or drawings pertaining to temporary

works prepared by the contractor.

1.5.9 **Team Leader Cum Resident Engineer** shall also be responsible for the overall performance and administration of the Consultant's Team at the Project Site. The Resident Engineer will also act as the Engineer's Representative and shall be overall in-charge for the Consultant's Supervision team for the entire project.

The **major** tasks for the Resident Engineer shall include but not limited to the following:

1. Establishment of Site offices and assist in establishment of Laboratories;
2. Assist the Authority with the Review of the Contractors' securities, insurance and safety plans;
3. Scrutiny of the Contractor's work programme, and scheme for the deployment of plant, equipment and machinery for approval of the Chief Engineer(civil);
4. Assist the Authority/ Chief Engineer (Civil) in the interpretation of provisions in the Contract documents and technical specification;
5. Assist the Authority/Chief Engineer(Civil)in handing over the site and issuing order to commence the works;
6. Liaisoning with the local authorities for shifting of utilities wherever required;
7. Regular Supervision of works
8. Evolve and implement Quantity and Quality control procedures;
9. Evolve criteria for the acceptance of works;
10. Prepare and issue variation orders after the approval of the Authority;
11. Assist the Authority in the evaluation of Contractor's claims;
12. Verify and certify Contractor's Interim Certificates and bills for approval of the Engineer –in – charge of the project
13. Assist the Chief Engineer (Civil) in monitoring Physical and Financial Progress of the works;
14. Prepare quarterly project budgets and estimates;
15. Assist NMPA in conducting monthly progress meetings;
16. Compile monthly progress reports and prepare Quarterly Reports;

17. Strictly monitor the progress of work for timely completion of the project.
18. Verify and certify Contractor's Statements at completion;
19. Prepare Project Completion Report;
20. Time schedule and management of Team's resources; and
21. Advising the Authority / Chief Engineer (Civil) in all matter related to the progress of works, with particular reference to delays, possible reasons and mitigating measures.

1.5.10 **Assistant Resident Engineer** shall assist the Resident Engineer in day to day work and report directly to the Resident Engineer. Ensure performance of the work in strict accordance with the drawings, plans and specifications. Maintain a detailed diary of the day work activities, issues, work approved or rejected, hours of operation, labour and equipment used, etc. Coordinate with the Contractor's in charge of the work on a frequent basis to ensure that no issues are encountered. Coordinate with the discipline Engineers to ensure that the relevant sections of works are managed, supervised and inspected correctly. Review and comment appropriately to RFI's as received from the Contractor, when directed by the Resident Engineer. Review and comment appropriately to RFA's as received from the Contractor, when directed by the Resident Engineer. Report to the Resident Engineer any failure of the Contractor to conform to drawings, plans and specifications and to provide good workmanship. Review and comment appropriately to drawings received from the Contractor, when directed by the Resident Engineer. Ensure that the works are being constructed to the latest construction and shop drawings. Liaise with the design office Engineer(s) when required. Assist the Resident Engineer in monitoring the Contractor's progress of the works. Ensure that works are compliant with the Contractor's HSE plans at all times.

1.5.11 **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 as per agreement. Payment shall be made to the Bank directly as per the details provided by the consultant. (Given in Form-11 E-

Payment).

1.5.12 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 @ 90% of the accepted man month rates as per actual deployment of Personnel duly certified by Authority or his representative.
3. Balance 10% will be released proportionately to the average financial progress of the construction contract for which Consultant has been appointed.
4. In case of contract extended due to reasons attributed to PMC consultant, the payment per month in the extended period shall not be made; however, entire staff as per requirement decided by the Authority to complete the work shall continue to be provided by PMC. The part of the money held back attributed to financial progress of work will continue to be released based on actual financial progress of work. In case consultant fails to deploy such personnel the equivalent amount will be recovered from performance security deposit or any other sums due to the consultants.
5. In the event of termination of construction contract or removal of contractor, no further payment beyond 15 days shall be made to the Consultant, till it is decided by the Authority, if the services of the Consultant/personnel are required and in which case the entire situation shall be reviewed including further deployment of consultant's staff etc.
6. 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.
7. 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 3 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.

8. PMC personnel can avail a weekly rest on one day for which no deduction in the remuneration will be made. However, this will only be with prior approval of Authority. Consultant, if required shall stagger/defer such weekly rest or availing holiday during exigencies, so as to ensure uninterrupted progress of work.
9. Payments to be made by the Authority hereunder shall be strictly subject to, and representative of, satisfactory progress achieved by the Consultant.
10. The Consultant shall, on a monthly basis, submit to the Authority, in a format acceptable to the Authority, a report stating personnel movements, inputs in the previous month compared to those shown in the Staffing Schedule.
11. 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.

12. 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.
 13. Final payment pursuant to Financial Proposal shall be made by the Authority only after the Final Statement and the Final Report have been submitted by the Consultant and approved by the Authority. The Consultant shall submit the Final Statement to the Authority within 120 calendar days of the date of approval by the Authority of the Final Report. Should any discrepancy be found to exist between the actual payments made by the Authority and the costs authorized to be incurred by the Consultant pursuant to this Contract, the final payment shall be adjusted by the Authority to reflect such discrepancy. The Consultant shall reimburse any amount that the Authority has paid or caused to be paid in accordance with this Section in excess of the costs actually incurred to the Authority within 3 days after receipt by the Consultant of notice thereof.
 14. Authority shall pay to the Consultants the amounts claimed with in 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.
 15. Payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.
 16. Payments shall be made in accordance Agreed Rate and No interest is admissible on outstanding amounts by the Authority.
- 1.5.13 In case for any reason the Consultancy is foreclosed, percentage payment due up to the completed stage will be made as indicated above and in case assignment foreclose in the middle of any indicated stage, pro-rata payment shall be made for the completed services as assessed by the Authority and the Authority's decision in this regard shall be final.

1.5.14 DOCUMENTS TO BE MADE AVAILABLE BY THE AUTHORITY

Available data as may be required by the Consultant will be provided by the Authority on request. The Nodal Officer designated by the Authority shall facilitate handing over of such information to the Consultant.

1.5.15 TIME AND PAYMENT SCHEDULE

The total duration envisaged **12 Months excluding Monsoon** for construction work which may be extendable till completion of work on mutual consent.

SCHEDULE-2
(See Clause 2.1.3)

AGREEMENT

This AGREEMENT (hereinafter called this “**Agreement**”) is made on the day of the month of 20..., between, on the one hand, the [New Mangalore Port Authority, Port of New Mangalore acting through its [****]] (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

- (A) The Authority vide its RFP bearing No.____ dated _____ invited Proposal for Providing project management consultancy services (supervision consultant) (hereinafter called the “**consultancy**”) for for strengthening and widening to four lanes of existing road from kk gate to Baikampady tank bund road with pavement quality concrete (hereinafter called the “**project**”);
- (B) the Consultant submitted its Proposal for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said Proposal, 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
- (C) the Authority, on acceptance of the aforesaid Proposal of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated (the “**LOA**”); and
- (D) in pursuance of the LOA, the Parties have agreed to enter into this Agreement.

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

1. GENERAL

1.1 Definitions and Interpretation

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

- (a) “**Agreement**” means this Agreement, together with all the Annexes;
- (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.1;
- (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) “**Authority**” means the New Mangalore Port Authority, Port of New Mangalore, acting through its[*****] ;
- (e) “**Authority’s Authorized Representative**” shall mean the person so designated as per Clause 1.10.2;
- (f) “**Award**” shall have the meaning set forth in Clause 9.4.3;
- (g) “**Claims**” shall have the meaning set forth in Clause 3.9.3;
- (h) “**Coercive Practice**” shall have the meaning set forth in Clause 3.2.7(c);
- (i) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;
- (j) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of the RFP;
- (k) “**Consultancy**” shall have the meaning set forth in Recital A;
- (l) “**Consultancy Documents**” shall have the meaning set forth in Clause 3.9.1;
- (m) “**Consultant**” shall mean [*]
- (n) “**Consultant’s Authorized Representative**” shall mean the person so designated as per Clause 1.10.3;
- (o) “**Corrupt Practice**” shall have the meaning set forth in Clause 3.2.7(a);
- (p) “**Designated Persons**” shall have the meaning set forth in Clause 1.10.4;
- (q) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- (r) “**Due Date**” shall have the meaning set forth in Clause 6.3(b);
- (s) “**Effective Date**” shall have the meaning set forth in Clause 2.1;
- (t) “**Force Majeure**” shall have the meaning set forth in Clause 2.7.1(a);
- (u) “**Fraudulent Practice**” shall have the meaning set forth in Clause 3.2.7(b);
- (v) “**Government**” means the Government of Karnataka;
- (w) “**INR, Re. or Rs.**” means Indian Rupees;
- (x) “**LOA**” shall have the meaning set forth in Recital C;
- (y) “**Party**” means the Authority or the Consultant, as the case may be, and Parties means both of them;

- (z) “**Performance Security**” shall have the meaning set forth in Clause 7.1.1;
- (aa) “**Personnel**” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (bb) “**Prohibited Practice**” shall have the meaning set forth in Clause 3.2.5;
- (cc) “**Project**” shall have the meaning set forth in Recital A;
- (dd) “**Project Manager**” shall have the meaning set forth in Clause 4.6;
- (ee) “**Restrictive Practice**” shall have the meaning set forth in Clause 3.2.7(e);
- (ff) “**RFP**” means the Request for Proposal document in response to which the Consultant’s Proposal for providing Services was accepted;
- (gg) “**Rules**” shall have the meaning set forth in Clause 9.4.1;
- (hh) “**Services**” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (ii) “**Sub-Consultant**” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; (not applicable to this contract)
- (jj) “**Third Party**” means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant;
- (kk) “**TOR**” shall have the meaning set forth in Clause 3.1.2; and
- (ll) “**Undesirable Practice**” shall have the meaning set forth in Clause 3.2.7(d).

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 parts 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
- (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 this Agreement, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of this Agreement; and
- (b) the Authority shall make payments to the Consultant in accordance with the provisions of this 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 in the State in which the Authority has its headquarters 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 table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7 Notices

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

- (a) in the case of the Consultant, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Authorized Representative set out below in Clause 1.10.3 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 the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-

mail to the 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 e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority's Authorized Representative set out below in Clause 1.10.2 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 the same city as the Authority's office, it may send such notice by 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 e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

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

1.9 Authority of Member-in-charge (Deleted)

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. For the avoidance of doubt the Members of the Consortium shall be held jointly and severally liable for all obligations to be fulfilled under this Agreement.

1.10 Authorised Representatives

- 1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clauses 1.10.2 and 10.2.3.
- 1.10.2 The Authority may, from time to time, designate one of its officials as the Authority's Authorized Representative. Unless otherwise notified, the Authority's Authorized Representative shall be:

The Chief Engineer (Civil)
New Mangalore Port Authority,
Panambur, Mangalore-575010 Tel: 0824-2887301/0824 2407493,
Email: chiefengineer@nmpt.gov.in

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

.....

.....

Tel:

Mobile:

Email:

1.10.4 Designated Persons of the Consultant

The Consultant shall designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Consultant (“**Designated Persons**”), and any communication or document required to be signed by the Consultant shall be valid and effective only if signed by any of the Designated Persons; provided that the Consultant may, by notice in writing, substitute any of the Designated Persons by any of its employees.

1.11 Taxes and duties

Unless otherwise specified in this 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 2 (two) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Earnest Money Deposit of the Consultant shall stand forfeited.

2.4 Expiry of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, or extended by the Parties by mutual consent, this Agreement shall expire upon completion of 12 (twelve) months from the Appointed 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 above, on matters not covered by this Agreement, the provisions of the RFP shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.2 and 6.1.2 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

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

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

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 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 minimise the consequences of any event of Force Majeure.

2.7.4 Extension of time

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

2.7.5 Payments

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

2.7.6 Consultation

Not later than 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 30 (thirty) 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 30 (thirty) 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 30 (thirty) 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 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 Authority 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 survive 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 3.6, as relate to the Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 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 equipment and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.9 and 3.10 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) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and

- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this 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 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 perform the Services 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 this 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 and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, 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 5 (five) years from the completion of this Consultancy 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 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.

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 this 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 shall 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*, the 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 request for proposals 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 (i) the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or dealing with matters concerning this Agreement before or after the execution thereof, at any time prior to the expiry of 1 (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 this Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or this Agreement, who at any time has been or is a legal, financial or technical adviser to 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 Bidders 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 2 (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 below, 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 wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to 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 6.1.1 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 in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause 3.4.3 above 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 Insurance to be taken out by the Consultant

- 3.5.1 (a) The Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as specified in this Agreement and in accordance with good industry practice.
- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.
- (c) If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Authority shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such

premia and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by the Authority.

- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Authority as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect; provided that in the event the Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Authority as the sole beneficiary of the Consultant or require an undertaking to that effect.

3.5.2 The Parties agree that the risks and coverages shall include but not be limited to the following:

- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of INR 1,07,00,000 (Rupees One crore seven lakhs)¹;
- (b) employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) professional liability insurance for an amount no less than the Agreement Value.

The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in Clause 6.1.1 of this Agreement.

3.6 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 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 1 (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.

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

¹ 1% of the indicative capital cost of the Project, but to a maximum of 20 crore.

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.

3.8 Reporting obligations

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

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

- 3.9.1 All plans, drawings, specifications, designs, 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.
- 3.9.2 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.
- 3.9.3 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 unauthorised 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.

3.10 Equipment and materials furnished by the Authority

Equipment and 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 equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Authority. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by the Authority in writing, insure them in an amount equal to their full replacement value.

3.11 Providing access to Project Office and Personnel

The Consultant shall ensure that the Authority, and officials of the Authority authorized in this regard by the Authority, are provided unrestricted access to the Project office and to all Personnel during office hours. The Authority's official, who has been authorised 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.

3.12. Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of the 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 drawings 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

4.2.1 The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in Annex-2 of this Agreement. For avoidance of doubt, it is clarified that as per the Project requirement as notified by the Authority at any time and from time to time, the Consultant shall immediately without any delay deploy on the Project Site one or more the requisitioned Key Personnel for the notified time. This shall be without any prejudice to the Terms of Reference outlined in Schedule 1 of this RFP.

4.2.2 If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of this Agreement may be increased by agreement in writing

between the Authority and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.1.

4.3 Approval of Personnel

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

4.3.2 If the Consultant hereafter proposes to engage any person as Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) 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

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of this Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than 2 (two) Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of remuneration equal to 20% (twenty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted. In case of a second substitution, such reduction shall be equal to 50% (fifty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in this Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the man days of Service set forth in Annex-2. Any taking of leave by any deployed Personnel would be in compliance with the Authority's leave policy, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6 Team Leader

The person designated as the Team Leader cum resident Engineer of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Team Leader shall be responsible for day-to-day performance of the Services.

4.7 Sub-Consultants (not applicable to this contract)

Sub-Consultants listed in Annex-4 of this Agreement are hereby approved by the Authority. The Consultant may, with prior written approval of the Authority, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the Consultant under this Clause 4.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

Unless otherwise specified in this 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 6.1.2.

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.1, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

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 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.2 below, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is INR (Rupees.). The payment shall be made as per the Man month rate quoted by the Selected Bidder in its Financial proposal as mentioned in Annex-6.
- 6.1.2 Notwithstanding anything to the contrary contained in Clause 6.1.1, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.1 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

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

6.3 Mode of billing and payment

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

- (a) The Consultant shall be paid for its Services as per the Payment Schedule at Annex-6 of this Agreement, subject to the Consultant fulfilling the following conditions:
- (i) No payment shall be due for the next month till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding month.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (b) The Consultant shall furnish the monthly invoice in respect of the preceding month along with all the relevant details by 10th day of next month.
- (c) The Authority shall within 7 days from the receipt of the monthly invoice will review the monthly invoice and provide its comments, if any.
- (d) The Consultant within 7 days from the receipt of any comments form, the Authority will incorporate all the suggestions of the Authority by making necessary changes and will re-submit the monthly invoice to the Authority.
- (e) The Authority cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt of the revised invoice (if any) by the Authority of duly completed bills with necessary particulars (the “**Due Date**”).

- (f) 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 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (g) 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

- 7.1.1 The Authority shall retain by way of performance security (the “**Performance Security**”), 5% (five per cent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiry of this Agreement pursuant to Clause 2.4 hereof. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the Authority may make deductions from any subsequent payments due and payable to the Consultant hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.
- 7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-7 of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 50% (fifty per cent) 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 0.2% (zero point two per cent) of the Agreement Value per day, subject to a maximum of 10% (ten per cent) of the 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.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

The Parties recognise that it is impractical in this Agreement to provide for every contingency which may arise during the life of this 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 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 In the Event of any Dispute between the Parties, the same shall be referred to the Conciliation and Settlement Committee of the Indian Ports Association for Conciliation as per the CSC Guidelines dated: 24.09.2021.

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 Act, 1996. The place of such arbitration shall be the capital of the State where the Authority has its headquarters and the language of arbitration proceedings shall be English.

9.4.2 There shall be an Arbitral Tribunal of 3 (three) arbitrators, of whom each Party shall select 1 (one), and the 3rd (third) arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Rules.

9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.

9.4.4 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.

9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
Consultant:

For and on behalf of
Authority

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

Annex-1

Terms of Reference
(Refer Clause 3.1.2)

(Reproduce Schedule-1 of RFP)

Annex-2

Deployment of Personnel

(Refer Clause 4.2)

(Reproduce as per Form-10 of Appendix-I)

Annex-3

Tests

Testing of Material and works:

- i. Review Quality Assurance Plan submitted by the contractor and shall convey its comments to the Contractor within a periods of 21 days stating the modification, if any required there to. The sampling methods and the acceptance criteria shall be as per the Indian/international practices.
- ii. Inspect the performance of works with regard to workmanship and compliance with the specifications, order/supervise/perform tests on materials and/or work and approve/disapprove the Contractor's plant and equipment.
- iii. Associate with the work tests being carried out by the Contractor and undertake additional tests as necessary to assess the nature of material.
- iv. Carry out comprehensive technical supervision of the works to ensure their quality and conformity with the standards and specifications as per contract. In addition to assessing and checking the laboratory and field tests carried out by the Contractor, the Consultants shall carry out independent tests as necessary to establish their nature of material.
- v. Maintain a permanent record of all measurements for the work quantities to be paid for and the results of all tests carried out for monitoring the quality of works.
- vi. Shall conduct the pre-construction review of manufacturer's test reports and standard and samples of manufactured material, and such other material as the Consultatns may require.
- vii. Consultant shall test check at least 20 (twenty) percent of the quality or number or tests prescribed for each category or type of test for quality control by the Contractor.

Annex-4

Approved Sub-Consultant(s)
(Refer Clause 4.7)

(Reproduce as per Form-12 of Appendix-I)

Annex-5

Cost of Services
(Refer Clause 6.1)

(Reproduce as per Form-2 of Appendix-II)

Annex-6

Payment Schedule*(Refer Clause 6.3)*

Sl. No.	Description of services	No. of persons	Estimated person days per month	Estimated minimum man month	Man Month Rate / Unit	Total
1.	Team Leader Cum Resident Engineer	01	1X26 = 26	1X12 =12	3,64,023	43,68,276
2.	Assistant Resident Engineer (In two shifts) to work on all days	02	2X30 = 60	2X12 =24	1,42,844	34,28,256
Total (Rs.)						77,96,532
Excess / Less (In percentage in two decimals)						
Excess / Less (Amount In Rupees)						
Quoted amount Agreement Value (F)						

Note

1. The bidder shall quote price exclusive of GST. The GST as applicable will be paid separately in the Tax invoice.
2. Contractor shall file the applicable returns with Tax department in time and submit the same as documentary evidence.
3. The Remuneration for person per month shall include every one of the payments, expenditure allowances, overheads & profit, and all taxes excluding GST thereon which will be reimbursed as per the prevailing government rules on documentary evidence.
4. The man month quantity is **estimated minimum requirement** and the same is considered for Financial Proposal evaluation. Actual utilized man month will vary according to project requirement and only actual utilized man month's quantities only considered for payment purpose.
5. The payment will be made on calendar month basis on based on the actual Manpower deployed.
6. For any external / internal experts as and when required for tackling any

technical / environmental / legal matter, the same have to be arranged by consultant at no extra cost.

7. No escalation on any account will be payable on the above amounts during the entire contract period.
8. Each man-month to be converted into 30 man-days
9. In case deployment of personnel in man days, remuneration schedule shall be made accordingly in pro-rate man day basis based on Note No.8.

Annex- 7

Bank Guarantee for Performance Security
(Refer Clause 7.1.2)

To
New Mangalore Port Authority,
Panambur, Mangalore-575010

In consideration of [*****] acting on behalf of the [New Mangalore Port Authority, New Mangalore] (hereinafter referred as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) awarding to, 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**”) the assignment for Proposal for Providing project management consultancy services (supervision consultant) for strengthening and widening to four lanes of existing road from kk gate to Baikampady tank bund road with pavement quality concrete, 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 the Bank) do hereby 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 or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be required 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 the date falling 365 days after the date of this Guarantee)].

For

Name of Bank:

Seal of the Bank:

Dated, theday of, 20.....

(Signature, name and designation of the authorised signatory)

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 2.3.3)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.3 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;
 - (ii) potential consultant should not have defined the project when earlier working for the Authority;
 - (iii) 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; or
 - (ii) no consultant should be involved in owning or operating entities resulting from the project; or
 - (iii) 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 number 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 2.1.3)

TECHNICAL PROPOSAL

Form-1

Letter of Proposal
(On Bidder's letter head)

(Date and Reference)

To,

The Chief Engineer (Civil),
New Mangalore Port Authority,
Panambur, Mangalore-575010

Sub: Providing project management consultancy services (supervision consultant) for Strengthening and widening to four lanes of existing road from kk gate to Baikampady tank bund road with pavement quality concrete.

Dear Sir,

1. With reference to your RFP Document dated, I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for Providing project management consultancy services (supervision consultant) for strengthening and widening to four lanes of existing road from kk gate to Baikampady tank bund road with pavement quality concrete. The Proposal is unconditional and unqualified.
2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the Authority to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last 3 (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 Bidder, 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.

7. 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 2.3 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 4.3 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.
8. 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 Bidders in accordance with Clause 2.8 of the RFP document.
9. 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.
10. 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.
11. 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.[§]
12. 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

[§] In case the Bidder is unable to provide the certification specified in Paragraph 12, it may precede the Paragraph by the words viz. "Except as specified in Schedule hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Proposal. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for pre-qualification hereunder.

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.

13. The Earnest Money Deposit of Rs. (Rupees) in the form of a Demand Draft is attached, in accordance with the RFP document.
14. 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 is rejected.
15. I/We agree to keep this offer valid for 90 (ninety) days from the Proposal Due Date specified in the RFP.
16. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith in Form-4.
17. In the event of my 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.
18. I/We have studied the RFP and all other documents carefully and also surveyed the Site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
19. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Proposal which shall be binding on us.
20. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP document.

Yours faithfully,

(Signature, name and designation of the authorised signatory)
(Name and seal of the Bidder)

APPENDIX-I

Form-2**Particulars of the Bidder**

1.1	<p>Title of Consultancy:</p> <p>FOR PROVIDING PROJECT MANAGEMENT CONSULTANCY SERVICES (SUPERVISION CONSULTANT) FOR STRENGTHENING AND WIDENING TO FOUR LANES OF EXISTING ROAD FROM KK GATE TO BAIKAMPADY TANK BUND ROAD WITH PAVEMENT QUALITY CONCRETE”.</p>
1.2	<p>Title of Project:</p> <p>STRENGTHENING AND WIDENING TO FOUR LANES OF EXISTING ROAD FROM KK GATE TO BAIKAMPADY TANK BUND ROAD WITH PAVEMENT QUALITY CONCRETE</p>
1.3	<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 authorised signatory of the Bidder:</p> <p>Name:</p> <p>Designation:</p> <p>Company:</p> <p>Address:</p> <p>Phone No.:</p> <p>E-mail address:</p>
1.4	<p>For the Bidder, state the following information:</p> <p>(i) In case of non-Indian firm, does the firm have business presence in India?</p> <p style="text-align: right;">Yes/No</p> <p>If so, provide the office address(es) in India.</p>

	<p>(ii) Has the Bidder been penalized by any organization for poor quality of work or breach of contract in the last 5 (five) years? Yes/No</p> <p>(iii) Has the Bidder ever failed to complete any work awarded to it by any public authority/ entity in last 5 (five) years? Yes/No</p> <p>(iv) Has the Bidder been blacklisted by any Government department/Public Sector Undertaking in the last 5 (five) years? Yes/No</p> <p>(v) Has the Bidder suffered bankruptcy/insolvency in the last 5 (five) years? Yes/No</p> <p>Note: If answer to any of the questions at (ii) to (v) is yes, the Bidder is not eligible for this Consultancy.</p>
1.5	<p>Does the Bidder combine functions as a consultant or adviser along with the functions as a contractor and/or a manufacturer? Yes/No</p> <p>If yes, does the Bidder agree to limit the Bidder's role only to that of a consultant/ adviser to the Authority and to disqualify themselves, their Associates/ affiliates, subsidiaries and/or parent organization subsequently from work on this Project in any other capacity? Yes/No</p>
1.6	<p>Does the Bidder intend to borrow or hire temporarily, personnel from contractors, manufacturers or suppliers for performance of the Consultancy? Yes/No</p> <p>If yes, does the Bidder agree that it will only be acceptable as Consultant, if those contractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this Project (including tendering relating to any goods or services for any other part of the Project) other than that of the Consultant? Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this Project and they agree to limit their role to that of consultant/ adviser for the Authority only? Yes/No</p> <p>(Signature, name and designation of the authorised signatory) For and on behalf of</p>

APPENDIX-I

Form-3

Statement of Legal Capacity
(To be forwarded on the letter head of the Bidder)

Ref. Date:

To,

The Chief Engineer (Civil),
New Mangalore Port Authority,
Panambur, Mangalore-575010

Dear Sir,

Sub: RFP for Providing project management consultancy services (supervision consultant) for strengthening and widening to four lanes of existing road from kk gate to Baikampady tank bund road with pavement quality concrete.

I/We hereby confirm that we, the Bidder, the constitution of which has been described in the Proposal^s), satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that (insert individual's name) will act as our Authorised Representative on our behalf and has been duly authorized to submit our Proposal. Further, the authorised 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 of the authorised signatory)
For and on behalf of

^s Please strike out whichever is not applicable

APPENDIX-I

Form-4

Power of Attorney

Know all men by these presents, we, (name of Bidder and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms..... son/daughter/wife and presently residing at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the “**Authorised Representative**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for Providing project management consultancy services (supervision consultant) for strengthening and widening to four lanes of existing road from kk gate to Baikampady tank bund road with pavement quality concrete, proposed to be developed by the New Mangalore Port Authority, New Mangalore (the “**Authority**”) including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-Proposal 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 Authorised Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorised Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarised

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 Laws and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of INR 100 (hundred) and duly notarised by a notary public.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*
- *However, Bidders from countries that have signed the Hague Legislation Convention 1961 need not get their Power of Attorney legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

APPENDIX 1

Form 5

Power of Attorney for Lead Member **(deleted)**

APPENDIX-I

Form-6

Particulars of Key Personnel

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignments ^s
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Team Leader Resident Engineer						
2	Assistant Resident Engineer						

^sRefer Form 8 of Appendix I (Eligible Assignments of Key Personnel)

APPENDIX-I

Form-7

Proposed Methodology and Work Plan

The proposed methodology and work plan shall be described as follows:

1. Understanding of TOR (not more than 2 (two) pages)

The Bidder shall clearly state its understanding of the TOR and also highlight its important aspects. The Bidder may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the objectives laid down in the TOR.

2. Methodology and Work Plan (not more than 3 (three) pages)

The Bidder will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Bidder will submit a brief write up on its proposed Consultancy team and organisation of Key Personnel explaining how different areas of expertise needed for this assignment have been fully covered by its Proposal. The Bidder should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy.

APPENDIX-I

Form-8

Eligible Assignments of Key Personnel
(Refer Clause 3.1.4)

1.	Name of Key Personnel:	
2.	Designation of Key Personnel:	
3.	Name of the project:	
4.	Name of Consulting Firm where employed:	
5.	Description of services performed by the Key Personnel (including designation):	
6.	Name of client and address: (indicate whether public or private)	
7.	Name and telephone no. of client's representative:	
8.	Estimated capital cost of the project (in Rs crore or US\$ million):	
9.	Start date of the services (month/year):	
10.	Finish date of the services (month/year):	
11.	Brief description of the project:	
<p>It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.</p> <p align="center">(Signature, name and designation of the Key Personnel)</p>		

Notes:

1. Use separate sheet for each Key Personnel.
2. The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.
3. Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.

APPENDIX-I

Form-9

Curriculum Vitae (CV) of Key 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

Name of project	Description of responsibilities
-----------------	---------------------------------

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

Certification:

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

(Signature and name of the Key Personnel)

Place.....

(Signature and name of the authorised signatory of the Bidder)

Notes:

1. Use separate form for each Key Personnel
2. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-8 of Appendix-I.

3. Each page of the CV shall be signed in ink and dated by both the Key Personnel concerned and by the Authorised Representative of the Bidder along with its seal. Photocopies will not be considered for evaluation.

APPENDIX-I

Form-10

Deployment of Personnel

S. No.	Designation	Name	Man days (MD)		Number of weeks																				
			At Site	Away from Site (specify)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
1.																									
2.																									
3.																									
Total Man days																									

APPENDIX-I

Form-11

Survey and Field Investigations

Item of Work/ Activity	To be carried out/ prepared by		Week																		
	Name	Designation	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

APPENDIX-I

Form-12

Proposal for Sub-Consultant(s) (not applicable to this contract)

1. Details of the Firm				
Firm's Name, Address and Telephone				
Name and Telephone No. of the Contact Person				
Fields of Expertise				
No. of Years in business in the above Fields				
2. Services that are proposed to be sub contracted:				
3. Person who will lead the Sub- Consultant				
Name:				
Designation:				
Telephone No:				
Email:				
4. Details of Firm's previous experience				
Name of Work	Name, address and telephone no. of Client	Total Value of Services Performed	Duration of Services	Date of Completion of Services
1.				
2.				
3.				

(Signature and name of the authorised signatory)

Note:

1. The Proposal for Sub-Consultant(s) shall be accompanied by the details specified in Forms 12 and 13 of Appendix –I.
2. Use separate Form for each Sub-Consultant

APPENDIX-I

Form-13

Pre-Contract Integrity Pact

(On stamp paper of value INR 100/-)

NEW MANGALORE PORT AUTHORITY (NMPA) hereinafter referred to as “The Principal”.

AND

(Name of the Bidder)

..... hereinafter referred to as “The Bidder/Concessionaire”.

Preamble: The Principal intends to award, under laid down organizational procedures, contract/concession for Tender No. E..... The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with the Bidders. The Central Vigilance Commission (CVC) has been promoting integrity, transparency, equity and competitiveness in Government/ PSU transactions and as a part of vigilance administration and superintendence, CVC has recommended adoption of Integrity Pact and provided basic guidelines for its implementation in respect of major procurements in Government organizations. In pursuance of the same, the Principal agrees to appoint an external independent monitor who will monitor the execution of the Concession Agreement for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - (a) No employee of the Principal, personally or through family members, will in connection with the execution of a contract, demand, take a promise for or accept, for him/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.
 - (b) The Principal will, during the pre-contract stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.
 - (c) The Principal will exclude from the process all known prejudicial persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant anti-corruption laws of India, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can

initiate disciplinary actions. In such a case, while an enquiry is being conducted by the Principal, the proceedings under the Concession Agreement would not be stalled.

Section 2 - Commitments of the Bidder/Concessionaire

- (1) The Bidder/Concessionaire commits themselves to take all measures necessary to prevent corrupt practices, unfair means and illegal activities, during pre-contract as well as post-contract stages. The Bidder/Concessionaire commits to observe the following principles during the execution of the Concession Agreement:
 - (a) The Bidder/Concessionaire will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the execution of the Concession Agreement or to any third person any material or immaterial benefit, which he/she is not legally entitled to, in order to obtain in exchange of advantage of any kind, whatsoever during the execution of the Concession Agreement.
 - (b) The Bidder/Concessionaire will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness, or to introduce cartelization in the bidding process.
 - (c) The Bidder/Concessionaire will not commit any offence, under the relevant anticorruption laws of India; further the Bidder/Concessionaire will not use improperly, for purposes of competition, or personal gain, or pass on to others, any information or document provided by the Principal, as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - (d) The Bidder will not collude with other parties interested in the Concession Agreement to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the Concession Agreement.
 - (e) The Bidder/Concessionaire will, when presenting its Proposal, disclose any and all payments it has made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with the award of the Concession Agreement.
 - (f) The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
 - (g) The Bidder 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 Principal.
- (2) The Bidder/Concessionaire will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from or exclusion from future contracts

If the Bidder, before award of the Concession Agreement, has committed a transgression, through a violation of Section-2 or in any other form, such as to put its reliability as Bidder, into question, the Principal is entitled to disqualify such Bidder, from the bidding process, or to terminate the Concession Agreement, if already signed, for such reason.

- (1) If the Bidder/Concessionaire has committed a transgression, through a violation of Section-2, such as to put its reliability, or credibility into question, the Principal is entitled to disqualify the Bidder/Concessionaire from the bidding process, terminate the Concession Agreement if already awarded and also, to exclude the Bidder/Concessionaire from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined, by the circumstances of the case, in particular the number of transgressions, the position of the transgressions, within the company hierarchy of the Bidder/Concessionaire and the amount of the damage. The execution will be imposed for a minimum of 6 months and maximum of 3 years.

Note: A transgression is considered to have occurred, if in the light of available evidence, no reasonable doubt is possible.

- (2) The Bidder/Concessionaire accepts and undertakes to respect and uphold, the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes, not to challenge or question such exclusion, on any ground, including the lack of any hearing before the decision, to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- (3) If the Bidder/Concessionaire can prove that, he has restored/recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

Section 4 - Compensation for damages

- (1) If the Principal has disqualified the Bidder, from the bidding process prior to the award, according to Section-3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit.
- (2) If the Principal has terminated the Concession Agreement according to Section-3, or if the Principal is entitled to terminate the Concession Agreement according to Section-3, the Principal shall be entitled to demand and recover from the Concessionaire, liquidated damages equivalent to 5% of the contract value, or the amount equivalent to Earnest Money Deposit/Performance Bank Guarantee, whichever is higher.
- (3) The Bidder/Concessionaire agrees and undertakes to pay the said amounts, without protest or demur, subject only to condition that, if the Bidder/Concessionaire can prove and establish that the termination of the Concession Agreement, after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder/Concessionaire shall compensate the Principal, only to the extent of the damage in the amount proved.

Section 5 - Previous transgression

- (1) The Bidder declares that, no previous transgression has occurred in the last 3 years, with any other company, in any country, or with any other Public Sector Enterprises in India, that could justify its exclusion from the award of the Concession Agreement.
- (2) If the Bidder makes incorrect statement on this subject, it can be declared disqualified for the purpose of the Concession Agreement and the same can be terminated for such reason.

Section 6 - Equal treatment of all Bidder/Concessionaire/subcontractors

- (1) The Bidder/Concessionaire undertakes to demand from all subcontractors, a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders, contractors and subcontractors.
- (3) The Principal will disqualify from the bidding process all Bidders, who do not sign this part or violates its provisions.

Section 7 - Criminal charges against violating Bidder/Concessionaire/ Sub-contractors

If the Principal obtains knowledge of conduct of an Bidder/Concessionaire or subcontractor, or of an employee, or a representative, or an associate of an Bidder/Concessionaire, or subcontractor, which constitutes corruption, or if the Principal has substantive suspicion, in this regard, the Principal will inform the Vigilance office.

Section 8 - External Independent Monitor

- (1) Pursuant to the need to implement and operate this Integrity Pact, the Principal has appointed the following as independent Monitor, for this Pact;

Name and Address of the Monitors:

Dr. Subhash Chandra Khuntia, IAS (Retd.)
16 - C, MCHS Colony,
HSR Layout (Sector 6),
Bangalore – 560 102
Mobile No. -9868247979
Email: skhuntia@hotmail.com

Ms. Sunita Puri, IRS (Retd.)
H No. 2095,
Sector 15 C,
Chandigarh – 560102
Mobile No. – 9872099717
Email: sunita.puri15@gmail.com

- (2) The task of the Monitor, is to review independently and objectively, whether and to what extent, the parties comply with the obligations under this agreement.
- (3) The Monitor is not subject to instructions, by the representative of the parties to the Chairperson of the Board of the Principal.
- (4) The Bidder/Concessionaire accepts that, the Monitor has the right to access, without restriction to all Project documentation of the Principal, including that provided by the Concessionaire. The Bidder/Concessionaire will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access, to the Project documentation. The same is applicable to subcontractors. The Monitor is under contractual obligation, to treat the information and documents of the Bidder/Concessionaire/subcontractor with confidentiality.
- (5) The Principal 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 Principal and the Bidder/Concessionaire. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices a violation of this agreement, he will so inform the management of the Principal and request the management to discontinue, or heal the violation or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties, that they act in a specific manner, refrain from action or tolerate action.
- (7) The Monitor will submit a written report, to the Chairperson of the Board of the Principal, within 8 to 10 weeks, from the date of reference of intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the Monitor has reported to the Chairperson of the Board, a substantial suspicion of an offence, under relevant anti-corruption laws of India, and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence, or reported it to the Vigilance office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

Section 9 - Pact Duration

This agreement becomes effective when both parties have signed it. It expires 12 months after the last payment under the Concession Agreement is made.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid, despite the lapse of this agreement, as specified above, unless it is discharged/determined by the Chairperson of the Principal.

The duration of this agreement in respect of unsuccessful Bidders shall expire after 3 months of the award of the Concession Agreement.

Section 10 - Other Provisions

1. This agreement is subject to Indian law. The place of performance and jurisdiction is the Registered Office of the Principal, i.e., New Mangalore, Karnataka.
2. Changes and supplements as well as termination notices, need to be made in writing, before they become effective and binding on both parties.
3. Should one or several provisions of this agreement, turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement, to their original intensions.

For the Principal

For the Bidder

Place: New Mangalore

Witness-1 :

Witness-2 :

Date : / /2024

APPENDIX-I

Form-14

Proposal Check List

(Mandatory documents to be uploaded in the Technical Proposal)

Sl No.	Documents	Check List
1.	Form-1: Letter of Proposal	Yes/No
2.	Form-2: Particulars of the Bidder	Yes/No
3.	Form-3: Statement of Legal Capacity	Yes/No
4.	Form-4: Power of Attorney	Yes/No
5.	Form- 5: Power of Attorney for Lead Member (deleted)	Yes/No
6.	Form-6: Particulars of Key Personnel	Yes/No
7.	Form-7: Proposed Methodology and Work Plan	Yes/No
8.	Form-8: Eligible Assignments of Key Personnel	Yes/No
9.	Form-9: Curriculum Vitae (CV) of Key Personnel	Yes/No
10.	Form-10: Deployment of Personnel	Yes/No
11.	Form-11: Survey and Field Investigations	Yes/No
12.	Form-12: Proposal for Sub-Consultant(s) (not applicable to this contract)	Yes/No
13.	Form 13: Pre-Contract Integrity Pact	Yes/No
14.	Form 14: Proposal Check List	Yes/No
15.	Any other documents specified in the RFP	Yes/No

For the avoidance of any confusion, original/scanned copies of the abovementioned documents shall be submitted offline in hard copy on or prior to the Proposal Due Date.

APPENDIX-II

FINANCIAL PROPOSAL

Form-1

Covering Letter
(On Bidder's letter head)

(Date and Reference)

To,

The Chief Engineer (Civil),
New Mangalore Port Authority,
Panambur, Mangalore-575010 Dear Sir,

Subject: RFP for **PROVIDING PROJECT MANAGEMENT CONSULTANCY SERVICES (SUPERVISION CONSULTANT) FOR STRENGTHENING AND WIDENING TO FOUR LANES OF EXISTING ROAD FROM KK GATE TO BAIKAMPADY TANK BUND ROAD WITH PAVEMENT QUALITY CONCRETE"**.

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

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

Yours faithfully,

(Signature, name and designation of the authorised signatory)

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

APPENDIX-II
(See Clause 2.1.3)

Form-2

Sl. No	Description	Unit	Quantity (in months)	Rate (in Figures & in Words)	Total Amount (in Figures and in Words)
1	Team Leader CUM Resident Engineer: having educational qualification Master or bachelor in Civil Engineering and construction management. 15 years in roads and highways sector. He should have led the team in consultancy work for not less than 5 (five) road Project viz design of roads, execution and quality control and other civil works out of 5 project at least one project shall be related to construction of road.	Man months	1x12 = 12	3,64,023	43,68,276
2	Assistant Resident Engineer (in two shifts) to work on all days: having educational qualification master / bachelor in civil engineering. 10 years' experience in road and highways sector. He should have worked as Assistant Resident Engineer in not less than 3 (three) Road and Highway projects viz execution, supervision and quality control and other civil works. Out of 3 projects at least one project shall	Man months	2 x 12 = 24	1,42,844	34,28,256

	be related to construction of Roads				
				Grand Total	77,96,532
				Excess / Less (In percentage in two decimals)	
				Excess / Less (Amount In Rupees)	
				Quoted amount in Figures Rs. (F)	

(Quoted amount - Rupees

Note

1. The bidder shall quote price exclusive of GST. The GST as applicable will be paid separately in the Tax invoice.
2. Contractor shall file the applicable returns with Tax department in time and submit the same as documentary evidence.
3. The Remuneration for person per month shall include every one of the payments, expenditure allowances, overheads & profit, and all taxes excluding GST thereon which will be reimbursed as per the prevailing government rules on documentary evidence.
4. The man month quantity is **estimated minimum requirement** and the same is considered for Financial Proposal evaluation. Actual utilized man month will vary according to project requirement and only actual utilized man month's quantities only considered for payment purpose.
5. The payment will be made on calendar month basis on based on the actual Manpower deployed.
6. For any external / internal experts as and when required for tackling any technical / environmental / legal matter, the same have to be arranged by consultant at no extra cost.
7. No escalation on any account will be payable on the above amounts during the entire contract period.
8. Each man-month to be converted into 30 man-days
9. In case deployment of personnel in man days, remuneration schedule shall be made accordingly in pro-rate man day basis based on Note No.8.

Seal and Signature

APPENDIX-III

Tender Document for the work of

“STRENGTHENING AND WIDENING TO FOUR LANES OF EXISTING ROAD FROM
KK GATE TO BAIKAMPADY TANK BUND ROAD WITH PAVEMENT QUALITY
CONCRETE AT NMPA”