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Section 1 - Letter of Invitation

Dated 24th July, 2020

Dear Sir/Madam,

The Department of Public Enterprises (*hereinafter called — Department*), is seeking engagement of services of a consultancy organization for support and advisory on various tasks and initiatives, invites proposal in a two-bid system (Part I: Technical Bid and Part II: Financial Bid) as per the attached RFP document.

2. The RFP documents can be downloaded from the website <https://eprocure.gov.in/epublish/app> and website of DPE (<https://dpe.gov.in>). The technical and financial bids, in prescribed formats and other documents as per the RFP should be submitted to Director (Management), Department of Public Enterprises. The last date of submission of bid w.r.t. RFP is **17th August, 2020 (Monday) by 5:00 PM.**
3. The pre-bid conference was held on **22nd June, 2020 (Monday) at 3:00 PM** through Video Conference. The organizations which obtain **75%** of marks based on the technical criteria prescribed would be treated as 'technically qualified'. The financial proposal(s) of only technically qualified organization(s) will be opened and will be evaluated following the Quality and Cost Based Selection (QCBS) with 80:20 ratio where, 80% weightage on technical score and 20% weightage on financial score.
4. The physical copies of the bid should be submitted at the following address before the submission deadline:

Shri Lokesh Bajpai
Director (Management)
Department of Public Enterprises, 4th Floor,
Block No. 14, CGO Complex, Lodhi Road,
New Delhi - 110003
5. The Department of Public Enterprises reserves the right to accept or reject all or any of the bids without assigning any reason whatsoever.

Yours sincerely,

(Lokesh Bajpai)
Director (Management)
Dept of Public Enterprises
011- 24360218
[lokeshbajpai\[dot\]ofb\[at\]nic.in](mailto:lokeshbajpai[dot]ofb[at]nic.in)

Section 2: Information to Consultants regarding the procedure for submission of proposal

2.1 General

This Request for Proposal seeks to engage the services of a consultancy organization for providing advisory support on various tasks and initiatives undertaken by DPE which broadly fall into following areas as per its assigned mandate.

- (i) Formulation of general policies on matters such as financial management, performance evaluation, HR, salary/remuneration, corporate governance, dispute resolution, procurement, etc. pertaining to Central Public Sector Enterprises (CPSEs)
- (ii) Memorandum of Understanding system for evaluation and monitoring the performance of CPSEs
- (iii) Measures aimed at improving performance of CPSEs in terms of profitability, productivity, corporate governance, CAPEX, R&D, Global outreach, import substitution, CSR, HRD, etc.
- (iv) Matters relating to revival, restructuring, and closure of CPSEs /subsidiaries of CPSEs
- (v) Autonomy, Financial and functional empowerment of CPSEs

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 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
- b. Financial Proposal

2.4.3 Technical Proposal

The Technical Proposal should not contain any pricing information whatsoever on the services offered. 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 accordingly be treated as such.

2.4.4 Financial Proposal

The Bidder shall indicate on the format, 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 include 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.

At any time during the currency of contract, if it is found that such similar services are being provided by the successful bidder at a price lower than the price chargeable under the contract in DPE to any other organization or any other Department of Government of India or any Department of any State Government, it should be immediately notified to the Department and the Contract value shall stand reduced, correspondingly.

2.4.5 Period of validity of proposals

Proposals shall remain valid up to three months from the last date of submission. 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(s) duly authorized to bind the Bidder to the contract. The latter authorization 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 initialed by the person or persons signing the Proposal.

2.4.7 Payment

The selected firm has to submit a Quarterly progress report along with proforma invoice upon achievement of the corresponding milestones, as per the payment schedule mentioned at Section 3. Payment will be released based on this report.

2.5 Submission of Proposals

2.5.1 Sealing and marking of proposals

- a) The Bidder shall seal the Proposals in one outer and two inner envelopes, as detailed below.

The outer envelope shall be addressed and delivered to:

Director (Management)
Department of Public Enterprises
Room No. 408, Block No. 14,
Lodi Road, New Delhi-110003

and, marked with – "*RFP for engagement of Consultants for Providing Advisory Services to Department of Public Enterprises.*"

- 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 the letter of invitation. 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.

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

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 Bidder's understanding of the requirements of the services, capability and approach for carrying out the tasks set forth through the nominated expert(s). 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 Terms of Reference (TOR).
- ii. Flow chart may be included to clearly indicate the involvement of the various agencies including those of bidder / 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 Bidder 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 Bidder. In this regard, unless the Bidder clearly states otherwise, it will be assumed that work required to implement any such improvements, are included in the inputs shown on the Bidder's Staffing Schedule.

2.6.5 Evaluation and comparison of Technical proposals

The technical evaluation shall be done by the Evaluation committee on the basis of the criteria specified in Section 5. Only the Bidders who have secured 75% 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's 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 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 Proposals 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 and informed to Bidders in advance.

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 is a discrepancy between words and figures, the amount in words will prevail.

2.6.9 Evaluation and comparison of Financial proposals

The representative from Department will read out aloud the name of the Bidder and the total price shown in the Bidder's Financial Proposal. This information will be recorded in writing by the Department representative. Evaluation Criteria to be adopted will be the Quality and Cost Based Selection (QCBS) with 80:20 ratio where, 80% weightage on technical score and 20% weightage on financial score. In case of a tie, the bidder with the higher Technical Score will be awarded the contract.

2.6.10 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 finally qualified. The notification of award will constitute the formation of the Contract.

2.6.11 Signing of Contract

At the same time as Department notifies the Successful Bidder that its Bid has been qualified, Department will send the Bidder the Contract Form. 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 Performance Security

Within 7 days of the receipt of notification of award from Department, the successful Bidder shall furnish a Performance Guarantee (10% of the bid amount) in accordance with the Conditions of this document. This guarantee will have to be paid in the form of Demand Draft / Banker's Cheque payable to DDO, DPE. or in the form of a Bank Guarantee (BG) from a scheduled commercial Bank in favour of DPE. The BG must be valid for a period of six month beyond the date of completion of contract. 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 validity of the Bid as prescribed.
4. If the information provided by the Bidder is found to be incorrect / misleading at any stage / time during the Bidding Process.
5. Bids not submitted in Two cover systems in sealed state (in two separate envelopes as prescribed).
6. Bid received by Department after the last date for receipt of Bids prescribed by Department.
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: Terms of Reference

3.1 Background

The Department of Public Enterprises is the nodal department for all the Central Public Sector Enterprises (CPSEs) and formulates policies pertaining to CPSEs. It lays down, in particular, policy guidelines on performance improvement and evaluation, autonomy and financial delegation and personnel management in CPSEs. It furthermore collects and maintains information in the form of Public Enterprise Survey on several areas in respect of CPSEs. In fulfilling its role, the Department coordinates with other Ministries, CPSEs, and concerned organizations.

3.2 Scope of Work

The services of a Consulting Organization are required to support and advise on following broad activities of DPE which could be undertaken individually or simultaneously in project mode. The main tasks and deliverables for these activities are enumerated in para 3.3.

- (i) Sectoral Benchmarking in Oil, Power & Coal Sector
- (ii) Measures aimed at improving performance of CPSEs in terms of profitability, productivity, CAPEX, Global outreach, import substitution, etc.
- (iii) Improvements in Memorandum of Understanding system for evaluation and monitoring the performance of CPSEs
- (iv) Autonomy, Financial and functional empowerment of CPSEs

In addition, the advice of consulting organization would also be solicited on various issues concerning management of CPSEs which are related to mandate of DPE.

3.3 Main Tasks/Deliverables

- (i) Conduct research (primary and/or secondary) on assigned topics and analyze the data.
- (ii) Present the research / views in form of presentation, notes, write-ups, etc.
- (iii) Devise recommendations for the Department for any new initiatives
- (iv) Develop execution plan for implementation of new initiatives
- (v) Ideate upgrades for existing initiatives
- (vi) Draft effective written communications for various stakeholders towards fulfillment of objectives and coordinate with various stakeholders from Department, various Ministries and CPSEs towards fulfillment of objectives and prepare status reports

3.4 Deliverables and Time Frames

The selected Consulting Organization shall provide the services of one full-time Consultant (on-site) for 10 working days a month to be located at DPE and commence work within a week of signing of the contract. In addition, a Project Manager will be posted full time at DPE. The tasks assigned to the Consulting Organization shall be completed within the time frame discussed with the Department. In case the Consultant is not able to comply with deliverables and time-frame discussed, the

Department reserves the right to request a replacement resource and / or impose a penalty of forfeiture of Performance Guarantee.

3.5 Payment Terms and Schedule

S. No.	Timeline	Percentage of total Payment payable
1.	Award of Contract (T0)	10%
2.	T1 = T0 + 3 months	10%
3.	T2 = T1 + 3 months	10%
4.	T3 = T2 + 3 months	10%
5.	T4 = T3 + 3 months	10%
6.	T5 = T4 + 3 months	10%
7.	T6 = T5 + 3 months	10%
8.	T7 = T6 + 3 months	15%
9.	T8 = T7 + 3 months	15%

It will be mandatory for the Bidders to indicate their bank account numbers and other relevant e-payment details so that payments could be made through ECS/EFT mechanism instead of payment through cheques, wherever feasible.

Note: The consulting firm has to submit a Quarterly progress report along with proforma invoice. Payment will be released based on this report.

3.6 Reporting Arrangements

The Consulting organization shall provide the services of Consultant and Project Manager at DPE as per arrangements enumerated under section 4 of RFP. They shall report to Secretary, Department of Public Enterprises; or any other official entrusted by Department to oversee the tasks allotted to him/her. The consultant (and his/her team) is required to liaise with the Department on a continuous basis to ensure the smooth working and functioning.

3.7 Duration of Contract

The contract will be valid for a period of two years from the date of award of contract.

Section 4: Key Personnel/Consultant

The Consulting organization is required to depute one Consultant with all required support services. He will be available in DPE for 10 working days in a month on fortnightly basis. The Consultant should have following experience and skill set.

- (i) He/She should have post graduate qualification in business management from an institute of repute such as IIM, etc. with good knowledge of and essentially 10 years of experience (15 years of experience desirable) in institutional/organizational level analysis, preferably in Government/Public Sector/Management of companies.
- (ii) He/She should be familiar with the role and ambit of DPE along with a broad understanding of various sectors in which CPSEs operate, Public Sector Management Systems, their structure and culture.
- (iii) He/she should be innovative, analytical and have ability to visualize new initiatives.
- (iv) He/she should have clarity of thought and impeccable written (including in English) and verbal skills.

In addition, a Project Manager will be posted full time at DPE having minimum 5 years of experience in institutional and organizational level analysis/ operations with MBA/CA degree. The other team members/experts having experience in areas specified in scope of work will be offsite for back end support to the consultant and Project Manager.

Section 5: Bid evaluation criteria and selection procedure

5.1 Technical Proposal Evaluation Criteria would be as under.

Particulars	Marks
Consultant (Key Personnel)- General qualifications, appropriate experience and track record, availability and certainty of obtaining named individuals etc. Special emphasis on CVs of the Consultant and Project Manager. The marking would be based on the quality of key personnel proposed only.	40
Previous Experience (during the last 5 years) of the Consulting Organization in similar projects in terms of scope, nature and value.	20
Support proposed to be provided by the Consulting Organization to ensure desired quality and robustness of services	30
Range of services and back-up support proposed to offered to the Department as indicated in the Presentation* & Technical Proposal	10
Total Marks	100

* All the bidders who submit their proposals would be invited for a Presentation. The Key Personnel 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 their approach to the assignment.

Section 6: Standard formats for technical and financial proposal

6.1 Format for Technical Proposal

The technical proposal should contain the following documents:

6.1.1 Cover Letter

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

- **Confirm that Consultant personnel listed in the technical proposal will be available at DPE 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 period as prescribed in the Proposal.
- 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.

6.1.2 Bidder Firm's profile, in General

A brief of the bidder firm's (Consulting organization) profile, capabilities, nature of business, etc.

6.1.3 Consultant/Key Personnel

Name & CV of the key personnel to work on this project (the CV should include name of personnel, nationality, profession/designation, whether employee of the firm, number of years with the firm, key qualifications, skills, date of birth, education and experience in the relevant fields. If the personnel is not a full time employee of the firm, to give an undertaking that he/she is available to undertake the tasks allocated to him / her in the technical proposal. The CV should be of maximum 5 pages and signed (by the key personnel) confirming that the information given in the CV is correct.

6.1.4 Experience of the Firm (Consulting organization)

The firm should give the details of the projects / assignments undertaken during the last 5 years similar to the requirement of the Department in terms of nature, size, and scope, 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. bidder, consortium member etc.)

6.1.5 Proposed Methodology and Work Plan

Details of how the key personnel carry out the assignment (local Vs. virtual), back-end support provided by the firm in terms of data, tools, and expertise, replacement of key personnel(s), if required, etc.

6.1.6 Matters not appropriate in Any Other Appendix

Matters such as Joint Ventures, Disclosures, and Conflict of Interest etc. may be mentioned in this Section.

6.2 Format for Financial Proposal

6.2.1 Bid Security

Bid Security of ₹2 lakh by way of Demand Draft / Banker's cheque payable in the name of DDO, DPE shall be furnished by the Bidder at the time of responding to the Proposal. Bid Security must be valid up to 90 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 should be part of Technical Proposal.

The Bid Security of the successful Bidder will be discharged upon the bidder executing the contract and furnishing the performance guarantee security.

6.2.2 Format for Submission of the Financial Proposal

To,
The Director (Management),
Department of Public Enterprises,
Ministry of Heavy Industries & Public Enterprises,
Block No. 14, CGO Complex,
Lodi Road, New Delhi

Dear Sir,

We, the undersigned, offer to provide the services of a Consultant onsite at DPE for tasks and initiatives outlined by DPE viz. Formulation of general policies on matters such as financial management, performance evaluation, HR, salary/remuneration, corporate governance, dispute resolution, procurement, etc. pertaining to Central Public Sector Enterprises (CPSEs), Memorandum of Understanding system for evaluation and monitoring the performance of CPSEs, Measures aimed at improving performance of CPSEs in terms of profitability, productivity, corporate governance, CAPEX, R&D, Global outreach, import substitution, CSR, HRD, etc., Matters relating to revival, restructuring, and closure of CPSEs /subsidiaries of CPSEs, Autonomy, Financial and functional empowerment of CPSEs etc. in accordance with DPE 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 inclusive 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 the letter of invitation.

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 ₹2 lakh (Rupees two Lakh only) to the Department in accordance with the Proposal Document.

The Bid Security in the form of * is attached.

We understand you are not bound to accept any Proposal you receive.

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 inclusive of all direct / indirect taxes, service tax and duties.

Section 7: Proposed contract terms

7.1 General Provisions

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

- i. "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;
- ii. "Contract" means the Contract signed by the Parties;
- iii. "Effective Date" means the date on which this Contract comes into force and effect pursuant to clause 7.7;
- iv. "Government" means Government of India;
- v. 'Local currency' means the Indian Rupees;
- vi. "Department" means Department of Public Enterprises, New Delhi
- vii. "Bidder" means any party that submits its bid for this project
- viii. "Successful Bidder" means the party that is offered to enter into contract after the selection process based on the eligibility criteria
- ix. "Consulting organization" is the party that has entered into the contract with the department after mutual acceptance of terms and conditions by both the parties
- x. "Member", in case the Successful Bidder consists of a joint venture of more than one entity, means any of these entities, and "Members" means all of these entities;
- xi. "Party" means the Department or the Consulting organization, as the case may be, and Parties means both of them;
- xii. "Personnel" means persons hired by the Consulting organization 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 6.1.3.
- xiii. "Services" means the work to be performed by the Consulting organization pursuant to the contract. The approach and methodology to be adopted by the Consultant for carrying out the assignment may be modified after mutual discussions with Department. The work plan as indicated by the Consultant may also get modified accordingly.
- xiv. "Sub-consultant" means any entity to which the Consulting organization subcontract part of the Services in accordance with the provisions of Clause 7.13.12 (a); and
- xv. "Third Party" means any person or entity other than the Government / Department and the Consulting organization

7.2 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 Consultant. The Consulting organization, 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 Consulting organization personnel and sub-

Consultants shall not be considered in any respect as being the employees or agents of Department or the Government.

7.3 Law Governing Contract

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

7.4 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.

7.5 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.

7.6 Taxes and Duties

The Consultant, 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 Consultant as per this contract.

7.7 Effectiveness of Contract

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

7.8 Expiration of Contract

Unless terminated earlier pursuant to Clause 7.12 this Contract shall expire when services have been completed and all payments have been made as per the payment schedule mentioned at Section 3.

7.9 Modification(s) in Contract

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.

7.10 Force Majeure

7.10.1. Definition

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.

Force Majeure shall not include:

- 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

- any event which a diligent Party could reasonably have been expected to both:
- take into account at the time of the conclusion of this Contract, and
- avoid or overcome in the carrying out of its obligations hereunder

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

7.10.2 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.

7.10.3 Measures to be taken

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. 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. The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

7.10.4 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 7.13.12(b).

7.10.5 Consultation

Not later than thirty (30) days after the Consulting organization, 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.

7.11 Suspension

The Department may, by written notice of suspension to the Consulting organization, suspend all payments to the Consulting organization hereunder if the Consultant organization fails 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 Consulting organization to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consulting organization of such notice of suspension.

7.12 Termination

7.12.1 By the Department

The Department may, by not less than seven (7) days' written notice of termination to the Consulting organization, 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 Consulting organization fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 7.11 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 Consulting organization 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 Consulting organization fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 7.19.3 hereof;
- d) if the Consultant submit to the department a statement which has a material effect on the rights, obligations or interests of the department and which the Consultant know to be false;
- e) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- f) if the Department, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- g) if the Successful Bidder/ Consulting organization, 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 bidders (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.

7.12.2 By the Consulting organization

The Consulting organization 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 Consulting organization pursuant to this Contract and not subject to dispute pursuant to Clause 7.19 hereof within seven days (7) days after receiving written notice from the Consulting organization 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 Consulting organization may have subsequently approved in writing)

following the receipt by the department of the Consultant's notice specifying such breach;

- c) if, 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 seven (7) days; or
- d) if the Department fails to comply with any final decision reached as a result of arbitration pursuant to Clause 7.19.3 hereof.

7.12.3 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 7.12.1 or 7.12.2 hereof, the Consulting organization 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 Consulting organization and equipment and materials furnished by the Department, the Consulting organization shall proceed as provided, respectively, by Clauses 7.13.14 or 7.13.15 hereof.

7.12.4 Payment upon Termination

In the event of such termination, the Consulting organization 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 Consultant to the Department. All advances paid to the Consulting organization 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 Consulting organization to the date of refund thereof.

7.12.5 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (d) of Clause 7.12.1 or in Clause 7.12.2 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 7.19 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

7.13 Obligation of the Consulting organization

7.13.1 Standard of Performance

The Consulting organization 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 Consulting organization 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 Consulting organization 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.

7.13.2 Fraud and Corrupt Practices

7.13.2.1 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.

7.13.2.2 Without prejudice to the rights of the Department under Clause 7.13.2.1 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.

7.13.2.3 For the purposes of this Clause, 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 arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

7.13.3 Encumbrances / Liens

The Consulting organization 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.

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

The Consulting organization shall not advertise or otherwise make public the fact that it is a service provider to the Department, nor shall the Consulting organization, 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.

7.13.5 Law Governing Services

The Consulting organization 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 Consulting organization and any Sub-consultants, comply with the Applicable Law.

7.13.6 Conflict of Interests

7.13.6.1 The Remuneration of the Consulting organization pursuant to Clause 7.16.1 hereof shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and, subject to Clause 7.13.6.2 hereof, the Consulting organization 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 Consultant 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.

7.13.6.2 If the Consulting organization, as part of the Services, have the responsibility of advising the Department on the procurement of goods, works or services, the Consulting organization 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 Consulting organization in the exercise of such procurement responsibility shall be for the account of the Department.

7.13.7 Confidentiality

The Consulting organization, 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 Department's business or operations without the prior written consent of the Department. The work done by Consulting organization, their sub-consultants and the personnel under either of them under this contract shall be treated as confidential, unless stated otherwise and not disclosed without the prior written consent of the Department

7.13.8 Liability of the Consulting organization

The Consultant's liability under this Contract shall be as provided by the Applicable Law. Maximum liability to be limited to value of the contract.

7.13.9 Insurance to be taken out by the Consulting organization

All costs involved in taking the insurance will be borne by the Consulting organization.

7.13.10 Reporting Arrangements

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

7.13.11 Accounting, Inspection and Auditing

The Consulting organization shall:

- i. 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. Permit the Consulting organization 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. Permit the Department to inspect the Consultant's accounts and records relating to the performance of the Consulting organization and to have them audited by auditors appointed by the department.

7.13.12 Consultant's Actions Requiring Department's Prior Approval

The Consulting organization 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 Consulting organization 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.

7.13.13 Reporting Obligations

The Consulting organization 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.

7.13.14 Documents Prepared by the Consulting organization 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 Consulting organization 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 Consulting organization to any person or organization without written approval of the Department.

- 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.

7.13.15 Equipment and Materials Furnished by the Department

Equipment and materials made available to the Consulting organization by the Department, or purchased by the Consulting organization 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 Consulting organization 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 Consultant, subject to normal wear and tear. The Consulting organization 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.

7.14 Consultant's Personnel and Sub-consultants

7.14.1 In general, the Consulting organization shall employ such qualified and experienced Personnel, as are required to carry out the said study.

7.14.2 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 Consulting organization, it becomes necessary to replace any of the Personnel, the Consultant 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 Consulting organization 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.

7.15 Right and Remedies of Department

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

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

7.16 Payment to the Consulting Agency

7.16.1 Lump-sum remuneration

The Consultant'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 Consultant in carrying out the said study.

7.16.2 Terms and Conditions for payment

- a) Payments will be made to the account of the Consulting organization and according to the payment schedule stated in Section 3.
- b) Payments will be made by the Department within sixty days of its approval of the quality of the deliverable from the Consulting organization against each milestone, as mentioned at clause 3.5 and on the receipt of the corresponding invoice from the Consulting organization specifying the amount due.

7.17 Indemnification

- a) The Consulting organization 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 Consultant its employees and / or agents caused by or resulting from any operations(s) conducted by or on behalf of the Consultant.
- b) The Consulting organization 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 Consulting organization.
- 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 Consulting organization 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 Consultant or to the person whether in the employment of the Consultant or not

7.18 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 7.19 hereof.

7.19 Settlement of Disputes

7.19.1 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.

7.19.2 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 7.19.3

7.19.3 Dispute Settlement Mechanism

7.19.3.1 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. Selection of arbitrator shall be made by mutual consultation. 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.

7.19.3.2 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 Twenty between Department of Public Enterprises, Government of India (hereinafter called Department and [name of Selected Consulting organization] (hereinafter called Consulting organization) on the other part:

Whereas the Department has decided to assign the task of providing advisory services to Consulting organization following the procedure laid down in proposal issued by the Department onth June/July, 2020.

The Consulting organization undertakes to abide by the Terms and Conditions as laid down in the Proposal document and complete the assigned task / study within time-schedule prescribed in the RFP issued by the Department onth June/July, 2020.

IN WITNESS WHEREOF..... (Name and Designation of the Authorized representative of the Consulting organization) for (Name of Consulting organization) and Shri Lokesh Bajpai, Director (Management) on behalf of Department of Public Enterprises hereunto have set their respective hand on the _____ day of _____ (month) of 2020 herein above written.

Signature on behalf of Consulting organization

Signature on behalf of Department

In the presence of Witness:

1. Name & Address

2. Name & Address