

Government of India

Ministry of Heavy Industries &
Public Enterprises

Department of Public Enterprises

Invites

Request for Proposal for Selection of Agency

for

Study to upgrade the Public Enterprises Survey

Table of Contents

Sl. No.	Content	Page
1	Proposal	3
2	Instruction to Bidders	4-12
3	Evaluation Criteria	13
4	Payment Schedule	14
5	Technical Proposal	15-16
6	Financial Proposal	17-18
7	Terms of Reference	19-21
8	General Terms and Conditions	22-35
9	Annex 1 – Draft Contract	36

Section 1: Proposal

Project Name	Study to upgrade the Public Enterprises Survey
Method of Selection	Combined Quality Cum Cost Based System(CQCCBS).
Pre-bid conference	<p>17th July, 2017 at 3.00 pm Venue: Room No. 312, DPE Conference Room, Department of Public Enterprises, 3rd Floor, Block No. 14, CGO Complex, Lodi Road, New Delhi – 110 003.</p> <p>Instructions to bidders - Bidders are requested to e-mail (rajendra.gautam@gov.in) their queries/requests for clarifications about the Request for Proposals (RFP) by 13th July, 2017. The pre-bid conference will enable the bidders to get responses to their e-mailed queries and also seek additional clarifications (if any).</p>
Submission Date of Technical and Financial Proposals	Proposals to be submitted by 5 pm, 24 th July, 2017 Any proposal delivered after the deadline will not be considered and returned unopened.
Tentative date of commencement of services	14 th August, 2017
Validity of Proposal	Technical and Financial Proposals to be valid upto One Hundred and Twenty (120) days after the date of Proposal submission prescribed by the DEPARTMENT
Technical Evaluation Criteria	Refer to Section 3
Contact Person for any clarifications	Dy. Director General (Survey), Department of Public Enterprises, 5 th Floor, Block No. 14, CGO Complex, Lodi Road, New Delhi – 110 003 Tele (011) 24360318, Email: rajendra.gautam@gov.in
Copies of Proposal	Invited Institutions must submit original and one copy each of the Technical and Financial Proposal. A copy of the Technical Proposal only must be submitted in a pen drive also in MS Word Format. (Refer Section 5 for Technical Proposal format and Section 6 for Financial Proposal format) Proposals non-compliant with aforesaid shall be disqualified.
Proposal Submission Address	Dy. Director General (Survey), Department of Public Enterprises, 5 th Floor, Block No. 14, CGO Complex, Lodi Road, New Delhi – 110 003
Consortium, as submitted in the RFP	The Memorandum of Understanding for the consortium must be included as part of the Technical Proposal submission

Section 2 : Instructions to Bidders

2.1 General

2.1.1 Purpose of the project is to conduct a study to upgrade the Public Enterprises Survey.

2.1.2 No bidder shall submit more than one bid for this project.

2.2 Cost of Proposal

The BIDDER shall bear all costs associated with the preparation and submission of the Proposal DEPARTMENT will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the project.

2.3 Proposal Documents

2.3.1 Contents of Proposal documents

Proposals must offer services for the total requirement. Proposals offering only part of the requirement will be rejected. The BIDDER is expected to examine all corresponding instructions, forms, terms and specifications contained in the Proposal documents. Failure to comply with these documents will be at the BIDDER's risk and may affect the evaluation of the Proposal.

2.3.2 Pre Bid Conference

The Bidders' designated representatives are invited to attend the Pre-Bid Conference at their own cost, which is to be held at the venue and time mentioned in Section 1.

The purpose of the meeting is to clarify issues and to answer questions on any matter that may be raised at that stage. The Bidder is requested, to submit any questions in writing to reach Department before the stipulated date and time given in Section 1.

It may not be practicable at the Pre-Bid Conference to answer questions received late, but questions and responses will be uploaded on DEPARTMENT website prior to the deadline for submission of the proposal. In the process of issuing bid clarifications, DEPARTMENT may choose to give a single clarification for similar type of queries raised by various bidders.

Non-attendance at the Pre-Bid Conference will not be a cause for disqualification of a Bidder.

2.3.3 Amendments to the Proposal Documents

At any time prior to the deadline for submission of Proposals, the DEPARTMENT may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective BIDDER, modify the Proposal Documents by amendment, which shall be uploaded on the DEPARTMENT website.

In order to afford prospective BIDDERS reasonable time in which to take the amendments into account in preparing their offers, the DEPARTMENT may, at its discretion, extend the deadline for the submission of Proposals.

2.4 Preparation of Proposals

2.4.1 Language of the proposal

The Proposals prepared by the BIDDER and all correspondence and documents relating to the Proposal exchanged by the BIDDER and the DEPARTMENT shall be written in the English language.

2.4.2 Documents comprising the proposal

The Proposal shall comprise the following components:

- a. Technical Proposal, as detailed in section 5
- b. Financial Proposal, as detailed in section 6

2.4.3 Technical Proposal

The BIDDER shall structure the Technical Proposal in the manner prescribed in Section 5.

The Technical Proposal should not contain any pricing information whatsoever on the services offered. Pricing information shall be separated and only contained in the appropriate Price Schedules.

Each page of the Technical bid should be signed by the authorized representative of the bidder.

Information which the BIDDER considers proprietary, if any, should be clearly marked "proprietary" next to the relevant part of the text and it will then be treated as such accordingly.

2.4.4 Financial Proposal

The BIDDER shall indicate on the format given in section 6, the price of services it proposes to provide under the contract.

The BIDDER shall prepare the bid based on details provided in the Proposal Documents. However, it must be clearly understood that the specifications and requirements are intended to give the BIDDERS an idea about the order and magnitude of the work and are not in any way exhaustive and guaranteed by DEPARTMENT.

Prices quoted must be in INR (Indian Rupees). The prices must be firm and final and shall not be subject to any upward modifications, on any account whatsoever.

The Financial Bid should clearly indicate the price to be charged without any qualifications whatsoever and should exclude all taxes, duties, fees, Insurance, levies, works contract/service tax and other charges as may be applicable in relation to the activities proposed to be carried out.

The BIDDERS are advised not to indicate any separate discount. Discount, if any, should be merged with the quoted prices. Discount of any type, indicated separately, will not be taken into account for evaluation purpose. However, in the event of such an offer, without considering discount, is found to be the lowest, the Purchaser shall avail such discount at the time of award of contract.

2.4.5 Period of validity of proposals

Proposals shall remain valid for One Hundred and Twenty (120) days after the date of Proposal submission prescribed by the DEPARTMENT, pursuant to the deadline clause. A Proposal valid for a shorter period may be rejected by the Department on the grounds that it is non-responsive.

In exceptional circumstances, the DEPARTMENT may solicit the BIDDER's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. A BIDDER granting the request will not be required nor permitted to modify its Proposal.

2.4.6 Format and signing of proposals

The BIDDER shall prepare two copies of each of the Proposal, clearly marking each "Original" and "Copy" as appropriate. In the event of any discrepancy between them, the original shall govern. In addition, the bidder shall prepare a Pen drive also of the Technical Proposal in MS Word Format.

The two copies of the Proposal shall be typed or written in indelible ink and shall be signed by the BIDDER or a person or persons duly authorised to bind the BIDDER to the contract. The latter authorisation shall be indicated by written power-of-attorney accompanying the Proposal.

A Proposal shall contain no interlineations, erasures, or overwriting except, as necessary to correct errors made by the BIDDER, in which case such corrections shall be initialled by the person or persons signing the Proposal.

2.4.7 Payment

DEPARTMENT shall effect payments to the Consultant after acceptance by DEPARTMENT of the invoices submitted by the Consultant, upon achievement of the corresponding milestones, as per the payment schedule mentioned at Section

2.5 Submission of Proposals

2.5.1 Sealing and marking of proposals

The BIDDER shall seal the Proposal in one outer and two inner envelopes, as detailed below.

(a) The outer envelope shall be addressed to –

Dy. Director General (Survey)
Department of Public Enterprises
Room No. 316, Block No. 14,
Lodi Road, New Delhi-110003

and, marked with – “Proposal to conduct a Study to upgrade the Public Enterprises Survey

(b) Both inner envelopes (one each for Technical and Financial Proposal respectively) should be sealed and shall super scribe “Technical Proposal” or “Financial Proposal” as the case may be and the name and address of the BIDDER.

(c) The envelope for Technical Proposal should contain the original and copy as well as the Pen drive.

(d) The envelope containing the Financial Proposal should bear a warning as “DO NOT OPEN WITH THE TECHNICAL PROPOSAL”.

Note: If the inner envelopes are not sealed and marked as per the instructions in this clause, the DEPARTMENT will not assume responsibility for the Proposal’s misplacement or premature opening.

2.5.2 Deadline for submission of proposals

Proposals must be received by the DEPARTMENT at the address specified in Section 1.

The DEPARTMENT may, at its own discretion extend this deadline for the submission of Proposals by amending the RFP documents in accordance with clause Amendments of Proposal Documents, in which case all rights and obligations of the DEPARTMENT and BIDDERS previously subject to the deadline will thereafter be subject to the deadline as extended.

2.5.3 Late Proposals

Any Proposal received by the DEPARTMENT after the deadline for submission of proposals will be summarily rejected.

2.5.4 Modification and withdrawal of Proposals

The BIDDER may withdraw its Proposal after the Proposal's submission, provided that written notice of the withdrawal is received by the DEPARTMENT prior to the deadline prescribed for submission of Proposals.

The BIDDER's withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of clause Deadline for Submission of Proposals. The withdrawal notice may also be sent by telex or fax but followed by a signed confirmation copy.

No Proposal may be modified subsequent to the deadline for submission of proposals.

No Proposal may be withdrawn in the Interval between the deadline for submission of proposals and the expiration of the period of proposal validity specified by the BIDDER on the Proposal Submission Form.

2.6 Opening and Evaluation of Proposals

2.6.1 Opening of proposals

The proposals shall be opened by a Committee formed by DEPARTMENT, to be called the 'Evaluation Committee'.

2.6.2 Clarification of proposals

To assist in the examination, evaluation and comparison of Proposals, the Evaluation Committee may at its discretion, ask the BIDDER for clarification of its Proposal. The request for clarification and the response shall be in writing and no change in price or substance of the Proposal shall be sought, offered or permitted.

2.6.3 Preliminary examination of Technical Proposal

The Evaluation Committee will examine the Proposals to determine whether they are complete, whether the documents have been properly signed, and whether the Proposals are generally in order.

2.6.4 Presentation by the bidder:

The presentation should clearly bring out the Consultant's understanding of the requirements of the services, capability and approach for carrying out the tasks set forth through the nominated experts.

The presentation shall ensure the following:

- (i) work plan in graphical format indicating the major activities, interface requirements and deliverables such as reports required under TOR.
- (ii) flow chart may be included to clearly indicate the involvement of the various agencies including those of consultants/sub-consultant/ Associates/client etc. This may be linked to work plan and staffing schedule.
- (iii) The work plan, flow chart, staffing schedule, approach and methodology must provide a logical description of how the consultant will carry out the services to meet all the requirements of TOR.
- (iv) Comments, if any, on the TOR to improve performance in carrying out the assignment. Innovativeness will be appreciated, including workable suggestions that could improve the quality/effectiveness of the Consultant. In this regard, unless the Consultant clearly states otherwise, it will be assumed that work required to implement any such improvements, are included in the inputs shown on the Consultant's Staffing Schedule.

2.6.5 Evaluation and comparison of Technical proposals

The technical evaluation shall be done by the Evaluation committee by adopting Combined Quality Cum Cost Based System (CQCCBS). The tender process would give 70% weightage to technical bids and 30% weightage to financial bids. The technical bids would be evaluated on the basis of the criteria specified in Section 3.

Only the BIDDERS who have secured 70% and above in the evaluation shall be considered as technically qualified and processed further.

Note: The score weights and points obtainable in the evaluation sheet are tentative and can be changed depending on the need or major attributes of technical proposal.

2.6.6 DEPARTMENT right to vary requirements at the time of award

The DEPARTMENT reserves the right at the time of award of contract to vary the quantity of services and goods specified in the Proposal without any change in price or other terms and conditions.

2.6.7 Opening of Financial Proposal

The evaluation committee will open the Financial Proposal of only Technically Qualified Bidders, in the presence of the representatives of the Bidders who choose to attend, at the time, date and place, as decided by the DEPARTMENT.

2.6.8 Preliminary examination of Financial Proposal

Each Financial Proposal will be inspected by the Evaluation committee to confirm that it has remained sealed and unopened. It shall then be examined by the evaluation committee for completeness and accuracy. If there are minor Arithmetical errors, the bid amount will be adjusted. If there is a discrepancy between words and figures, the amount in words will prevail.

2.6.7 Evaluation and comparison of financial proposals

The representative from DEPARTMENT will read out aloud the name of the Consultant and the total price shown in the Consultants Financial Proposal. This information will be recorded in writing by the DEPARTMENT representative. Proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

The combined score shall be obtained by weighing the technical and financial scores in the ratio of 70:30 and adding them up. On the basis of combined weighted score for technical and financial, the bidder shall be ranked in terms of total score obtained. The proposal obtaining the highest combined score in evaluation will be ranked as H-1 followed by the proposals securing lesser marks as H2, H3, etc. The bidder securing the highest combined marks will be considered for award of the contract. In the event of a tie in the final scores, the agency having the lower financial quote amongst the two would be given preference.

DEPARTMENT reserves the right to negotiate with the most competitive bidder if required.

2.6.8 Notification of Award

Prior to the expiration of the period of Bid Validity, DEPARTMENT will notify the Successful Bidder in writing by registered letter or by fax and email, to be confirmed in writing subsequently by registered letter, that its Bid has been accepted. The notification of award will constitute the formation of the Contract.

2.6.9 Signing of Contract

At the same time as DEPARTMENT notifies the Successful Bidder that its Bid has been accepted, DEPARTMENT will send the Bidder the Contract Form, incorporating all agreements between the parties. Within 7 days of receipt of the Contract Form, the Successful Bidder shall sign and date the Contract and return it to DEPARTMENT. The copy of the Contract is enclosed at Annex 1.

2.7.0 Performance Security

Within 7 days of the receipt of notification of award from DEPARTMENT, the successful Bidder shall furnish a Performance Bank Guarantee (10% of the bid amount) in accordance with the Conditions of this document. Such Bank guarantee should have a claim period of three months beyond the contract period.

Failure of the Successful Bidder to comply with the requirement of the above Clause shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security, in which event Department may award the Contract to the next best evaluated Bidder or call for new Bids.

2.7.1 General Rejection Criteria

The following bids would be summarily rejected:

1. Bids submitted without or improper Bid Security or Financial Bid/proposal.
2. Bids received through Fax/E-Mail.
3. Bids which do not conform to 120 day validity of the Bid as prescribed in the Bid.
4. If the information provided by the Bidder is found to be incorrect / misleading at any stage / time during the Biding Process.
5. Bids not submitted in Two cover systems in sealed state (in two separate envelopes as prescribed in the Bid
6. Bid received by DEPARTMENT after the last date for receipt of Bids prescribed by DEPARTMENT, pursuant to section 1.

7. Bids without power of authorization or any other document consisting of adequate proof of the Signatory's Authority.
8. Bids of bidders who are black listed by the Central Government.

Section 3: Evaluation Criteria

Technical Proposal Evaluation Criteria:

Particulars	Marks
Past Experience in the similar projects during the last five years giving details therein (a) Title of the research project (b) Name & address of the client (c) Completion time (d) value (in Rs. Lakhs)	40
Human Resources of the organisation- How many are professional/Technical and supporting staff (Do not attach CVs)	10
Human Resources to be deployed in the proposed study giving therein their names, highest academic and professional qualification, Areas of key expertise and lengthy of experience (Do not attach CVs)	20
Detailed Methodology and organisation of the study (Max. two pages)	30
Total Marks	100

* All the bidders who submit their proposals would be invited for a detailed presentation. The Team leader indicated in the proposed team is expected to make the presentation. The purpose of proposal presentation is to enable the Department to seek clarifications and gain a better understanding about the team and the approach to the assignment.

Section 4: Payment Schedule

Sl. No.	Stage/Activity	Stages
1.	On Submission of the appointment letter	First Instalment of 40% of the total amount
2.	On Submission of Interim Report	Second Instalment of 35% of the total amount
3.	Submission of Final Report	Third Instalment of 25% of the total amount

Any delay in the submission of the final report will attract a penalty of 5% per week and the balance will be forfeited on delay in submission of the report beyond 5 weeks from the stipulated date.

Section 5: Technical Proposal

The technical proposal should contain the following documents:

5.1 Cover Letter

In the cover letter, the bidder should confirm the following:

- confirm that all personnel listed in the technical proposal will be available to provide the required services for the duration of the contract as set-out in the technical proposal.
- confirm that the technical and financial proposals are valid upto 120 days after the date of Proposal submission prescribed by the Department.
- confirm that the bidder has not indulged in any corrupt or fraudulent practices in preparing this proposal.
- confirm that the person signing the cover letter and the proposal has been duly authorized to do so.
- cover letter to contain the name, address, telephone and fax no., and email id of the authorized person with whom Department to communicate.
- confirm that the bidder will bear all costs incurred in connection with the preparation and submission of the proposal and to bear any further pre-contract costs.
- confirm that the terms and conditions laid out in the RFP document are acceptable.
- Confirm that, if the financial Proposal is accepted, to commence and complete delivery of all services specified in the contract within the time frame stipulated.

5.2 BIDDER Firm's profile, in general

5.3 Human Resources

Human Resources of the organisation- How many are professional/Technical and supporting staff. Human Resources to be deployed in the proposed study giving therein their names, highest academic and professional qualification, Areas of key expertise and length of experience

5.4 Experience of the firm

The firm should give the details of the projects/assignments undertaken during the last 5 years only, in detail (including name of assignment, name/address of employer, date of award of assignment, date of completion of assignment, nature of the assignment, value of the assignment, scope/geographical coverage of the assignment and role of the firm viz. prime consultant, sub-consultant, consortium member etc.)

5.5 Proposed methodology and work plan.

5.6 Detailed Methodology and organisation of the study (Max. two pages).

Section 6 – Financial Proposal

6.1 Bid Security

6.1.1 Bid Security of Rs 1 lakh by way of bank guarantee issued by a Nationalised/Scheduled Bank shall be furnished by the consultant at the time of responding to the Proposal. Bid Security must be valid up to 120 days after the last date of submission of proposal and the same will be returned to the un-successful bidders after completion of selection process. Bid Security to be part of Technical Proposal

6.1.2 The bid security of the successful bidder will be discharged upon the bidder executing the contract and furnishing the performance bank guarantee security.

6.2 Format for submission of the Financial Proposal

To

The Dy. Director General,
Department of Public Enterprises,
Block No. 14, CGO Complex, Lodi Road, New Delhi

Dear Sir,

We, the undersigned, offer to provide the services to conduct a Study to upgrade the Public Enterprises Survey in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal. Our attached Financial Proposal is for the sum of [Insert amount(s) in words and figures]. This amount is exclusive of the local indirect taxes, service tax and duties.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Section 1.

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely “Prevention of Corruption Act, 1988”.

We acknowledge the right of the Department to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

We offer a Bid Security of Rs. 1 lakh (Rupees One Lakh only) to the Department in accordance with the Proposal Document. The Bid Security in the form of bank guarantee is attached. We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Bidder:

Address:

NOTE - The Bidder should quote the total lump sum price for providing the services included in the terms of reference exclusive of local indirect taxes, service tax and duties.

Section 7: Terms of Reference

7.1 Introduction

The Public Enterprises Survey (PES) is an annual document of the Ministry of Heavy Industries & Public Enterprises, Government of India. The document summarizes the annual performance of Central Public Sector Enterprises (CPSEs), including their subsidiaries, on major financial and economic parameters. It also provides detailed information on the financial and economic performance of CPSEs. The PE Survey is a critical reference document in the public domain which is extensively used by policy makers, administrators, researchers and others who are working in the area of public enterprises.

In the globalized world, public enterprises operate in a dynamic environment and therefore it is not possible to assess their performance in isolation. There is a need to bring in a broader perspective of PE performance and growth with reference to their global counterparts in Asia, Europe and others. Greater thrust on transparency and competitiveness in Indian PEs is vital for their growth.

The PE Survey brought out by DPE, is a document which acts as the mirror for the PEs in India. There is a need to process and present the data in a more analytical form for better decision making and comprehension. The present PE Survey is based on the Schedule III of Companies Act 2013 containing mainly audited financial data for three years. The PE Survey has not undergone any major structural change during all these years in its form and content. DPE proposes to upgrade the quality and content of the PE Survey for enriching readability and enhancing the value of the document and making it more useful for the audience including international and national investors, academicians, consultants, researchers, policy makers and others.

7.2 Objectives of the assignment

The key objective of the assignment is to upgrade the content of the PE Survey in order to enhance its quality and readability in keeping with the current trends in similar publications globally.

7.3 Scope of work

1. Desk Review
 - To study the annual survey documents of SOEs from other countries to assess their utility and identify the scope for revision in the DPE survey;
 - To identify gaps in the annual survey published by DPE by benchmarking with other official and similar private publications.
 - SOE Survey Reports, Websites, Journals, Published reports and Policy statements, OECD database

2. Consultations
 - To undertake consultations with key stakeholders to identify their expectations- through structured and unstructured methods
 - Document and map expectations and needs of PE survey readers;
 - To identify the scope for improvement for re-purposing the document

3. Recommendations
 - Analyze findings and identify critical areas of functioning to improve performance.
 - To draw an outline for the re-purposed document giving it a comprehensive and analytical touch.
 - Increase visual appeal of the PE survey.

7.4 Approach / Methodology

The study would examine the relative information concerning public enterprises (state owned enterprises) in the selected countries and other similar private sector publications. The annual survey contents would be compared with that of the Public Enterprise Survey published by DPE and gaps would be identified. As the study is descriptive in nature, relevant publications, published documents from OECD, etc. would be considered to draw conclusions. Data would be collected from DPE website/officials, stakeholders, policy makers and CPSEs executives.

7.5 Eligibility and Experience

For taking up the study the attributes required for an institution to qualify would be as follows:

- Institutions should be working on public sector performance and public policy. Adequate knowledge of PE functioning and

familiarity with the financial, economic, statistical and computational technologies will be an added advantage.

7.6 Quality of Documentation

The Annual Survey template which will be developed must have the following characteristics:

- Comply with statutory and policy requirements
- Present information in a concise manner
- Document must be written in English language.
- Provide a balanced account of performance of CPSEs
- Match global practices and standards

7.7 Deliverables

- Improvement of overall design and structure of PE Annual Survey Report
- Formats and templates for data collection methods from CPSEs
- Innovation in the Structure and content of the PE Annual Survey Report
- Attractive Presentation of the PE Annual Survey Report
- Analytical Content on various economic and financial aspects of CPSEs and economy as a whole
- The analytical report in the Survey supported by presentable tables and or graphs

7.8 Timelines

A period of 90 days will be given for the completion of the report. An interim report will be submitted in 60 days. The selected Institution/Organisation has to start the study immediately after its award and the deliverables would be completed as per the above time frame. In case the selected institute/Organisation declines to take up the study after a notice of award has been issued, it would be barred from applying for any study, evaluation or assistance of any kind from the Department of Public Enterprises, Government of India for a period of three years from the date of award.

Section 8: GENERAL TERMS AND CONDITIONS

8.1 General Provisions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a. "Applicable Law" means the laws and any other instruments having the force of law in India, as they may be issued and in force from time to time.
- b. Contract means the Contract signed by the Parties;
- c. "Effective Date" means the date on which this Contract comes into force and effect pursuant to clause 8.7;
- d. "Government" means Government of India;
- e. 'Local currency' means the Indian Rupees;
- f. "Member", in case the Implementing Agency consists of a joint venture of more than one entity, means any of these entities, and "Members" means all of these entities;
- g. "Party" means the Department or the Implementing Agency, as the case may be, and Parties means both of them;
- h. "Personnel" means persons hired by the Implementing Agency or by any Sub- Consultant as Employees and assigned to the performance of the Services or any part thereof; and 'key personnel' means the personnel referred to in Clause 5.3 and 7.6.
- i. "Services" means the work to be performed by the Implementing Agency pursuant to the contract. The approach and methodology to be adopted by the Implementing Agency for carrying out the assignment may be modified after mutual discussions with Department. The work plan as indicated by the Implementing Agency may also get modified accordingly.
- j. "Sub-consultant" means any entity to which the Implementing Agency subcontract part of the Services in accordance with the provisions of Clause 8.13.12 (a); and
- k. "Third Party" means any person or entity other than the Government/Department and the Implementing Agency
- l. "Department" means Department of Public Enterprises, New Delhi

8.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent as between the Department and the Implementing Agency. The Implementing Agency, subject to this Contract, should have complete charge of Personnel and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder. The Consultant shall be considered as having the legal

status of an independent Consultant vis-à-vis DEPARTMENT. The Consultant's personnel and sub-Consultants shall not be considered in any respect as being the employees or agents of DEPARTMENT or the Government.

8.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

8.4 Notices

Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile.

8.5 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

8.6 Taxes and Duties

The Implementing Agency, Sub-consultants and Personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Applicable Law and the Department shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed. The Department shall not be liable for any tax levied on the remuneration and allowances of the Implementing Agency as per this contract.

8.7 Effectiveness of Contract

This Contract shall come into force and effect on the date (the "Effective Date") of the Department's notice to the Implementing Agency instructing the Implementing Agency to begin carrying out the Services.

8.8 Expiration of Contract

Unless terminated earlier pursuant to Clause 8.12 this Contract shall expire when services have been completed and all payments

have been made as per the payment schedule mentioned at section 4.

8.9 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Work, may only be made by written agreement between the Parties to the contract or their duly authorized representatives with the mutual consent of both parties.

8.10 Force Majeure

8.10.1. Definition

a. For the purposes of this Contract, "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-consultants 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 Contract 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.

8.10.2 No Breach of Contract

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 Contract 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 Contract.

8.10.3 Measures to be taken

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

8.10.4 Extension of Time

Any period within which a Party shall, pursuant to this Contract, 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. This doesn't preclude the Department from extending the time period of the assignment in pursuant to clause 8.13.12(b).

8.10.5 Consultation

Not later than thirty (30) days after the Implementing Agency, as the result of an event of Force Majeure, have 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.

8.11 Suspension

The Department may, by written notice of suspension to the Implementing Agency, suspend all payments to the Implementing Agency hereunder if the Implementing Agency fail to perform any of their obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Implementing Agency to remedy such failure within a period not exceeding thirty (30) days after receipt by the Implementing Agency of such notice of suspension.

8.12 Termination

8.12.1 By the Department

The Department may, by not less than seven (7) days' written notice of termination to the Implementing Agency, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause, terminate this Contract.

a. if the Implementing Agency fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 8.11 hereinabove, within seven (7) days of receipt of such notice of suspension or within such further period as the Department may have subsequently approved in writing;

b. if the Implementing Agency become insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;

c. if the Implementing agency fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8.19.3 hereof;

d. if the Implementing agency submit to the department a statement which has a material effect on the rights, obligations or interests of the department and which the Implementing agency know to be false;

e. if, as the result of Force Majeure, the Implementing Agency is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

f. if the Department, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

g. if the Implementing agency, in the judgment of the Department has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this clause: "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution. "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Consultants (prior to or after submission of proposals) designed to establish prices at

artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

8.12.2 By the Implementing Agency

The Implementing Agency may, by not less than seven (7) days' written notice to the Department, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause, terminate this Contract:

- a. if the department fails to pay any money due to the Implementing Agency pursuant to this Contract and not subject to dispute pursuant to Clause 8.19 hereof within seven days (7) days after receiving written notice from the Implementing Agency that such payment is overdue;
- b. if the department is in material breach of its obligations pursuant to this Contract and has not remedied the same within seven (7) days (or such longer period as the Implementing agency may have subsequently approved in writing) following the receipt by the department of the Implementing Agency's notice specifying such breach;
- c. if, as the result of Force Majeure, the Implementing Agency is unable to perform a material portion of the Services for a period of not less than seven (7) days; or
- d. if the Department fails to comply with any final decision reached as a result of arbitration pursuant to Clause 8.19.3 hereof.

8.12.3 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 8.12.1 or 8.12.2 hereof, the Implementing Agency 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 Implementing Agency and equipment and materials furnished by the Department, the Implementing Agency shall proceed as provided, respectively, by Clauses 8.13.14 or 8.13.15 hereof.

8.12.4 Payment upon Termination

In the event of such termination, the Implementing Agency shall be compensated for the actual amount of work performed to the satisfaction of the Department on pro rata basis after offsetting against these payments any amount that may be due from the Implementing Agency to the Department. All advances paid to the Implementing agency shall be

immediately refunded to the Department along with the borrowing rate of interest of Government of India (@ 12%) from the date of receipt of the said amount by the Implementing agency to the date of refund thereof.

8.12.5 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (d) of Clause 8.12.1 or in Clause 8.12.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 8.19 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

8.13 Obligation of the Implementing Agency

8.13.1 Standard of Performance

The Implementing Agency shall perform the Services and carry out their 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 Implementing Agency shall always" act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Department, and shall at all times support and safeguard the Department's legitimate interests in any dealings with Sub-consultants or Third Parties. The Consultant shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

8.13.2 Fraud and Corrupt Practices

8.13.2.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and during the subsistence of the contract. Notwithstanding anything to the contrary contained herein, or in the contract, the Department may reject a Bid, or terminate the Contract, as the case may be, 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 in the Bidding Process. In such an event, the Department shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may

be available to the Department under the Bidding Documents and/ or the Contract, or otherwise.

8.13.2.2 Without prejudice to the rights of the Department under Clause 8.13.2.1 hereinabove and the rights and remedies which the Department may have under the contract, or otherwise if a Bidder is found by the Department 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 Bidding Process, or during the execution of the Contract, such Bidder shall not be eligible to participate in any tender or RFP issued by the Department during a period of 2 (two) years from the date such Bidder is found by the Department to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

8.13.2.3 For the purposes of this Clause 8.13.2, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Department who is or has been associated in any manner, directly or indirectly, with the Bidding Process or has dealt with matters concerning the contract or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Department, shall be deemed to constitute influencing the actions of a person connected with the bidding process.

(b) "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding 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 Bidding Process;

(d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Department with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "restrictive practice" means forming a cartel or arrangement at any understanding or arrangement among Bidders with the objective of

restricting or manipulating a full and fair competition in the Bidding Process.

8.13.3 Encumbrances/Liens

The Implementing Agency shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with DEPARTMENT against any money due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Consultant.

8.13.4 Use of name, Emblem or official seal of Department /Government

The Implementing Agency shall not advertise or otherwise make public the fact that it is a service provider to the Department, nor shall the Implementing Agency, in any manner whatsoever use the name, emblem or official seal of Department or the Government, or any abbreviation of the name of Department or the Government in connection with its business or otherwise.

8.13.5 Law Governing Services

The Implementing Agency shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub- consultants, as well as the Personnel of the Implementing Agency and any Sub- consultants, comply with the Applicable Law.

8.13.6 Conflict of Interests

8.13.6.1 The Remuneration of the Implementing Agency pursuant to Clause 8.16.1 hereof shall constitute the Implementing Agency's sole remuneration in connection with this Contract or the Services and, subject to Clause 8.13.6.2 hereof, the Implementing Agency shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations hereunder, and the Implementing Agency shall use their best efforts to ensure that any Sub- consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

8.13.6.2 If the Implementing Agency, as part of the Services, have the responsibility of advising the Department on the procurement of goods, works or services, the Implementing Agency shall comply with any applicable procurement guidelines of the Government of India and shall at all times exercise such responsibility in the best interest of the Department. Any discounts or commissions obtained by the Implementing

Agency in the exercise of such procurement responsibility shall be for the account of the Department.

8.13.7 Confidentiality

The Implementing Agency, their Sub-consultants and the Personnel of either of them shall not, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Departments business or operations without the prior written consent of the Department.

8.13.8 Liability of the Implementing Agency

The Implementing Agency's liability under this Contract shall be as provided by the Applicable Law.

8.13.9 Insurance to be taken out by the Implementing Agency

All costs involved in taking the insurance will be borne by the Implementing agency.

8.13.10 Reporting Arrangements

The Implementing agency shall neither seek nor accept instructions from any authority external to the Department in connection with the performance of services under the Contract

8.13.11 Accounting, Inspection and Auditing

The Implementing Agency (i) shall keep accurate and systematic accounts and records in respect of the Services, in such form and detail as will clearly identify all relevant time charges and cost, and the bases thereof; (ii) shall permit the Implementing Agency or its designated representative periodically, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Department; and (iii) shall permit the Department to inspect the Implementing Agency's accounts and records relating to the performance of the Implementing Agency and to have them audited by auditors appointed by the department.

8.13.12 Implementing Agency's Actions Requiring Department's Prior Approval

The Implementing Agency shall obtain the Department's prior approval in writing before taking any of the following actions:

- (a) 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 Department prior to the execution of the subcontract, and

(ii) that the Implementing Agency shall remain fully liable for the performance of the Services by the Sub- consultant and its Personnel pursuant to this Contract.

(b) Extension of time period for completion of services for any reason including Force majeure.

8.13.13 Reporting Obligations

The Implementing agency shall furnish, compile or make available at all times to the Department and records of information, oral or written, which the Department may reasonably request of the services to be performed under this contract.

8.13.14 Documents Prepared by the Implementing Agency to Be the Property of the Department

a. All drawings, photographs, reports, questionnaires, recommendations, estimates, documents and all other data, including the Raw data, compiled or received by the Implementing Agency under this Contract shall be the property of the Department, shall be treated by him/her as confidential, shall be delivered only to the duly authorized officials on completion of work under this Contract or as may otherwise be specified by the Department under this Contract. In no event shall be the contents of such document or data are made known by the Implementing Agency to any person or organisation without written approval of the Department. Subject to the provisions of this Article, the Implementing Agency may retain a copy of the document produced by him.

b. All copyright, patents and other intellectual property rights in all countries and all proprietary rights in the manuscripts, records and other materials except for the existing materials, publicly or privately owned, collected or prepared in the course of the execution of this Contract, shall become the property of the Department as appropriate, who shall have the right to publish the same in whole or in part, copyright and takeout patents etc. as the Department may determine appropriate.

8.13.15 Equipment and Materials Furnished by the Department

Equipment and materials made available to the Implementing Agency by the Department, or purchased by the Implementing Agency with funds provided by the Department, shall be the property of the Department and shall be marked accordingly. Upon termination or expiration of this Contract, the Implementing Agency shall make available to the Department an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the

Department's instructions. Such equipment or property when returned to the

Department shall be in the same condition as when delivered to the Implementing agency, subject to normal wear and tear. The Implementing agency shall, if any event be liable to the Department for the loss of or damage to such equipment or property through his/her fault or negligence.

8.14 Implementing Agency's Personnel and Sub-consultants

8.14.1 In general, the Implementing Agency shall employ such qualified and experienced Personnel, as are required to carry out the said study.

8.14.2 Removal and/or Replacement of Personnel

a. Except as the Department may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Implementing Agency, it becomes necessary to replace any of the Personnel, the Implementing Agency shall forthwith provide as a replacement a person of equivalent or better qualifications with the prior approval of the department.

b. If the Department (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Implementing Agency shall, at the Department's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the department.

8.15 Right and remedies of department

8.15.1 Nothing in or relating to this contract shall be deemed to prejudice or constitute a waiver of any rights or remedies of the Department

8.15.2 The Department shall not be liable for any consequences of, or claims based upon any act of omission on the part of the Government

8.16 Payment to the consulting agency

8.16.1 Lumpsum remuneration

The Implementing agency's total remuneration shall not exceed the Contract price and shall be a fixed lump sum including all staff costs, sub consultants costs, printing, communications, travel, accommodation and the like, and all other costs incurred by the Implementing Agency in carrying out the said study.

8.16.2 Terms and Conditions for payment

Payments will be made to the account of the Implementing agency and according to the payment schedule stated in Section 4.

8.17 Indemnification

a. The Implementing agency shall indemnify, hold and save harmless and defend at his/her own expenses the department and its personnel from and against all suits, claims, demands and liability of any nature whatsoever, including without limitations, costs and expenses arising out of acts or omissions of the Implementing agency its employees and/or agents caused by or resulting from any operations(s) conducted by or on behalf of the Implementing Agency

b. The Implementing agency shall , at all times, further indemnify Department against any damages, cost, expenses and/or claims occasioned by any infringement(s) of Copyrights or Intellectual Property Rights (IPRs) of any third party occasioned by the services acts or commissions or omission or on behalf of the Implementing agency.

c. Any failure or delay on the part of any party to exercise right or power hereunder shall not operate as a waiver thereof

d. Neither this contract nor any rights under it may be assigned by either party without the express prior written consent of the other party. However upon assignment of the assignor's interest in this Contract, the assignor shall be released and discharged from its obligations hereunder only to the extent that such obligations are assumed by the assignee.

e. The Implementing agency shall at all times indemnify the department against any claims which may be made under the Workmen's compensation act, 1923 or any statutory modification thereof or otherwise for or in respect of any damages or compensation payable in consequence of any accident or injury sustained by any workmen, staff and agent of the Implementing agency or to the person whether in the employment of the Implementing agency or not

8.18 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 8.19 hereof.

8.19 Settlement of Disputes

8.19.1 Amicable Settlement

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

8.19.2 Dispute Settlement

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in Clause 8.19.3

8.19.3 Dispute Settlement Mechanism

8.19.3.1 Arbitration

Any disputes arising out of or in connection with this Contract shall be submitted to arbitration to a sole arbitrator, if attempts at settlement by negotiations and/or conciliation have failed. A person of appropriate seniority from the Department would be the Sole arbitrator. The arbitrator shall give its award on the costs, which may be divided between the parties. The decision rendered in the arbitration shall constitute final adjudication of the dispute. The venue of arbitration shall be at New Delhi in India. The arbitration shall be governed by the Arbitration and Conciliation Act 1996 as amended from time to time. In any arbitration proceeding hereunder:

- i. The English language shall be the official language for all purposes; and
- ii. The decision of the sole arbitrator shall be final and binding and shall be enforceable in any court of competent jurisdiction in New Delhi and the parties hereby waive any objections to or claims of immunity in respect of such enforcement.

8.19.3.2 Jurisdiction

In case of any dispute, jurisdiction shall be a court in the NCT of Delhi/New Delhi only.

Annex 1

(Contract for Execution on Stamp Paper of Rs.100/-)

CONTRACT

This contract is made at Delhi on this _____ day of _____(Month) of two Thousand Seventeen Between Department of Public Enterprises, Government of India (hereinafter called Department and [name of Selected Agency] (hereinafter called Agency) on the other part:

Whereas the Department has decided to assign the task of undertaking a Study to upgrade the Public Enterprises Survey to the Agency following the procedure laid down in proposal issued by the Department onth May, 2017.

The Agency undertakes to abide by the Terms and Conditions as laid down in the Proposal document and complete the study within time-schedule prescribed in the proposal issued by the Department on th May, 2017

IN WITNESS WHEREOF..... (Name and Designation of the Authorized representative of the Agency) for (Name of agency) and Shri R.C.Gautam, Dy. Director General (Survey) on behalf of Department of Public Enterprises hereunto have set their respective hand on the ____ day of _____ (month) of 2017 herein above written.

Signature on behalf of Agency

Signature on behalf of Department

In the presence of Witness:

1. Name & Address
2. Name & Address