

**Indian Highways Management Company Limited
(IHMCL)**

*2nd Floor, MTNL Building, Sector 19, Dwarka,
New Delhi-110075*

**TRAFFIC SURVEY ON NATIONAL HIGHWAYS USING
PORTABLE AUTOMATIC TRAFFIC COUNTER &
CLASSIFIER (ATCC) SYSTEMS**

Ref: No. IHMCL/Portable-ATCC/2017

REQUEST FOR PROPOSAL (RFP)

31st May, 2017

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DISCLAIMER

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

This RFP is not an Agreement and is neither an offer nor invitation by the IHMCL to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in preparation of Technical and Financial qualification and making their financial offers (the “**Bids**”) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by IHMCL in relation to the project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for IHMCL, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP.

The assumptions, assessments, statements and information contained in the RFP, , may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

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

IHMCL also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. IHMCL may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that IHMCL is bound to select a Bidder or to appoint the Successful Bidder/JV, as the case may be, for the project and IHMCL

reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

SECTION - I

NOTICE INVITING TENDER

Bids are invited for the below mentioned work by Indian Highways Management Company Limited (IHMCL) from eligible bidders:

Name of the Work	EMD/ Bid Security	Document Fee(non refundable)	Contract period	Closing date and time
Engagement of Agencies for "Traffic Survey on National Highways using portable Automatic Traffic Counter & Classifier (ATCC) systems".	INR. 10,000,00/- (Indian Rupees Ten Lakhs only)	INR. 5000/- (Indian Rupees five thousand only)	2 Year 6 Months	Up to 18:00 Hrs. (IST) on 10.07.2017

The RFP document to be downloaded from the NHAI/IHMCL website indicated below. The Bids shall be liable for summarily rejection unless accompanied by the requisite EMD and bid document fee as indicated above. IHMCL shall not be responsible for any postal delay. Bids submitted after the closing date/time shall be summarily rejected.

IHMCL reserves the right to accept or reject any or all bids without thereby incurring any financial or other liability to the affected Bidders.

Address for communication and for bid submission:

COO
Indian Highways Management Co. Ltd. (IHMCL)
2nd Floor, MTNL Building,
Sector 19, Dwarka
New Delhi 110 075

Phone: +91-11-25074100 Ext.1273

Email: aksrivastava@nhai.org

Website: www.nhai.org

SECTION II

2.0 DEFINITIONS

In this document, the following terms shall have respective meanings as indicated:

- 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. **“Authorized Representative”** means any person/agency authorized by IHMCL.
- c. **“Bidder”** means an individual, a firm or JV or Consortium which participates in the tender and submits its proposal.
- d. **Client / Employer / Purchaser** shall mean the Indian Highways Management Co. Ltd.
- e. **“Commencement date”** means the date upon which the Contractor receives the notice to commence the work issued by the Employer.
- f. **“Contract”** means the agreement entered into between the Employer and the Contractor, as recorded in the Contract documents signed by the Parties, including all attachments and appendices thereto and all documents incorporated by references therein.
- g. **“IHMCL”** means Indian Highways Management Co. Ltd.
- h. **“Law”** or **“Legislation”** - shall mean any Act, notification, bye law, rules and regulations, directive, ordinance, order or instruction having the force of law enacted or issued by the Government of India or State Government or regulatory authority or political subdivision of government agency.
- i. **“Letter of Award (LOA)”** means the issue of a signed letter by the Employer of its intention to accept the offer of Successful Bidder and awarding the work mentioning the total Contract Value.
- j. **“Local Currency”** means the Indian Rupees
- k. **“MoRTH”** means Ministry of Road Transport and Highways
- l. **“NHAI”** means National Highways Authority of India, New Delhi.
- m. **“Party”** shall mean IHMCL or Bidder individually and **“Parties”** shall mean IHMCL and Bidder collectively.
- n. **“Personnel”** means persons hired by the Contractors as employees and assigned to the performance of the Services or any part thereof.
- o. **“RFP”** shall mean Request for Proposal, Tender Document or Bidding Document including the written clarifications &

Corrigendum/Addendum issued by IHMCL in respect of the RFP from time to time.

- p. **“Services”** means requirements defined in this Request for Proposal including all additional services associated thereto to be delivered by the Successful Bidder.
- q. **“Successful Bidder”** means the Bidder, who, after the complete evaluation process, gets the Letter of Award. The Successful Bidder shall be deemed as “Contractor” appearing anywhere in the document.

SECTION 3

INSTRUCTION TO BIDDERS

3.1 INTRODUCTION

IHMCL is a company incorporated under the Companies Act, 1956 with equity participation from NHAI, various concessionaires of NHAI projects and financial institutions for implementation of Electronic Toll Collection and other Intelligent Transportation System and allied works in road transport sector in India.

(Ministry of Road Transport & Highways (hereinafter referred to as “MoRTH”) has mandated IHMCL to carry out comprehensive traffic surveys at around 2300 locations on national highways in India, which would include conducting traffic surveys using portable Automatic Vehicle Counter and Classifier (ATCC) systems, and creating central repository of traffic data for auditing, compilation and analysis of data generated from traffic surveys.

In that direction, IHMCL invites bids from eligible agencies to conduct traffic survey using portable Automatic Traffic Counter-cum-Classifiers (ATCC) on sections of 2/4/6/8 lane National Highways at identified locations on National Highways in India as given in Annexure-1.

3.2 ELIGIBILITY CRITERIA

- 3.2.1 The applicant shall be an individual, a firm/Joint Venture/Company incorporated and registered in India under the Companies Act, 1956 or a consortium of the above.

(Documentary proof (copy of certificate of incorporation) shall be submitted as part of the eligibility documents)

A Bidder shall only be allowed to participate in the Bidding Process only through one particular Consortium or JV and not through any other consortium constituted for this Project, either directly or indirectly or through any of their associates. In case it is found during the bidding process that a member of a Consortium/JV is also a member of any other Consortium/JV, all member of the respective Consortiums/JVs shall be disqualified and their EMD shall be forfeited.

- 3.2.2 The average annual turnover should be more than Rs. 8 cr. (Rupees Eight Crore only) in the last consecutive three financial years.

(A certificate from the statutory auditor as proof for the above in the enclosed format)

- 3.2.3 The Bidder should have experience of undertaking minimum 400 nos. of 7 days traffic surveys on Highways using ATCC systems or setup ATCC systems in 3 different highway projects during the last five years ending March 2016.

The documentary proof in support of the experience(in the form of copy of work order/ completion certificate from its clients indicating the names of projects undertaken, scope of work of each project, name of client, start date, date of completion, value of the project etc.) shall be submitted as part of the eligibility documents. The details of the said proofs of experience should be submitted in the format prescribed below .

The Bidder shall also submit an undertaking in the format prescribed in this document.

Name of Work	Client	Survey Duration	Certificate Placed at

- 3.2.3.1 A subsidiary Company registered in India of a Foreign Company having requisite experience may also participate, however, for considering the experience of the Parent Company, the subsidiary Company registered in India should provide an undertaking from their Parent Company confirming thereby:

- (i) perpetual and unconditional access to expertise, personnel and facilities of the Parent Company to the Indian Company;
- (ii) sharing of risks and profits of the Indian Company by the Parent Company; and
- (iii) that the Parent Company has sufficient representation in the management of Indian Company to control the activities of such Indian Company.

In such case, only the experience and the details of the Parent Company will be considered.

- 3.3 The Applicant may be Joint Venture (JV)/ Consortium subject to fulfilling following conditions:

- (i) maximum number of partners in the JV or Consortium shall be **two**;

- (ii) the parties in a JV or Consortium shall be jointly and severally liable;
- (iii) the Lead Partner, shall be the most experienced firm amongst the parties in JV;
- (iv) the stakes of the Lead Partner in the JV or Consortium should be more than fifty percent (50%);
- (v) the eligibility/ experience of each partner of JV or Consortium shall be considered in proportion to their stakes in the JV/ Consortium; and
- (vi) the eligibility/ experience of any partner of JV or Consortium shall be considered only if the partner is proposed to have at least twenty six percent (26%) stakes in the JV/ Consortium.

3.3.1 The documentary proof in support of fulfilling the eligibility criteria by the Consortium/ JV, along-with copies of all documents as per requirements under Para 3.3 above shall be submitted as part of the eligibility documents.

3.3.2 Conflict of Interest

The bidder should not have a conflict of interest with the toll fee operators/contract on the concerned toll plaza site and the bidder should furnish an undertaking to this effect. For the purpose of clarity, “conflict of interest” as used herein shall mean that the bidder should not be a toll operating agency at any of the toll plazas established on the National Highways.

3.4 Power of Attorney

The Bidder should submit a notarised Power of Attorney in the format provided at 7.4 authorizing the signatory of the Bid to commit the Bidder.

In case the Bidder is a Consortium or a Joint Venture, the members thereof should furnish a Power of Attorney, **in the format provided at 7.4 (A)**, in favour of any one member and such member shall thereafter be identified as the Lead Member.

3.5 CONTENT OF TENDER DOCUMENT

3.5.1 The Tender document should be read in conjunction with any addenda or clarifications issued.

3.5.2 Bidders are advised to study the Bid Document carefully. Submission of the Bid will be deemed to have been done after careful study and examination of all instructions, eligibility norms, terms and requirement specifications in the tender document with full understanding of its implications. Bids not complying with all the given clauses in this tender document are liable to be rejected at the sole discretion of IHMCL. Failure to furnish all information required in the tender Document or submission of a bid not substantially responsive to the tender document in all respects will be at the bidder’s risk and may result in the rejection of the bid.

3.6 COST OF BIDDING:

The Bidder shall bear all costs associated with the preparation and submission of the Bid and IHMCL will in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

3.7 CLARIFICATION ON TENDER DOCUMENT

- 3.7.1 All Bidders are required to go through the tender document (RFP document) and submit their queries/ clarifications to IHMCL in writing within 10 days from the date of publication of this tender. IHMCL will neither acknowledge nor respond to any queries received after this date.
- 3.7.2 Pre-Bid meeting(s) will be held at NHAI's office, Dwarka on **11.06.2017** at **11.00 AM**
- 3.7.3 IHMCL will publish the clarifications to the bidders' queries on NHAI/MoRTH website only. No separate information will be sent to any individual Bidder in this regard.
- 3.7.4 Save and except as provided in this RFP, IHMCL shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.
- 3.7.5 Bids shall be deemed to be under consideration immediately after they are opened and until such time IHMCL makes official intimation of qualification / disqualification to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under this RFP, from contacting by any means, IHMCL and/ or their employees/ representatives on matters related to the Bids under consideration.

3.8 AMENDMENT OF TENDER DOCUMENT

- 3.8.1 At any time prior to the deadline for submission of bids, IHMCL, for any reason, whether at its own initiative or in response to the clarifications requested by prospective Bidders may modify the bidding documents by issuing amendment(s).

3.8.2 Any Corrigendum /Addendum thus issued shall be part of the bidding documents and shall be communicated on website www.ihmcl.com only. No separate information will be passed to any individual Bidders in this regard.

3.9 LANGUAGE OF BID

The Bid prepared by the Bidder, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and IHMCL shall be written in English language only.

3.10 SUBMISSION OF BID

3.10.1 The bids shall be submitted in a sealed envelope superscripted “Bid for conducting Traffic Survey using portable ATCC systems”, which should contain following sealed envelopes:

- (i) Application fee of Rs. 5,000 in the form of DD
- (ii) EMD of Rs. 10,00,000 (Rupees Ten Lakhs only) in the form of DD
- (iii) Technical Bid separate for each zone:

The technical bid shall contain the following:

- a. Index of documents with page number;
- b. A cover letter on the letter head of the Applicant in the prescribed format at 7.1
- c. Power of Attorney (in original) in favour of the authorized signatory of the bidder in the prescribed format at 7.4 and if applicable also as per format at 7.4 (A); the Power of Attorney should be executed on a non-judicial stamp paper of appropriate denomination and should be registered or duly notarized by a notary public.

Documents in support of justifying the eligibility criteria prescribed in this document.

- (iv) Financial Bid(s) for traffic survey separately for each zone superscribing “Financial Bid for Zone -----“

For the sake of administrative convenience the 2300 locations have been subdivided into 7 zones as per Annexure 1. Bidder shall submit the Bids separately, Zone wise.

3.10.2 For the avoidance of doubt, the Technical and Financial Bids should be placed in separate sealed envelopes superscribing “Technical Bid” and “Financial Bid” respectively, which shall be then placed in a sealed master envelope.

Technical Bid shall be submitted in hard bond cover duly indexed with all page numbers.

3.11 BID PRICE

- a) The bidder shall indicate the prices in Indian Rupees only.
- b) Prices quoted by the bidder shall be fixed for the entire **Contract period**. Bids submitted with adjustable price quotations will be rejected.

3.12 BID VALIDITY

- a) Bids shall remain valid for a period of **180 days** from the last date of bid submission. Any Bid valid for a shorter period shall be rejected as non-responsive.

- b) In exceptional circumstances, IHMCL may solicit Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing, however, no modification to such bid shall be permitted.

3.13 DOCUMENT FEE AND BID SECURITY

3.13.1 The Bidder shall furnish, as part of the Bid, Earnest Money Deposit (EMD) /Bid Security for an amount **INR 10,00,000/-** (Rupees Ten Lakhs only) The Successful Bidder's EMD will be returned, without any interest, upon the Successful Bidder signing the Contract and furnishing the Performance Security in accordance with the provisions thereof. IHMCL may, at the Successful Bidder's option, adjust the amount of EMD in the amount of Performance Security to be provided by him in accordance with the provisions of the Agreement.

3.13.2 **Document fee:** The document fee (non-refundable) of Rs. 5000/- (Rupees Five thousand only) in the form of a demand draft / pay order drawn in favour of "Indian Highways Management Company Ltd." on any Scheduled bank payable at New Delhi shall be submitted by the bidder.

3.13.2 The Earnest Money at the Bidder's option shall be in the form of a demand draft / pay order drawn in favour of "Indian Highways Management Company Ltd." on any Scheduled bank payable at New Delhi.

The Bid Security in any other form shall not be accepted and the bid shall be rejected.

3.13.3 deleted

3.13.4 Any bid not accompanied by an acceptable Earnest Money Deposit shall be rejected by the Employer as non-responsive.

3.13.5 The Earnest Money of unsuccessful bidders will be returned as promptly as possible, after expiry of the period of Bid Validity prescribed by the Employer.

3.13.6 The Earnest Money of the **Successful Bidder** will be discharged when the Bidder has furnished the required Performance Security and signed the Contract.

3.13.7 The Bid Security / Earnest Money will be forfeited:

- (i) if the Bidder withdraws or modifies the Bid during the period of Bid validity;
- (ii) if the Bidder does not accept the correction of the bid price, pursuant to [Clause 3.22](#);
- (iii) in the case of a Successful Bidder, if the Bidder fails within the specified time limit to

- a. sign the Agreement; and/or
 - b. Furnish the required Performance Security; or
- (iv) if the Bidder is engaged in corrupt or fraudulent practices.

3.14 ALTERNATIVE PROPOSALS BY BIDDERS

Bidder shall submit offers that fully comply with the requirement of the tender document including conditions of Contract. **Conditional offer or alternate offer** will **not be** considered further in the process of tender evaluation.

3.15 FORMAT FOR SIGNING OF BID

- 3.15.1 The Bidders are required to fill up and submit all the formats.
- 3.15.2 The Bid shall be signed by a duly authorized person to sign on behalf of the bidder. All pages of the bid except any un-amended printed literature shall be signed and sealed by the person signing the bid.
- 3.15.3 The Bid shall contain no overwriting, alterations or additions. If it is necessary to correct errors made by the Bidder, in which case such corrections shall be made by scoring out the cancelled portion, **writing the correction and signing** by the authorised signatory of the Bid.

3.16 FORMAT FOR SUBMISSION OF PROPOSALS

- 3.16.1 All the Bids (Technical & Financial bids) will have to be submitted **ONLY in HARD BOUND** (Hard bound implies such binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document) form with all pages sequentially numbered either at the top or at the bottom right corner of each page. It should also have an index giving page wise information of above documents. **Bids without hard bound will summarily be rejected. Spiral bound document shall be summarily rejected.**
- 3.16.2 The outer envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late”.
- 3.16.5 If these envelopes are not sealed and marked as required, IHMCL will assume no responsibility for the bid’s misplacement or premature opening.

3.17 DEADLINE FOR SUBMISSION OF BID

- 3.17.1 Complete Bid containing all envelopes as specified under Clause 3.10.1 must be received by the Employer at the address specified in the NIT on or before 10.07.2017 **up to 18:00 Hrs(IST)**. In the event of the specified date for the submission of bids being declared a holiday for the Employer, the Bids will be received up to the specified time on the next working day.
- 3.17.2 The Employer may, at its discretion, extend the deadline for submission of bids by issuing an amendment in which case all rights and obligations of the

Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline extended.

3.17.3 Offer by fax / e-mail will not be acceptable.

3.18 LATE SUBMISSION

Bids received after the deadline shall not be considered and shall be rejected and returned to the bidder unopened. No representation or communication would be entertained in this regard from any Bidder.

3.19 MODIFICATION AND WITHDRAWAL OF BIDS

3.19.1 Bidders may modify or withdraw their bid before the deadline.

3.19.2 The modifications or withdrawal shall be submitted in a separate sealed envelope and marked as 'Modifications or withdrawal' as appropriate.

3.19.3 No bid shall be modified or withdrawn after the deadline for submission of Bids. In case a Bidder withdraws its Bid after the deadline for submission, the EMD of such Bidder would be encashed.

3.20 OPENING OF BIDS

3.20.1 Technical Bids will be opened at Hrs(IST) on ----- at the address mentioned in NIT.

3.20.2 Bidder's authorised representative may attend the opening, and those who are present shall sign evidencing their attendance.

3.20.3 The Bidder's names, Bid modifications or withdrawals and such other details as IHMCL at its discretion, may consider appropriate, will be announced at the time of opening.

3.20.4 The Financial Bids of ONLY the Bidders who are short-listed after the technical evaluation would be opened.

3.20.5 The financial bids of short-listed bidders shall be opened in the Zone-wise sequence i.e. the financial bids of Zone-1 shall be opened first and thereafter that of Zone-2 and so on.

3.20.6 As the maximum number of Zones for work award to any bidder is limited to 3 (three), therefore, if any bidder happens to be lowest in 3 Zones in the sequence of opening of financial bids mentioned above, his financial bids of remaining Zones shall not be opened and shall be returned unopened after completion of bid process.

3.21 EXAMINATION AND EVALUATION OF BIDS

3.21.1

3.21.2 Any time during the process of evaluation, the Purchaser may seek for clarifications from any or all Bidders. Failure of any Bidder to provide the required clarifications, may result in rejection of its bid, in the sole discretion of IHMCL.

3.21.3 **Phase-1: Document Fee & EMD/Bid Security:** First, the envelope containing Document fee and Bid Security will be opened and if both are

found furnished by the bidders in the prescribed manner, then the second envelope containing Technical Proposal documents shall be opened. At any stage during the evaluation, if the EMD is found invalid, the respective Bidder's bid shall be summarily rejected.

3.21.4 **Phase-2: Technical Proposal Evaluation:**

The technical bids will be evaluated by an evaluation committee. The Bidder shall have to fulfil all the Eligibility Criteria as specified, in totality and submit all the required documents. These documents will be scrutinized in this phase of evaluation. Those bidders who do not fulfil the terms and conditions of Eligibility Criteria as specified in this tender will not be eligible for further evaluation.

Evaluation of Technical Proposals by IHMCL shall not be questioned by any of the Bidders. IHMCL may ask Bidder(s) for additional information, visit to Bidder's site and/ or arrange discussions with their professional, technical faculties to verify claims made in Technical Bid documentation from the Bidder on the already submitted Technical Proposal at any point of time before opening of the Financial Proposal.

3.21.5 **Phase-3: Financial Proposal Evaluation:**

The Financial Proposals of ONLY the Bidders who are short-listed in the technical evaluation will be evaluated. The Financial Proposal Evaluation will be based on the "Total Cost", which would be the total payouts, but will exclude the applicable taxes such as Value Added Tax, Service Tax, Sales Tax etc.

If there is a discrepancy between the unit price & the total price, the unit price shall prevail and IHMCL shall correct the total price. If there is a discrepancy between words & figures, the amount in words shall prevail. If the bidder does not accept the correction of errors, his bid shall be rejected and the EMD will be forfeited.

The Evaluation Committee shall determine if the financial proposal is complete and without computational errors. The proposal with the **lowest price** will be selected.

3.21.6 Tests of responsiveness

As a first step towards evaluation of bids, IHMCL shall determine whether each bid is responsive to the requirements of this RFP. A bid shall be considered responsive only if:

- (a) Technical and Financial qualification bid is received as per the format required under this RFP;
- (b) Application is accompanied by the EMD and the application fee as specified in Clause 3.10.1;
- (c) Application is accompanied by the Power of Attorneys in the format as required under this RFP;

- (d) Application is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 3.4, if applicable;
- (e) Bids contain all the information (complete in all respects);
- (f) Bid does not contain any condition or qualification;
- (g) it is not non-responsive in terms hereof.

3.21.7 IHMCL reserves the right to reject any bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by IHMCL in respect thereof.

3.22 **IMBALANCED BID**

If the Bid of the Successful Bidder is seriously imbalanced in relation to the **Employer's estimate** of the cost of work to be performed under the Contract, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of the proposed System. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in [Clause 3.30](#) be increased and an additional Performance Security may be obtained at the expense of the Successful Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the Successful Bidder under the Contract. The amount of the additional increased Performance Security shall be equal to the seriously imbalanced amount, which shall be final, binding and conclusive on the bidder.

3.23 **PROCESS TO BE CONFIDENTIAL**

Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a Contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the Successful Bidder has been announced. Any attempt by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.

3.24 **AWARD CRITERIA**

- 3.24.1 Subject to [Clause 3.26](#), the Employer will award the Contract to the Bidder whose Bid has been determined to be responsive to the Tender documents and who quoted the lowest.
- 3.24.2 Bidders can submit bids for all Zones, however, work of more than three (3) zones will not be awarded to any single Bidder.
- 3.24.3 The Employer reserves the right to order for increased or decreased quantity, by up to 30%, of traffic survey locations specified in the BOQ without any change in unit price.

3.26 IHMCL 'S RIGHT TO REJECT ANY OR ALL BIDS

IHMCL reserves the right to reject any Bid, and to annul the bidding process and reject all bids at any time, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected Bidder(s) of the grounds for such decision.

3.27 NOTIFICATION OF AWARD OF CONTRACT

3.27.1 Prior to the expiration of the Bid validity, the Employer will notify the Successful bidder that his Bid has been accepted. The Employer will mention the contact value in the letter of acceptance (LOA).

3.27.2 The Contract will incorporate all agreements between the Employer and the Successful Bidder. It will be signed by the Employer and the Successful Bidder after the performance security is furnished. The Employer will issue notice to commence the work after signing of Contract.

3.27.3 Upon furnishing of the Performance Security by the Successful Bidder, the Employer will promptly notify the other Bidders that their Bids have been unsuccessful. EMDs of unsuccessful bidders will be returned back to them after signing of Contract with the Successful bidder or after the expiry of the validity period of the Bids, whichever is earlier.

3.28 CONFIDENTIALITY

3.28.1 The Bidder shall keep confidential any information related to this tender with the same degree of care as it would treat its own confidential information. The Bidders shall note that the confidential information will be used only for the purposes of this tender and shall not be disclosed to any third party for any reason whatsoever.

3.28.2 Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising IHMCL in relation to, or matters arising out of, or concerning the bidding process. IHMCL will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. IHMCL may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or IHMCL or as may be required by law or in connection with any legal process or such information which would be available in public domain.

3.28.3 At all times during the performance of the Services, the Bidder shall abide by all applicable IHMCL / MoRTH's security rules, policies, standards, guidelines and procedures. The Bidder should note that before any of its employees or assignees is given access to the Confidential Information, each such employee and assignees shall agree to be bound by the term of

this tender and such rules, policies, standards, guidelines and procedures by its employees or agents.

3.28.4 The Bidder should not disclose to any other party and keep confidential the terms and conditions of this Contract, any amendment hereof, and any Attachment or Annexure hereof.

A copy of **Non Disclosure Agreement** as per the enclosed format at section -7 has to be signed by the Successful bidder during signing of the Contract.

The obligations of confidentiality under this section shall survive termination of the Contract.

3.28.5 Bidders shall not be under a declaration of ineligibility or blacklisting for corrupt and fraudulent practices by the Central Government, the State Government or any public undertaking, autonomous body, authority by whatever name called under the Central or the State Government.

3.29 SIGNING OF AGREEMENT

At the same time that the Employer notifies the Successful bidder that his bid has been accepted by issuance of the LOA, the Employer will direct him to submit the Performance Security and inform the bidder for signing of the Contract as per the terms mentioned in the LOA.

3.30 PERFORMANCE SECURITY

3.30.1 Within 15 (Fifteen) days of the receipt of the Letter of Award, the Successful Bidder shall submit an irrevocable and unconditional guarantee from a Scheduled Commercial Bank in India as performance security for the due performance of its obligations under the Contract in the form of Bank Guarantee for Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) in accordance with [clause 3.22](#) and relevant conditions of Contract.

3.30.2 The Performance Security shall be submitted in the form of Bank Guarantee issued in the name of Employer by a bank mentioned under [clause no: 3.31](#) as per the format given in [Section -7](#) and will be valid for **a period of 180 days after the expiry of Contract period and shall also have a minimum claim period of 1 year.**

3.31 BANK GUARANTEE (BG)

3.31.1 The Bank Guarantee in the name of the Employer issued by the following banks would only be accepted:-

- (i) State Bank of India or its subsidiaries,
- (ii) Any Indian Nationalised Bank
- (iii) IDBI or ICICI Bank
- (iv) A Foreign Bank (issued by a branch outside India) with a counter guarantee from SBI or its subsidiaries or any Indian Nationalised Bank.
- (v) Any Scheduled Commercial Bank approved by RBI having a net worth of not less than Rs. 500 crore as per the latest Annual Report of the Bank. In the case of a Foreign Bank (issued by a branch in India), the net worth in respect of the Indian operations shall only be taken into account.
- (vi) Export Import Bank of India

3.31.2 The acceptance of the Bank Guarantees shall also be subject to the following conditions:-

- (i) The capital adequacy of the Bank shall not be less than the norms prescribed by RBI (presently 9, with effect from 31st March, 2003, 10).
- (ii) The bank guarantee issued by a Cooperative Bank shall not be accepted.

3.32 CORRUPT OR FRAUDULENT PRACTICES

The Employer will reject a proposal for award and appropriate the EMD or the Performance Security, as the case may be, if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

The Employer will declare the firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract by IHMCL if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for the contractor, or during execution.

“Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in Contract execution.

“Fraudulent Practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid process at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

3.33. MISCELLANEOUS

3.33.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

3.33.2 IHMCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Bidder in order to receive clarification or further information;
- (c) retain any information and/ or evidence submitted to IHMCL by, on behalf of, and/ or in relation to any Bidder; and/ or
- (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

3.33.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases IHMCL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

3.33.4 If the Bidder has committed a transgression under this RFP such as to put its reliability or credibility into question, IHMCL shall be entitled to blacklist and put on holiday such Bidder for any future tenders/contract award process in its sole and absolute discretion.

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SECTION IV- CONDITIONS OF CONTRACT

4.1 CONDITIONS OF CONTRACT

These Conditions shall supplement or amend the other parts of the Bidding Documents and whenever there is a conflict; provision herein shall prevail over those in the other parts of the Bidding Documents.

4.2 GOVERNING LANGUAGE

All correspondence and other documents to be exchanged by the parties shall be written in the English language. The version written in English language shall govern its interpretation.

4.3 APPLICABLE LAW

Appropriate laws of Government of India shall apply.

4.4 INTERPRETATION

In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined.

4.5

4.6 The Bidders are expected to examine all terms and instructions included in the RFP Document. During preparation of the technical proposal, the bidders shall make their own assessment of staff to undertake the assignment.

4.7 PAYMENT TERMS

4.7.1 Payments will be made in Indian Rupees only

4.7.2 The payment shall be made after successful completion of Traffic Survey at the designated locations and submission of deliverables as per clause 5.5. The schedule of payment shall be as under:

(a) 100% payment normally within 60 days of submission of undisputed invoice subject to adjustment of applicable penalties within the said 60 days period, if any.

(b) IHMCL may, by written notice of suspension to the Contractor, suspend all payments to the Contractor hereunder if the Contractor's 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 Contractor to remedy such failure within a period not

exceeding seven (07) days after receipt by the Contractor of such notice of suspension.

4.8 PRICES

- a) Value Added Tax and other applicable taxes, both existing & future, such as Service Tax, Sales Tax, GST etc., which will be levied on the goods and services invoiced by the bidder to IHMCL, will be reimbursed on actual basis.
- b) IHMCL reserves the right to ask the Bidder to submit proof of payment against any of the taxes, duties, levies indicated.
- c) All payments shall be made subject to adjustment of applicable damages.
- d) No amount or cost shall be payable for holding discussion, as considered necessary by the Client, for any purpose with Client's Officials at Client's Head Office or elsewhere, prior, during or after the conduct of an assignment.
- e) Prices quoted by the bidder shall be fixed for the entire **Contract period**.

4.9 START OF ASSIGNMENT

- 4.9.1 Immediately upon issuance of the letter of commencement of works, the Contractor shall commence traffic survey assignment.
- 4.9.2 The Contractor shall complete two traffic survey assignments at each location in a year starting from the date of commencement. For this purpose, the Contractor shall have sufficient teams to complete the traffic surveys at the locations coming under the zones awarded to him. Non-fulfilment of this requirement or delay in completion of traffic survey assignments would attract penalties.

4.10 DAMAGES

- 4.10.1 Delay in commencement of assignments (as per 4.9.1): Damages of Rs. 5000/- per day upto to a maximum of Rs. 50,000/- shall be imposed.
- 4.10.2 Delay in submission of survey reports: Damages of Rs. 5000/- per day upto to a maximum of Rs. 50,000/- per assignment shall be imposed.
- 4.10.3 Non-completion of traffic survey assignments in a year: Each number of traffic survey shortfall in a year shall attract Damages of Rs. 1,00,000 (Rupees One Lakh only).

4.10.4 IHMCL will conduct random checking of the traffic survey report(s). In case the accuracy levels fall below the specified limit indicated in Section V, Damages shall be imposed as below:

- (a) 1st attempt: The Contractor will be asked to correct the report. Damages of Rs. 5000/- per day per assignment will be imposed after 02 days from the date of notice for correction till receipt of corrected report.

The contractor shall provide the corrected report(s) in the manner and quantity specified in “Deliverables” clause 5.5.

- (b) 2nd attempt: If IHMCL finds any inaccuracies in the corrected report, no payment will be made for that assignment

4.10.5 In case IHMCL is of the view that the delay is due to reasons beyond the control of the agency, suitable extension of time may be granted to the Successful Bidder with or without imposing any Damages on such Successful Bidder in the absolute discretion of IHMCL.

Damages shall be payable by the Successful Bidder within 5 days of imposition thereof by IHMCL, failing which the same shall be deducted from the payments to be made to the Successful Bidder or from the Performance Security as deemed appropriate by IHMCL.

The Damages payable, as set forth in this Agreement, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”).

4.11 CONTRACT PERIOD

The total contract period shall be for a period of **Two Years and Six Months**, however the IHMCL shall review the performance of the Contractor after completion of the abovementioned period and accordingly renew the Contract on an yearly basis thereafter, if deemed appropriate in the sole discretion of IHMCL (the “Contract Period”).

4.12 INSURANCE

The Contractor shall effect and maintain at its own cost, during the Contract period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to cover third party claims and Force Majeure events.

4.13 FORCE MAJEURE

- (i) Neither party shall be responsible to the other for any delay or failure in performance of its obligations due to any occurrence of a Force Majeure event which is beyond the control of any of the Parties, including, but without limited to, fire, flood, explosion, acts of God or any governmental body, public disorder, riots, embargoes, or strikes, acts of military authority, epidemics, strikes, lockouts or other labour disputes, insurrections, civil commotion, war, enemy actions.
- (ii) If a Force Majeure arises, the Contractor shall promptly notify IHMCL in writing of such condition and the cause thereof. Unless otherwise directed by IHMCL, the Contractor shall continue to perform his obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. The Parties shall be excused from performance of their respective obligations in whole or part as long as such Force Majeure event continues to prevent or delay such performance by the Parties. However, in case such Force Majeure event lasts for a continuous period of 60 days, either Party may terminate the Contract.

4.14 INDEMNIFICATION

- 4.14.1 The Service Provider shall indemnify, defend, save and hold harmless, IHMCL and MoRTH and their officers, servants, agents (hereinafter referred to as the “**IHMCL Indemnified Persons**”) against any direct loss, damage, claims, cost and expense of whatever kind and nature (including without limitation, legal fees, claims and expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of or are based upon any order passed by any statutory authority including Courts, tribunals or other judicial/quasi judicial authorities, on account of breach of the Service Provider’s obligations under this Agreement or any other related agreement or otherwise, any fraud or negligence attributable to the Service Provider or its Agents under contract or tort or on any other ground whatsoever, all eventualities of theft, dacoity, robbery, etc., except to the extent that any such suits, proceedings, actions, demands and claims has arisen due to any breach or default of this Agreement on the part of the IHMCL Indemnified Persons.
- 4.14.2 The Service Provider shall indemnify IHMCL Indemnified Persons from all legal obligations of its professionals deployed. The IHMCL Indemnified Persons also stand absolved of any liability on account of death or injury sustained by the Service Provider’s staff during the performance of their work and also for any damages or compensation due to any dispute between the Service Provider and its staff.
- 4.14.3 In addition to the aforesaid, the Service Provider shall fully indemnify, hold harmless and defend the IHMCL Indemnified Persons from and against any and all direct loss, damage, cost and expense of whatever kind and nature

(including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Service Provider or by the Agents in performing the Service Provider's obligations or in any way incorporated in or related to this Agreement. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Service Provider shall make every reasonable effort, by giving a bond (of the type and value as required) or otherwise, to secure the revocation or suspension of the injunction or restraint order and continue to perform its obligations hereunder. If the Service Provider is unable to secure such revocation within a reasonable time, it shall, at its own expense, and without impairing the Specifications and Standards, shall rectify such defaults and shall also be liable for damages to IHMCL for the corresponding loss during the interim period on this account.

4.14.4 The provisions of this Clause 4.14 shall survive Termination.

4.14.5 The remedies provided under this Clause 4.14 are not exclusive and shall not limit any rights or remedies that may otherwise be available to IHMCL Indemnified Party at law or in equity.

4.15 TERMINATION

4.15.1 **ON EXPIRY OF THE CONTRACT:** Subject to the condition mentioned under Clause 4.11, the Agreement shall be deemed to have been automatically terminated on the expiry of the Contract Period unless the IHMCL has exercised its option to further renew the Contract Period in accordance with the provisions, if any, of the Contract.

4.15.2 **ON ACCOUNT OF FORCE MAJEURE:** Either party shall have the right to terminate the Contract on account of Force Majeure, as set forth in [clause 4.13](#).

4.15.3 **ON BREACH OF CONTRACT:** The Employer may terminate the Contract if the Contractor causes a fundamental breach of the Contract.

Fundamental breach of Contract include, but shall not be limited to, the following:

- a) The Contractor fails to carryout any obligation under the Contract.
- b) The Contractor without reasonable excuse fails to commence the work in accordance with [clause 4.9](#).
- c) Has failed to furnish the required securities or extension thereof in terms of the Contract.
- d) the Contractor stops work and the stoppage has not been authorized by the Employer;
- e) the Contractor at any time during the term of the Contract becomes **insolvent** or makes a voluntary assignment of its assets for the benefit of creditors or is adjudged bankrupt
- f) If the Contractor, in the judgement of the Employer, has engaged in the corrupt or fraudulent practice in competing for or in executing the Contract.
- g) The Service Provider sub-contracts any assignment under this Agreement.
- h) Any other fundamental breaches as specified in the Tender.

4.15.4 Notwithstanding the above, the Employer may terminate the Contract for convenience by giving 30 days prior notice without assigning any reason.

4.15.5 Upon Termination (except on account of expiry of Term of this Agreement or Force Majeure), the IHMCL shall be entitled to:

- (i) appropriate the entire Performance Security or part thereof as Damages; and
- (ii) Debar/Blacklist the Service Provider from participating in any other project/assignment/work of IHMCL for a period as determined by IHMCL in its sole discretion.

4.16 ARBITRATION/ RESOLUTION OF DISPUTES

4.16.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to the Contract (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 4.16.2.

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

4.16.3 Mediation

In the event of any Dispute between the Parties, either Party may call upon the Chairman in case of IHMCL or his nominee and the Proprietor/Chairman/CEO, as the case may be, in case of the Contractor to mediate in arriving at an amicable settlement thereof. If after expiry of 30 days of receipt of the documents in relation to the Dispute or such extended period as the Parties may agree in writing, the Dispute remains unresolved, the Parties shall attempt to resolve the dispute through conciliation under the Arbitration and Conciliation Act, 1996, as per Clause 4.16.4.

4.16.4 Conciliation

The Parties shall attempt to select one of the experts from the list of empanelled arbitrators of the Society for Affordable Redressal of Disputes (“SAROD”) as the Conciliator to mediate and assist the Parties in arriving at an amicable settlement thereof. If the Parties fail to agree on nominating a conciliator within 15 (fifteen) days or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 60 (sixty) days of the notice in writing referred to in Clause 4.16.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 4.16.5.

4.16.5 Arbitration

Any Dispute which is not resolved amicably by conciliation, as provided in Clause 4.16.2, shall be finally settled by arbitration as set forth below:

- i. The Dispute shall be referred to the SAROD. The dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time.
- ii. The seat of Arbitration shall be New Delhi and the language for all documents and communications between the parties shall be English.
- iii. The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be borne by each party itself.

4.16.6 The arbitrators shall make a reasoned award (the “**Award**”).

4.16.7 The Contractor and IHMCL agree that an Award may be enforced against the Contractor and/or IHMCL, as the case may be, and their respective assets wherever situated.

4.16.8 Adjudication by Regulatory Commission or Authority

In the event of constitution of a statutory Regulatory Commission or Authority with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 4.16.3, be adjudicated upon by such Regulatory Commission or Authority in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be

construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

4.16.9 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending any proceedings hereunder. Further, the Parties unconditionally acknowledge and agree that notwithstanding any Dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

4.17 Appropriation of Performance Security

4.17.1 Upon failure of the Service Provider to commence the services, for any reason whatsoever, within the period set forth in this Agreement or the extended period thereunder, the IHMCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to levy Damages as per Clause 4.10 hereinabove.

4.17.2 The IHMCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages or any other amounts payable to IHMCL under this Agreement as and when such Damages or other amounts become due and payable. Upon such encashment and appropriation from the Performance Security, the Service Provider shall, within 10 days thereof, replenish, in case of partial appropriation, to its original level of the amount guaranteed under the Performance Security, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security, as the case may be failing which IHMCL shall be entitled to terminate this Agreement in accordance with 4.15 hereof.

4.18 MISCELLANEOUS

4.17.1 Standard of Performance

The agency shall undertake to perform the services with the highest standards of professional and ethical competence and integrity which are, amongst others, ESSENCE of this assignment. Keeping in view the sensitivity involved in such assignments, the personnel deployed should maintain confidentiality/integrity at all times and should work in a professional manner to protect the interest of NHAI. The firm shall promptly replace any personnel deployed under this contract that NHAI considered unsatisfactory.

4.17.2 Representations and Warranties of the Parties

The Parties represents and warrants to the each other that:

- (a) it is duly organised and validly existing under the applicable laws, and has full power and authority to execute and perform its obligations under this Contract and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under applicable laws to authorise the execution and delivery of this Contract and to validly exercise its rights and perform its obligations under this Contract;
- (c) this Contract constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Contract will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) the information furnished in the Bid and as updated on or before the date of this Contract is true and accurate in all respects as on the date of this Contract;
- (e) the execution, delivery and performance of this Contract will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association [or those of any member of the Consortium] or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (f) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Contract or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Contract;

4.17.3 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Contract constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Contract or any transaction contemplated by this Contract, no immunity (whether

by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

4.17.5 Waiver

4.17.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Contract:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Contract;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Contract in any manner.

4.17.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Contract or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

4.17.6 Liability for review of Documents

Except to the extent expressly provided in this Contract:

- (a) no review, comment or approval by IHMCL, any document submitted by the Contractor nor any observation or inspection of the Services performed by the Contractor nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Contract, the Applicable Laws and applicable permits; and
- (b) IHMCL shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

4.17.7 Exclusion of implied warranties etc.

This Contract expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

4.17.8 Survival

4.17.8.1 Termination shall:

- (a) not relieve the Contractor or IHMCL, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Contract expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

4.17.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination

4.17.9 Entire Agreement

This Contract, the RFP and the Sections hereto together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Contract are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Proposals shall be deemed to form part of this Contract and treated as such.

4.17.10 Severability

If for any reason whatever any provision of this Contract is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Contract or otherwise.

4.17.11 No partnership

This Contract shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

4.17.12 Third parties

This Contract is intended solely for the benefit of the Parties and their respective successors and permitted assigns and nothing in this Contract shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Contract.

4.17.13 Successors and assigns

This Contract shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

4.17.14 Notices

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

- (a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to IHMCL; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Contractor may from time to time designate by notice to IHMCL;
- (b) in the case of IHMCL, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [•] of IHMCL with a copy delivered to the Authority Representative or such other person as IHMCL may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party given in accordance herewith shall be deemed to have been delivered when in

the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

4.17.15 Sub-Contracting

The Service Provider shall not sub-contract any assignment to a third party. The Service Provider shall remain solely responsible for all works under this Agreement.

4.17.16 Confidentiality of the Assignment/Findings

The agency shall not, during the term of assignment and within two years after its expiration, disclose any propriety or confidential information relating to the services, this assignment or the NHAI's business or operations without prior written consent of NHAI.

4.17.17 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties as the case may be, has been obtained.

4.17.18 Language

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

4.17.18 Counterparts

This Contract may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Contract.

----- XXXX -----

SECTION –IVA
FORM OF CONTRACT

Conducting Traffic Surveys on National Highways in [•] using Portable Automatic Traffic Counter & Classifier (ATCC) Systems.

This CONTRACT (hereinafter called the “**Contract**”) is made on the ----- day of the month of ----- 2017,

BETWEEN

Indian Highways Management Company Limited (IHMCL), constituted under Companies Act, 1956 and having its registered office at NHAI, G 5 & 6, Sector 10, Dwarka, New Delhi-110075 and Corporate Office at 2nd Floor, MTNL Building, Sector-19, Dwarka, New Delhi - 110075 (hereinafter referred to as the "**IHMCL**"), which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and assigns) of the FIRST PART.

AND

[•] a company/firm incorporated [under the provisions of the Companies Act, 1956/2013] and having its registered office at [•] (hereinafter referred to as the "**Contractor**" or the “**Service Provider**” which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and assigns) of the OTHER PART.

WHEREAS

- (A) IHMCL is a company incorporated under the Companies Act, 1956 with equity participation from NHAI, concessionaires and financial institutions for implementation of Electronic Toll Collection and other Intelligent Transportation System and allied works in road transport sector in India.
- (B) Ministry of Road Transport & Highways (hereinafter referred to as "Ministry" or "MoRTH") has mandated IHMCL to carry out comprehensive traffic surveys on all National Highways, which would includes conducting traffic surveys at around 2300 locations using portable Automatic Vehicle Counter and Classifier (ATCC) systems, and creating central repository of traffic data for auditing, compilation and analysis of data generated from traffic surveys.
- (C) In this regard, IHMCL had invited bids (hereinafter referred to as the "**Request for Proposal**" or "**RFP**") for engagement of Agencies for "Traffic Survey on National Highways Using Portable Automatic Traffic Counter & Classifier (ATCC) Systems" (hereinafter referred to as the "**Services**").
- (D) The Contractor, in the ordinary course of its business, is engaged in providing similar services to their clients, and had represented to IHMCL through their

bid against the RFP (hereinafter called the "**Bid**") that they have the required professional skills, personnel and technical resources to undertake the Project;

- (E) After evaluation of the bids received, IHMCL had accepted the Bid of the Contractor and issued its Letter of Award No. dated (hereinafter called the "**LOA**") to the selected bidder requiring, inter alia, to convey its acceptance to the LOA within [•] days of the date of issue thereof.
- (F) By its letter dated, the Contractor has conveyed its acceptance of the LOA to IHMCL including the obligation to enter into this Contract pursuant to the LOA.
- (G) The Contractor, in accordance with the terms of the LOA and the RFP, has also submitted the Performance Security in the form of Bank Guarantee / DD Ref. _____ dated _____ for Rs. [•] drawn on _____ as per prescribed format, within 15 days of receipt of the LOA.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a). The RFP;
 - (b). [•]
 - (c). [•]
 - (d). [•]
- 2. The mutual rights and obligations of IHMCL and the Contractor shall be as set for the in the Contract; in particular:
 - (a) The Consultants shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) Client shall make payments to the Consultants in accordance with the provisions of the Contract.

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

FOR AND ON BEHALF OF
(Indian Highways Management
Company Limited)

Witness

- 1. Signature
Name
Address

By
Authorised Representative

2. Signature
Name
Address

FOR AND ON BEHALF OF
(Contractor)

Witness

1. Signature
Name
Address

By
Authorised Representative

2. Signature
Name
Address

SECTION -V

SCOPE OF WORK

5.1 Background

The Ministry of Road Transport & Highways (MORT&H) is responsible for the development, maintenance and management of National Highways and for matters connected or incidental thereto.

MORT&H officiates from Transport Bhawan located at 1, Parliament Street, New Delhi. MORT&H also has Regional offices in most of the State Capitals. Issues relating to Planning for National Highways are being done by MORT&H and the execution of work at site are being done through agencies namely, National Highways Authority of India (NHAI), National Highway (NH) wing of State Public Works Department (PWD), Border Roads Organisation (BRO) etc.

NHAI got a new Company “Indian Highways Management Company Ltd. (IHMCL)” incorporated with equity participation of NHAI (41.38%), Concessionaires (33.81%) and Financial Institutions (24.81%) for implementation of Electronic Toll Collection (ETC) and other Intelligent Transportation System (ITS) / transportation related activities on highways in India.

MORT&H assigned IHMCL for conducting traffic survey at around 2300 locations on national highways in India. In that direction, IHMCL invites bids from eligible agencies to conduct traffic survey using portable Automatic Traffic Counter-cum-Classifiers (ATCC) on sections of single/ intermediate /2/4/6 lane National Highways at identified locations on National Highways in India as given in Annexure-3.

5.2 Traffic Survey Assignment

- 5.2.1 Counting and classification of vehicles passing on a designated section of the National Highway with the help of portable **Automatic Traffic Counter & Classifier (ATCC)** Systems for a minimum continuous period of 7 days round the clock. Also, the agency shall record video of the movement of vehicles with the date/timestamp during the same period.

The ATCC data & Video shall be captured /recorded on real-time basis.

- 5.2.2 Within 30 days from the date of signing the Contract, the Contractor shall commence the assignments at the specified location(s). After collection of 7 days traffic data at each location, the agencies shall submit survey reports within 15 days after validation / correction.
- 5.2.3 Separate setup of ATCC and Videography shall be provided for upstream and downstream traffic on the project highway.

- 5.2.4 At times, traffic survey of more or less than 7 days period may be required. In such cases, payments shall be governed on pro-rata basis.
- 5.2.5 Total no. of assignments would be as per BOQ of respective Zones. Traffic surveys shall be conducted twice every year at each location. However, depending upon the need and directions of IHMCL/MoRTH, actual number of assignments may increase or decrease to the extent of 30%.

5.3 **Key Personnel**

- 5.3.1 The agency shall deploy one Traffic Expert for each assignment and one Team Leader for the purpose of establishing coordination with IHMCL, who should be employed with the agency / firm whose CV shall be approved by IHMCL. The Team Leader shall be overall in-charge of traffic surveys and shall interact with IHMCL with reference to each assignment and shall also be responsible for certification of report of each assignment. He should be Graduate in Engineering with minimum 3 years of specific experience in undertaking and analysis of traffic surveys on highways. The Traffic Expert shall be available on each site during all traffic survey assignments and shall be responsible and accountable to all data being captured by the ATCC systems.
- 5.3.2 The Contractor shall be fully responsible to provide security to their persons deputed on traffic survey site including their insurance, wherever required under the law or considered prudent.
- 5.3.3 The Contractor shall submit proof of presence of Traffic Expert in the format acceptable to IHMCL at the beginning of each assignment.

5.4 **ATCC System**

- 5.4.1 The Contractors may select the portable ATCC system based on any sensor technologies.
- 5.4.2 The final uploaded data on the system should meet the following accuracy levels.
- (i) Classification of vehicles : better than 95%
 - (ii) Counting of vehicles : better than 98%

For verification of the above mentioned accuracy levels, IHMCL will compare the ATCC data with the video captured.

- i) ATCC system shall be provided for identifying and recording all types of vehicles on the highway for data collection.
- ii) The system shall be capable of classifying any other vehicle category as per user needs.
- iii) Vehicle classification should be user selectable based on length of vehicle and number of axles and/or detuning of the loop inductivity.

- iv) The system shall be robust and be capable of operating under all weather conditions.
- v) The system shall have the capability of accommodating multiple installations through installation of detectors/sensors taking inputs from portable sensors and should be modular in design.
- vi) The sensors may be a combination of piezo-electric sensors and inductive loops, enabling counting/classification of 2 lane/4 lane/6 lane/8 lane traffic with or without lane discipline of vehicular traffic.
- vii) The system should be able to count and classify vehicle by each lane.
- viii) Should be capable of producing vehicle level reports so that vehicle count and classification, if required, can be cross checked with video easily.
- ix) The system shall be capable of recording, for later analysis, on an individual vehicle basis, time/date, speed, direction. Number of axles, axle spacing, and site identification.
- x) The indicative classification of common vehicles in India, based on wheel base, is as given below:

	Type of Vehicle	Probable Range of Wheel Base (mm)
1.	Two wheelers (motorised) Scooters, Mopeds, Motor Cycle	0-135
2.	Three Wheelers (Auto/Tempo)	1400-1800
3.	Four Wheelers (Cars, Jeeps, Vans, etc.)	1801-2675
4.	Light Motor Vehicles	2690-3400
5.	Trucks/Buses	3401-5600
6.	Multi Axle Vehicles	5000-18000

- xi) The ATCC, however, shall have the capabilities to count and classify vehicles as per the following minimum classifications:

S. NO.	Vehicle Category	
1)	Car, Jeep and Van, Mini LGV	
2)	Two Wheelers	
3)	Auto Rickshaw	
4)	Buses	Minibus
5)		Standard Bus/2 Axle Truck
6)	Goods Vehicle	LGV
7)		3-Axle Truck
8)		MAV upto 6 axles
9)		MAV more than 6 axles
10)	Heavy Machinery & Earth Moving Equipment	
11)	Tractor	Without Trailer
12)		With Trailer
13)	Slow Moving Vehicles	Cycle
14)		Cycle Rickshaw
15)		Animal Cart

Also, IHMCL may conduct audit of raw ATCC data (before validation / correction by the Service Provider) on sampling basis. If the Classification and Counting accuracies found below 90% or 95% respectively, then no payment will be made for that assignment

5.4.3 **Video Camera:** Colour video camera with the IR flash capable of capturing video during night/dark. Captured video should enable employer to identify and classify vehicles visually. Camera must be installed in such a way so that ATCC equipment must be visible in the recording also captured video must have Location name, date of survey, Latitude Longitude.

- i) Video camera shall be mounted in such a way that occlusions do not generally obstruct view of the traffic.
- ii) Separate cameras to capture upstream and downstream traffic shall be used. There will be total four cameras (two in each direction of traffic, one on the median and another towards edge of road) alongwith one PTZ camera in the median to capture incident(s) during traffic survey.
- iii) The mounting height shall be such that the axle configuration of the vehicle shall be clearly visible.
- iv) For videography, colour video camera with IR flash capable of capturing video during night/dark shall be used. The traffic in the captured video during night time should be clearly visible for counting, classification and cross checking.
- v) It shall be ensured that no vehicle is stopped/parked in front of the camera obstructing view of the camera.
- vi) Camera angel shall be such that the headlight glare from vehicles does not impact quality of the video.
- vii) The camera to be used shall have a resolution of at-least 640x480 pixels and shall have frame rate of 25FPS. In case IR enabled camera is used, the IR range shall be at-least 15m so that direction wise traffic from roadside can be captured without loss of quality. Cameras to be used shall have weather proof housing/casing so that video capture is uninterrupted by weather conditions.

5.4.4 **The System:**

- a) should be able to work as true Multi-lane free flow operation in which the Lane crossing classification should be possible together with simultaneous passages. The system should be capable of recognizing the flow of traffic in either direction.
- b) shall separately detect and classify vehicles passing at the same time – side by side
- c) Trailers with the shafts shall be detected and classified as one vehicle and not classified and counted as separate vehicles.
- d) should be able to classify and count standard vehicles travelling up to 100 kmph.

5.5 **DELIVERABLES:**

- 5.5.1 The report formats shall be finalized after discussions with all the agencies and Control Centre (CC) service provider and shall be standardized by IHMCL, which may be modified from time to time based on the requirement.
- 5.5.2 The Traffic Survey data shall be submitted within 15 working days of completion of the assignment at the site and will constitute the basis for the payments. The report should meet the objectives set-out in the Scope of Work. T = Traffic Completion Date

Sl. No.	Deliverables	Time Line w.e.f	Remark
1.	Submission of Raw Data from Logger	T + 4 days	
2.	Submission of Final Data after correction	T + 15 days	

- 5.5.3 In addition, traffic survey data and video with analysis shall also be submitted to IHMCL in electronic storage media viz. portable HDD/ DVD media for each assignment.
- 5.5.4 Each agency need to install video storage server with adequate capacity to store the video of each location over Contract Period.
- 5.6 Classification of vehicles

The ATCC system shall classify the vehicles as defined as under:

S. NO.	Vehicle Category		PCU Factors
1)	Car, Jeep and Van		1
2)	Two Wheelers		0.5
3)	Auto Rickshaw		1
4)	Buses	Minibus	1.5
5)		Government Bus	3
6)		Private Bus	3
7)		School Bus	3
8)	Goods Vehicle	Mini LGV	1
9)		LGV (4 wheeler)	1.5
10)		LGV (6 wheeler)	1.5
11)		2-Axle Truck	3
12)		3-Axle Truck	3
13)		MAV 4 to 6 axles	4.5
14)		MAV more than 6 axles	4.5
15)	Heavy Machinery & Earth Moving Equipment		4.5
16)	Tractor	Without Trailer	1.5
17)		With Trailer	4.5
18)	Slow Moving	Cycle	0.5

19)	Vehicles	Cycle Rickshaw	2
20)		Animal Cart	6
21)		Other Slow Moving	6

5.8 Traffic Survey Zones / Locations

5.8.1 The traffic survey locations are grouped in 7 Zones as per Annexure – 1. The bidders are expected to submit bids for separate zones.

5.8.2 The approximate number of zone-wise locations where such traffic survey is intended to be performed is indicated in Annexure – 1.

5.8.3 Agencies are expected to conduct traffic survey twice a year at each location.

5.8.4 With an objective to capture regional/seasonal variations of traffic, agencies shall plan the traffic survey suitably considering climatic conditions like rain, fog etc in that particular zone.

5.8.5 The no. of survey locations in Annex-1 is indicative only. IHMCL will not be responsible for any compensation, in case of any increase or decrease in the number of locations. IHMCL reserves the right to allocate Traffic Survey assignment of any location of any zone to any agency. IHMCL also reserves the right to conduct repeat survey at any location as per requirements from time to time and to allocate the assignment for such repeat survey to the same agency or another agency, as it may deem fit.

5.8.6 The Contractors shall have sufficient teams/setup to complete traffic surveys in respective Zones twice a year.

5.9 IHMCL reserves the right to modify this TOR in public interest and proper conduct of services.

5.10 Miscellaneous

- i) Survey location shall be judiciously selected such that there is no traffic generation between count location and toll plaza.
- ii) Agencies shall be careful with counts and classification, if there is heavy u-turning traffic at toll plaza.

5.11 Obligations of Agency

The Agency shall be responsible to:

- i) Arrange required electrical power including uninterrupted power supply system at the site;
- ii) Safety and security of its equipment and staff;
- iii) Deploy adequate number of resources with qualifications and skills commensurate to the job requirement;

- iv) Maintain adequate insurance covers to safeguards its interest regarding any loss/damage/theft to its equipment and or personal during conduct of the assignment;
- v) Indemnify IHMCL against any damage/loss of property or personal of the agency during conduct of assignment.

-----XXXXX-----

SECTION-VI

**BOQ & FORMAT FOR
SUBMISSION OF FINANCIAL BID**

6.1 FINANCIAL PROPOSAL SUBMISSION FORM

Zone :

From,
(Name & Address of the Bidder)

_____ (Date)

To,
COO
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector –19,
Dwarka
New Delhi 110 075

Dear Sir,

Subject:

Tender Ref No: _____

We, the undersigned, offer to provide the services as required in accordance with your tender document Ref no. _____ and our Proposal (Technical and Financial). Our attached financial proposal is for the sum of Rs. _____ (*Amount in words*) for Zone ----- . This amount is inclusive of the all taxes, duties etc.

Our Proposal is binding upon us upto expiration of the validity period of the Proposal.

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

Yours sincerely,

Authorised signatory:

Name and title of Signatory:

Name of Bidder:

Address:

Encl. Bill of Quantities.

6.2 BILL OF QUANTITIES

Zone:

S. No	Description	Unit Price in INR	No. of assignments in 2 years 6 months (No. Of locations in this zone*2*2.5)	Total Amount in INR
1	Counting and classification of vehicles with the help of portable Automatic Traffic Counter & Classifier (ATCC) Systems for a continues period of 7 days round the clock for both upstream and downstream traffic	<i>(Price to be quoted here for per assignment)</i>		
2	Videography of the movement of vehicles during the same period. Two sets of Camera systems, one each for upstream and downstream traffic	<i>(Price to be quoted here for per assignment)</i>		
	Total			

(Authorized Signatory)

SECTION-VII

FORMATS FOR SUBMISSION OF BIDS

7.1 BID FORM

(Date)

From,
(Name & Address of the Bidder)

To,
CEO
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector –19,
Dwarka
New Delhi 110 075

Subject: _____

Ref.: Tender No _____

Dear Sir/Madam,

After examining/reviewing the Bidding Documents for _____ etc. the receipt of which is hereby duly acknowledged, we, the undersigned, are pleased to bid to execute the whole of the Job for the item in conformity with, the said RFP Documents, including Corrigendum / Addenda Nos. _____.

We confirm that this bid is valid for a period of **180 days** from the date of opening of Bid, and it shall remain binding upon us and may be accepted by any time before the expiration of that period.

If our bid is accepted, we will provide the required performance guarantee as per the tender document.

Until a final Contract is prepared and executed, the bid together with your written acceptance thereof in your notification of award shall constitute a binding Contract between us.

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

Yours sincerely,

(Signature of the Authorized signatory):

Name and Designation of the Authorized signatory:

Name and Address of Bidder:

Phone, Fax & E-Mail

7.2 UNDERTAKING
(should be on Bidder's Letterhead)

1. I, the undersigned, do hereby certify that all the statements made in the required attachments are true and correct.
2. The undersigned also hereby certifies that neither our firm M/s _____ have abandoned any work of National Highways Authority of India/IHMCL nor any contract awarded to us for such works have been rescinded, during last five years prior to the date of this bid.
3. The undersigned hereby authorize(s) and request(s) any bank, person, firm or corporation to furnish pertinent information deemed necessary and requested by the Employer to verify this statement or regarding my (our) competence and general reputation.
4. The undersigned understands and agrees that further qualifying information may be requested, and agrees to furnish any such information at the request of the Employer.
4. We confirm that we have not been blacklisted /debarred by any central/state Government department/organization or Quasi Government agencies of PSU.
5. We confirm that no criminal proceeding is pending any court of law.
6. We also confirm that we have not been convicted by any court of law for any of the offenses under any Indian laws

(Signed by an Authorized Officer of the bidder)

Title of Officer

Name of bidder

DATE

7.3 BIDDER'S ANNUAL TURNOVER

(Date)

From,
(Name & Address of the Bidder)

To,
COO
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector –19,
Dwarka
New Delhi 110 075

Subject: -----

Tender Ref. No.:-----

Dear Sir/Madam,

We hereby certify that the average annual turnover of M/s. _____
(name of the bidder) from traffic survey project for the last three financial years
(ending 31st March of the previous financial year) is as given below:

Annual Turnover for the last 3 Financial Years (FYs) in Indian Rupees (INR)			
FY (2013-2014)	FY (2014-2015)	FY (2015-2016)	Average

Yours Sincerely,

(Signature of Statutory Auditor)

Name of the Statutory Auditor:

Name of the Statutory Auditor Firm:

Seal:

7.4 Power of Attorney

Know all men by these presents, we, M/s (name of Firm/ Company and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr/ Ms..... son/daughter/wife of..... and presently residing at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the "Authorised Signatory or Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our quotation for empanelment as the agency for -----, proposed by Indian Highways Management Co. Ltd., including but not limited to signing and submission of all applications, proposals and other documents and writings, and providing information/ responses to IHMCL, representing us in all matters before IHMCL, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with IHMCL in all matters in connection with or relating to or arising out of our proposal for the said assignment and/or upon award thereof to us.

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

IN WITNESS WHEREOF WE,THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS

POWER OF ATTORNEY ON THIS DAY OF, 2017

For
(Signature, name, designation and address)

Witnesses:

1.

2.

Notarised

Accepted

.....
(Signature, name, designation and address of the Attorney)

Notes:

*The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. **The Power of Attorney should be executed on a non-judicial stamp paper of appropriate denomination and should be registered or duly notarised by a notary public.***

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

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, Applicants from countries that have signed the Hague Legislation Convention 1961 need not get their Power of Attorney legalised by the Indian Embassy if it carries a conforming Apostiles certificate.

7.4 (A)

Format for Power of Attorney for Lead Member of Consortium

Whereas the Indian Highways Management Co. Ltd. (the “IHMCL”) has invited bids from interested parties for the (Name of the Project *****). (“the Project”).Whereas,,, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s., having our registered office at, and M/s., having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s....., having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the IHMCL, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Contract is entered into with the IHMCL.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

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

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

Witnesses:

1.

2.

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

7.5 FORM OF PERFORMANCE SECURITY (BANK GUARANTEE)

To
The Chairman,
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector- 19,
Dwarka, New Delhi- 110 075

WHEREAS _____ (Name and address of Contractor) (hereinafter called "the Contractor")* has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (Name of contract and brief description of works) (hereinafter called the "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREOF we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor up to a total of _____ (amount of Guarantee)** _____ (in words) , such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ (amount of Guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The liability of the Bank under this Guarantee shall not be affected by any change in the constitution of the contractor or of the Bank.

Notwithstanding anything contained herein before, our liability under this guarantee _____ is _____ restricted _____ to Rs. _____ (Rs. _____) and the guarantee shall remain valid till _____. Unless a claim or a demand in writing is served on us on or before _____ all our liability under this guarantee shall cease.

Signature and seal of the Guarantor _____

In presence of

Name and Designation _____

1. _____

(Name, signature & Occupation)

Code no. of the officer(s) signing the guarantee(s)

Name of the Bank _____

Address _____ 2. _____
(Name, signature & Occupation)

Date _____

Controlling Office of the Bank:

Contact Person: _____

Address : _____

Tel. No : _____

Note:

- * Give names of ***all partners*** if the Contractor is a Joint Venture/consortium.
- ** An amount is to be inserted by the Guarantor, representing the percentage of the contract price specified in the Contract and denominated in Indian Rupees.

7.6 Format for Non Disclosure Agreement

This Non Disclosure Agreement dated the day of _____, 2017

BETWEEN

Indian Highways Management Co. Ltd., 2nd Floor, MTNL Building, Sector-19, Dwarka, New Delhi-75
(hereinafter referred to as the “**Disclosing Party**”)

AND

_____, a company incorporated under the laws of India
and having its registered office at _____
(hereinafter referred to as “**Receiving Party**”) (collectively referred to as “**the parties**”)

WHEREAS

In connection with “_____”, the Receiving Party as **Contractor** by the Disclosing Party, the Parties have agreed to execute this Non Disclosure Agreement to ensure that all information provided by the Disclosing Party to the Receiving Party in the course of engagement of the Receiving Party as **Contractor** is kept confidential

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

- a) “**Purpose**” shall mean “_____”, by the Receiving Party to the Disclosing Party.
- b) “**Confidential Information**” shall mean all discussions, documents, paper, discs, technology, procedure and other information of a confidential nature pertaining to, generated or disclosed by either party in any form including in writing, electronically, computerized orally or otherwise marked as “Confidential” or informed to be ‘Confidential’ or relating to the Purpose, including, without limitation:
- (i) All financial details investment plans, price specifications, schemes, technology know-how, techniques and information relating to business, investments, transactions or affairs, services being rendered, plans for business investments or for improving services and discussions on future services; and all other information, material or data relating to the current and /or future business and operations of the Disclosing Party and analysis, compilations, studies, summaries, extracts or other documentation prepared by the Receiving Party arising out of the Confidential Information.
 - (ii) the terms of this or any other agreement or document signed or to be signed by or between the Parties and the provisions thereof.

However, “Confidential Information” shall exclude any part of such disclosed information or data which: -

- i. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party; or
- ii. the Receiving Party can show (a) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence, or (b) to have been developed by or for the Receiving Party at any time independently of any information disclosed to it by the Disclosing Party; or
- iii. the Receiving Party obtains from a source other than the Disclosing Party without breach by the Receiving Party or such source or any obligation of confidentiality or non-use towards the Disclosing Party; or

- iv. is hereafter furnished by the Disclosing Party to a third party without restriction on disclosure or use; or
- v. is disclosed by the Receiving Party (a) with the prior written approval of the Disclosing Party, or (b) without such approval, after a period of one (1) year from the date of receipt thereof.

2. Handling of Confidential Information

The Receiving Party shall maintain the Disclosing Party's Confidential Information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the Receiving Party applies to its own Confidential Information which the Receiving Party warrants as providing adequate protection against unauthorized disclosure, copying or use. The Receiving Party shall ensure that disclosure of such Confidential Information is restricted to those employees, directors, officers, representatives, advisors, consultants or agents (collectively referred to as "**Representatives**") of the Receiving Party having the need to know the same for the Purpose. Copies or reproductions shall not be made except to the extent reasonably necessary for the Purpose and all copies made shall be the property of the Disclosing Party. All Confidential Information and copies thereof shall be returned to the Disclosing Party within seven (7) days of receipt of a written request from the Disclosing Party

The Receiving Party shall not attempt to reverse engineer, decompile, disassemble or reverse translate any Confidential Information provided by the Disclosing Party or discover the source code or trade secrets in any such Confidential Information.

Nothing in this Agreement shall limit the ability of a party to disclose such Confidential Information of the other party if such disclosure is (a) required to be made pursuant to any law or regulation, government authority, duly authorized subpoena or court order, whereupon that party shall provide prompt notice to the Disclosing Party of the Confidential Information in question, who will thereof have the opportunity to respond prior to such disclosure; (b) required to be made by a court or other tribunal in connection with the enforcement of such Disclosing Party's rights under this Agreement, or (c) is approved by the prior written consent of the Disclosing Party of the Confidential Information.

3. Limitations and Warranty

- a) The Receiving Party shall (i) not divulge the Disclosing Party's Confidential Information, in whole or in part, to any third party without the prior written consent of the Disclosing Party, (ii) use the same only for the Purpose, and (iii) make no commercial use of the same or any part thereof without the prior written consent of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party shall be entitled to make any disclosure required by law of the Disclosing Party's Confidential Information.
- b) The Disclosing Party warrants its right to disclose its Confidential Information to the Receiving Party and to authorize the Receiving Party to use the same for the Purpose.

4. Disclaimer

All rights in Confidential Information are reserved by the Disclosing Party and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any invention, discovery, patent, copyright or other intellectual property right now or in the future held, made, obtained or licensable by either party. Nothing in this Agreement or its operation shall constitute an obligation on either party to enter into the aforesaid business relationship or shall preclude, impair or restrict either party from continuing to engage in its business otherwise than in breach of the terms of this Agreement

5. Notices

All notices under this Agreement shall be in writing, sent by facsimile or first-class registered or recorded delivery post to the party being served at its address specified above or at such other address of which such party shall have given notice as aforesaid, and marked for the

attention of that party's signatory of this Agreement. The date of service shall be deemed to be the day following the day on which the notice was transmitted or posted as the case may be.

6. No Bar on Participation in Projects initiated by the Disclosing Party

The Disclosing Party acknowledges that the advisory mandate awarded to the Receiving Party will not bar the Receiving Party or any of its group companies from bidding or participating in any projects initiated by the Disclosing Party on the ground that the Receiving Party was privy to information which was not within the public domain.

On its part the Receiving Party shall ensure, confirm and warrant that neither the Receiving Party nor any of its group companies will mis-use the information available to it in the course of the advisory mandate to derive an unfavorable advantage in bidding /participation in any projects initiated by the Disclosing Party. The Disclosing Party on its part shall not summarily debar or reject the bid/participation of the Receiving Party on the ground that the Receiving Party was privy to confidential information and its has derived undue advantage, unless reasonable opportunity its given to the Receiving Party to put forth its say.

7. Non-Assignment

This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party.

9. Forbearance

No relaxation, forbearance or delay by a party in enforcing any of the terms of this Agreement shall prejudice, affect or restrict its rights, nor shall waiver by a party of any breach hereof operate as a waiver of any subsequent or continuing breach.

10. Indemnity

The Receiving Party agrees to indemnify the Disclosing Party for any loss or damage suffered due to any breach by it of its obligations under this Agreement. Damages shall include all costs, expenses and attorney's fees incurred by the Disclosing Party in the enforcement of this Agreement. PROVIDED ALWAYS THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES, LOST BUSINESS, LOST SAVINGS OR LOST PROFITS OR REVENUES RESULTING FROM A BREACH OF THIS AGREEMENT EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

11. Non-Publicity

The parties shall not make any announcement or disclosure of any kind whatsoever concerning this Agreement, including without limitation the existence of this Agreement, without the other Party's prior written consent unless such announcement and/or disclosure is required by law.

12. Notwithstanding anything contained herein to the contrary, the obligations of the Parties herein shall continue for a period of one (1) year from the date of this Agreement or if a further agreement is entered into, the termination of such further agreement, whichever is the later.

13. The Receiving Party agrees that the obligations contained in this Agreement shall extend to the affiliated companies of the Receiving Party and to all its advisors and consultants. In this respect the Receiving Party represents that an agreement to keep such information confidential, on terms similar to this Agreement, is in place before disclosing any Confidential Information to such affiliate, advisor or consultant.

14. Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect. This Agreement cannot be amended except by written agreement signed on behalf of each party by their authorized signatories.

15. Dispute Resolution

The parties shall attempt to resolve any dispute arising out of or in connection with this Agreement by mutual consultation, failing which such dispute shall be referred to and finally

resolved by arbitration in India under the auspices and governed by the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be at **Delhi** and only the courts at **Delhi** shall have the jurisdiction to try any matters arising from the arbitration. The language of the arbitration shall be in English.

16. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with the laws of India

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written

On behalf of **Disclosing Party**

On behalf of Receiving Party

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Traffic Count Locations in India

ZONE	Name of the State	Total Count Stations
Zone-1	Maharashtra (West)	316
	Sub total	316
Zone 2	Maharashtra (East)	316
	Sub total	316
Zone-3	Andhra Pradesh	164
	Telangana	101
	Sub total	265
Zone-4	Rajasthan	258
	Sub total	258
Zone-5	Bihar	244
	Jharkhand	155
	Sub total	399
Zone-6	Assam	128
	Manipur	32
	Meghalaya	31
	Mizoram	31
	Nagaland	19
	Sikkim	10
	Tripura	24
	Arunachal Pradesh	21
	Sub total	296
Zone-7	Karnataka	244
		244
Zone-8	Haryana	131
	Punjab	134
	Sub total	265
	GRAND TOTAL	2359