

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

**Limited RFP for Selection of Vendor of Supply  
of IHMCL FASTag**

Tender No. IHMCL/LTE-RFP/Tag Supply/2018  
Indian Highways Management Company Limited (IHMCL)  
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15-Oct-2018  
[info@ihmcl.com]

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## DISCLAIMER

The information contained in this Request for Proposal document (the "RFP") or subsequently provided to prospective 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 does not constitute an Agreement between IHMCL or prospective Bidders or any other Party and is neither an offer nor invitation by 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 physical documents 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

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 under any law whether written or otherwise, 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.

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 award the project to the Successful Bidder

## PART-I: NOTICE INVITING TENDER

1. Bids are invited for the below mentioned work by Indian Highways Management Company Limited (IHMCL) from Bidders who have been empaneled by IHMCL via Letter No. IHMCL/ETC/TAG Supply/2018, dated 11-10-2018:

Name of the Work	EMD/Bid Security	Document Fee(non refundable)	Agreement period	Closing date and time for Online bid Submission
Selection of Vendor of Supply of IHMCL FASTag	Rs. 2,00,000 (Two Lakhs only)	NA	The initial period of engagement shall be 3 years from date of signing of Contract Agreement. The period of engagement may be further extendable by additional 1 year at the sole discretion of IHMCL.	22 October 2018 (16:00 Hrs IST)

The complete Bidding Documents can be viewed / downloaded from e-procurement portal <http://etenders.gov.in>. The Bids shall be liable for summarily rejection unless accompanied by the requisite EMD as indicated above. IHMCL shall not be responsible for any postal delay. Bids submitted after the closing date/time shall be summarily rejected.

2. IHMCL reserves the right to accept or reject any or all bids received before signing of Contract Agreement without thereby incurring any financial or other liability to the affected Bidders.

Address for communication:

Indian Highways Management Co. Ltd. (IHMCL)  
2nd Floor, MTNL Building,  
Sector 19, Dwarka  
New Delhi 110 075  
Phone: +91-11- 28042710;  
Email: [info@ihmcl.com](mailto:info@ihmcl.com); Website: [www.ihmcl.com](http://www.ihmcl.com)

## PART II: DEFINITIONS

### 2.1 DEFINITIONS

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

**“Applicable Law”** means the laws, rules or regulations and any other instruments, having the force of law in Republic of India, as in force from time to time.

**“Authorized Representative”** means any person/agency authorized by IHMCL.

**“Bidder”** means, a company which participates in the Bid process and submits its proposal pursuant to this RFP.

**“Commencement date”** means the date upon which the Service Provider receives the notice to commence the work issued by IHMCL.

**“Contract”** shall mean & include RFP, Notice for Inviting Tender (NIT), the tender documents and letter of acceptance thereof and the formal agreement, to be executed between IHMCL and the Service Provider together with the complete documents referred to therein including the conditions with appendices and any special conditions, the specifications, designs, drawings, bill of quantities with rates and amounts. All these documents taken together shall be deemed to form one Contract and shall be complementary to each other

**“ IHMCL”** means Indian Highways Management Company Ltd.

**“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.

**“Letter of Award (LOA)”** means the issue of a signed letter by IHMCL to Successful Bidder conveying its intention to accept the offer of Successful Bidder and awarding the work mentioning the total Contract Value.

**“Local Currency”** means the Indian Rupees

**“MoRTH”** means Ministry of Road Transport and Highways

**“NHAI”** means National Highways Authority of India ..

**“Party”** shall mean IHMCL or Bidder individually and “Parties” shall mean IHMCL and Bidder collectively.

**"Personnel"** means persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof.

**"RFP"** shall mean this limited Request for Proposal dated 15 October, 2018, issued by IHMCL.

**"Services"** means requirements defined in this RFP including all additional services associated thereto to be delivered by the Successful Bidder.

**"Successful Bidder"** means the Bidder, who, after the complete evaluation process, has been issued the Letter of Award by IHMCL

**"Service Provider"** means the Successful Bidder who has executed the contract with IHMCL and has complied with other requirements as specified in this RFP to the satisfaction of IHMCL

Any other term(s), not defined herein above but defined elsewhere in this RFP shall have the meaning(s) ascribed to such term(s) therein and shall be deemed to have been included in this Section.

## PART-III : INSTRUCTIONS TO BIDDERS

### 3.1 Bid Conditions

### 3.2 Eligibility to Bid

**Only the bidders who have been empanelled via Bid No. IHMCL/ETC/Tag Supply/2018 are eligible to participate in the Bid.** Bidders are required to submit proof of empanelment with the application (Letter No. IHMCL/ETC/Tag Supply/2018, dated 11 October 2018) . Empanelled Bidders are as mentioned below: -

S.No.	Company Name
1	M/s Infotek Software and Systems Pvt. Ltd.
2	M/s M Tech Innovations Ltd.
3	M/s Omnia Technologies Pvt. Ltd.
4	M/s Sessaasai Business Forms Pvt. Ltd.
5	M/s Star RFID and System India Pvt. Limited and Nippon Audiotronix Private Limited
6	M/s IAITO Infotech Pvt. Ltd.
7	M/s Ecartes technology Pvt. Ltd.
8	M/s Continuum Electroproducts LLP

### 3.3 Content Of RFP

- a) The RFP should be read in conjunction with any addenda or clarifications issued subsequent to publication of RFP.
- b) Bidders are advised to study the RFP 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 RFP with full understanding of its implications. Bids not complying with all the stipulations and requirements as set forth in this RFP are liable to be rejected at the sole discretion of IHMCL. Failure to furnish all information required in the RFP or submission of a bid not substantially responsive to the RFP in all respects will be at the Bidder's risk and may result in the rejection of the bid.

### 3.4 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.

### **3.5 Amendment Of RFP**

- a) At any time prior to the closure of time 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 RFP by issuing amendment(s) or Corrigendum.
- b) Any Corrigendum /Addendum issued as aforesaid shall be part of the RFP and shall be displayed /communicated on e-procurement portal, www.ihmcl.com or www.nhai.gov.in. No separate information will be passed to any Bidder in this regard.

### **3.6 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.

### **3.7 Bid Validity**

- a) Bids shall remain valid for a period of 120 days from the last date of Bid due date. Any Bid valid for a shorter period shall be rejected as non-responsive. IHMCL has sole discretion to extend the period beyond 120 days.
- 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.

### **3.8 BID SECURITY**

- a) The Bidder shall furnish, as part of the Bid, Earnest Money Deposit (EMD) /Bid Security for an amount INR Rs. 200,000 (Rupees Two 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 Contract.
- b) The Earnest Money shall be in the form of a demand draft / pay order drawn in favour of "Indian Highways Management Company Limited ." Drawn on any Scheduled bank payable at New Delhi.
- c) Any bid not accompanied by an acceptable Earnest Money Deposit and Document Fee shall be rejected by IHMCL as non-responsive.
- d) The Earnest Money Deposit of unsuccessful bidders will be returned upon written request from the unsuccessful bidder, after expiry of the period of Bid Validity prescribed by IHMCL or Signing of Contract Agreement between IHMCL and successful bidder.
- e) The Earnest Money Deposit of the Successful Bidder will be discharged when the Successful Bidder has furnished the required Performance Security and signed the Contract Agreement.
- f) 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 pertaining to imbalance bid ;



- iii. in the case of a Successful Bidder, if the Bidder fails within the specified time limit to -
- iv. sign the Contract; and/or
- v. Furnish the required Performance Security; or
- vi. if the Bidder is found to be engaged in corrupt or fraudulent practices.

### **3.9 Alternative Proposals By Bidders**

Bidder shall submit only one bid/offer for this RFP that fully complies with the requirement of the RFP including conditions of Contract. Conditional offer or alternate offer will not be considered further in the process of tender evaluation.

### **3.10 Deadline For Submission Of Bid**

- a) Complete Bid documents as specified in the RFP must be received as specified on or before the date and time specified under "Key Dates". In the event of the specified date for the submission of Bids being declared a Non-working day for IHMCL, the Bids will be received up to the specified time on the next working day.
- b) IHMCL may, at its discretion, extend the deadline for submission of Bids by issuing an amendment in which case all rights and obligations of IHMCL and the Bidders previously subject to the original deadline will thereafter be subject to the deadline extended.
- c) Offer by fax / e-mail will not be accepted and shall be treated as void ab-initio.

### **3.11 Modification And Withdrawal Of Bids**

- a) Bidders may modify or withdraw their Bid before the deadline.
- b) The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.
- c) For modification of e-Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, a Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.

### **3.12 Opening Of Physical Documents**

- a) Physical Documents submitted will be opened at IHMCL Corporate Office , 2nd Floor , MTNL Building, Sector -19,Dwarka,New Delhi-110075 as per schedule defined under "Key Dates".
- b) Bidder's authorized representative may attend the opening, and those who are present shall sign the Attendance Sheet evidencing their attendance.
- c) 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.
- d) Physical Documents shall be opened first and based upon the evaluation of these documents, IHMCL shall announce the names of the Bidders who have qualified for opening of Financial

Bids. It is hereby clarified that Financial Bids of only such Bidders who are declared qualified as stated herein shall be opened.

### **3.13 Tests of responsiveness**

- a) As part of Bid evaluation process, IHMCL shall first determine whether each Bid is responsive to the requirements of this RFP. A bid shall be considered responsive only if:
  - i. Financial Bid is received through e-tender portal as per the format required under this RFP;
  - ii. Requisite Physical Documents in physical form only
  - iii. Bid is accompanied by the EMD as specified
  - iv. Bid contains all the information as required (complete in all respects);
  - v. Bid does not contain any condition or qualification;
  - vi. The amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding.
  - vii. it is not non-responsive in terms hereof
- b) 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.

### **3.14 Examination And Evaluation Of Bids**

- a) Opening of Bids will be done through online process.
- b) IHMCL shall open Physical Documents as per schedule specified in Key Dates, in the presence of the authorized representatives of the Bidders, who choose to attend. Physical Documents of only those Bidders shall be online opened whose documents listed in of the RFP have been received physically. IHMCL will subsequently examine and evaluate the Bids in accordance with the provisions of this RFP.
- c) Any time during the process of evaluation, IHMCL may seek for clarifications from any or all Bidders. Failure of any Bidder to provide the required clarifications within the stipulated timeline may result in rejection of its Bid, at the sole discretion of IHMCL.
- d) The bids shall be evaluated as per following process:
  - i. **EMD/Bid Security and Bid Form evaluation:**

The envelope containing EMD/Bid Security and other relevant documents as required by this RFP will be opened. If the physical documents are not in prescribed format, then the Financial bids shall be summarily rejected. At any stage during the entire Bid

evaluation process, if the EMD is found to be invalid, the respective Bidder's Bid shall be summarily rejected. If Physical Documents submitted by the Bidder has the Financial Bid details, the Bid shall be summarily rejected.

**ii. Financial Bid Evaluation:**

- The Financial Bids of ONLY the Bidders who are declared as qualified in Phase-1 will be evaluated.
- The Financial Bid Evaluation will be based on the "Unit Price" quoted by the bidder which would be the total payouts inclusive of all levies and taxes like Excise Duty, Custom Duty, packing, forwarding, freight and insurance, Octroi/Entry Tax, etc. or as applicable taxec, but exclusive of GST.
- If there is a discrepancy between words & figures, the amount in words shall prevail. If the bidder does not accept the correction of errors, its Bid shall be rejected and the EMD will be forfeited.
- The Evaluation Committee shall determine if the financial bid is complete and without computational errors. The Bid with the lowest price will be selected.  
The Bidder quoting the lowest quoted price will be selected.

**3.15 Imbalanced Bid**

If the Bid of the Successful Bidder is seriously imbalanced in relation to IHMCL's estimate of the cost of work to be performed under the Contract, IHMCL 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, IHMCL may require that the amount of the Performance Security set forth in the RFP be increased and an additional Performance Security may be obtained at the expense of the Successful Bidder to a level sufficient to protect IHMCL 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.

**3.16 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 IHMCL's processing of Bids or award decisions may result in the rejection of his Bid.

**3.17 Award Criteria**

- a) IHMCL will award the Contract to the Bidder whose Bid has been determined to be responsive in terms of this RFP and the Bid price has been found to be lowest.
- b) IHMCL reserves the right to order for increased or decreased quantity, as per requirement without any change in unit price.
- c) IHMCL may decide not to procure the entire required quantity from the single vendor (i.e. L1). IHMCL may provide opportunity to the L2, L3 and subsequent sequential bidders to match the price quoted by L1 bidder. The order for the required quantity may be placed on the successful bidders as follows:
  - i. 100% on L1 bidder in case L2 and L3 bidders do not match the price quoted by L1 bidder.
  - ii. 70% on L1 bidder and 30% on L2 bidder, if L2 bidder matches the price quoted by L1 bidder. If L2 bidder does not agree to match the price of L1 bidder and if L3 bidder agrees to match the price of L1 bidder, then 70% on L1 bidder and 30% on L3 bidder.
  - iii. 50% on L1 bidder, 30% on L2 bidder and 20% on L3 bidder if L2 bidder and L3 bidder both agrees to match the price of L1 bidder.

However, IHMCL, on its sole discretion may cancel the order of any of the vendor/s if it's not satisfied with the performance of the vendor like delivery timelines, service delivery, quality or any other factor as deemed important by IHMCL.

IHMCL is not under any compulsion to place any specific quantity with any of the vendor/s if it's not satisfied with the performance of the vendor and quality of the RFID Tags. IHMCL's decision at any or all the stages of the above mentioned qualification process will be final and no correspondence on this issue will be entertained from any of the bidders in this respect.

- d) In case IHMCL decides to procure additional quantity, the orders will be placed with the bidders in the same proportion of 70:30 or 50:30:20 as the case may be. However, in case IHMCL is not satisfied with the level of services provided by any of the selected vendors, Bank on its sole discretion, will have the right to place the entire or a part of the order to either of the selected vendors of its choice. The service level will include the timeliness of service, delivery time, adhering to the schedule, or any other factor as considered appropriate by IHMCL.

### **3.18 IHMCL 'S Right To Reject Any Or All Bids**

Notwithstanding anything contained herein, IHMCL reserves the right to reject any Bid, and to annul the bidding process and reject all Bids at any time before signing of Contract Agreement, 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.

### **3.19 Notification Of Award Of Contract**

- a) Prior to the expiration of the Bid validity, IHMCL will notify the Successful Bidder that his Bid has been accepted. IHMCL will mention the contract value in the LOA.
- b) The Contract will incorporate all agreements between IHMCL and the Successful Bidder. It will be signed by IHMCL and the Successful Bidder after the performance security is furnished by the Successful Bidder. IHMCL will issue notice to commence the work after signing of Contract.
- c) Upon furnishing of the Performance Security by the Successful Bidder, IHMCL 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.

### **3.20 Confidentiality**

- d) 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.
- e) 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 as may be required by law or in connection with any legal process or such information which would be available in public domain.
- f) At all times during the performance of the Services, the Bidder shall abide by all applicable IHMCL ,NHAI/ 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.
- g) The Successful 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.
- h) The obligations of confidentiality under this section shall survive termination of the Contract.
- i) 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.

### **3.21 SIGNING OF CONTRACT**

IHMCL shall ask the Successful Bidder to furnish the Performance Guarantee and also to execute the Contract Agreement.

### **3.22 PERFORMANCE SECURITY**

- a) Within 3 (three) days of the receipt of the Letter of Award, the Successful Bidder shall submit an irrevocable and unconditional Bank Guarantee issued in the name of IHMCL for an amount equal to Rupees 10 Lakhs issued by a Bank described under this RFP which shall be verified at any branch located in the National Capital territory of Delhi and through SFMS mode as performance security for the due performance of its obligations under the Contract.
- b) The aforesaid Bank Guarantee shall be as per the format given in format provided in this RFP and will be valid for a period till Contract period after the expiry of Contract period and shall also have a minimum claim period of 1 year.

### **3.23 BANK GUARANTEE (BG)**

- a) The Bank Guarantee in the name of IHMCL issued by the following banks would only be accepted:-
  - i. Any Nationalized Bank
  - ii. Any Scheduled Commercial Bank approved by RBI having a net worth of not less than Rs. 500 crore as per the latest Audited Balance Sheet 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
  - iii. A Foreign Bank (issued by a branch outside India) with a counter guarantee from any Indian Nationalized Bank.
  - iv. Export Import Bank of India
- b) 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
  - ii. The bank guarantee issued by a Cooperative Bank shall not be accepted.

### **3.24 Corrupt or Fraudulent Practices**

- a) IHMCL 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.
- b) IHMCL will declare the Bidder 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 Bidder has engaged in corrupt or fraudulent practices in competing for the contract, or during execution.
- c) "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official or employee of IHMCL in the procurement process or in Contract execution.
- d) "Fraudulent Practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of IHMCL 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 IHMCL of the benefits of free and open competition.

### 3.25 MISCELLANEOUS

- a) 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.
- b) IHMCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
  - i. 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;
  - ii. consult with any Bidder in order to receive clarification or further information;
  - iii. retain any information and/ or evidence submitted to IHMCL by, on behalf of, and/ or in relation to any Bidder; and/ or
  - iv. independently verify, disqualify, reject and/ or accept any or all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- c) 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.
- d) 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 debar such Bidder for any future tenders/contract award process in its sole and absolute discretion.

## PART-IV: PREPARATION AND SUBMISSION OF APPLICATION

- 4.1 Bid must be submitted online only at <https://etenders.gov.in> during the validity of registration with the e-Tendering Portal being managed by National Informatics Centre (NIC), i.e. <https://etenders.gov.in>. To participate in e-tendering, the intending participants shall register themselves in the website of URL.
- 4.2 Bidders/Applicants are advised to go through the FAQs, guidelines, instructions, manuals, policies, system setting procedures etc. as provided in the e-Procurement portal.
- 4.3 Tender form and relevant documents will not be sold /issued manually from offices.
- 4.4 The date and time for online submission as mentioned in the section RFP document shall be strictly followed in all cases. The bidder/Applicants should ensure that their tender is submitted online before the expiry of the scheduled date and time. No delay on account of any cause will be entertained. Tender(s) not submitted online will not be entertained.
- 4.5 If for any reason, any interested bidder fails to complete any online stages during the complete tender cycle, IHMCL shall not be responsible for that and any grievance regarding that shall not be entertained.

### 4.6 KEY DATES

Sl. No.	Event Description	Date
1.	Invitation of RFP	15 October 2018
2.	Bid Due Date (Online Submission)	22-October 2018 (Upto 1500 Hrs IST)
3.	<ul style="list-style-type: none"><li>• Submission of Bid Security and Bid Form (Physical Submission)</li><li>• Opening of documents submitted physically and financial bids</li></ul>	<ul style="list-style-type: none"><li>• 23-October 2018 (Upto 12:00 Hrs IST)</li><li>• 23-October 2018 (Upto 16:00 Hrs IST)</li></ul>
4.	Letter of Award (LOA)	Within 7 days of Financial Opening
5.	Validity of Bid	120 days from Bid Due Date
6.	Signing of Contract	Within 10 days of Award of LOA



## **PART V- CONDITIONS OF CONTRACT**

### **5.1 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.

### **5.2 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.

### **5.3 APPLICABLE LAW**

Appropriate laws as in force in Republic of India shall apply.

### **5.4 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.

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

### **5.5 RIGHT TO VARY QUANTITY**

- a) At the time of award of contract or during the Contract Period, the quantity of FASTag originally specified in the bidding documents may be changed by IHMCL by a written order to the Successful Bidder. It shall be without any change in the unit prices or other terms and conditions of the Bid and the bidding documents.
- b) Repeat orders for additional FASTags may be placed on the rates and conditions given in the contract. Delivery or completion period may also be proportionally increased on mutually agreed terms.

### **5.6 RIGHT TO AMEND PROJECT SCOPE**

IHMCL retains the right to amend the Project Scope without assigning any reason at any time during the Contract Period. IHMCL makes no commitments, express or implied, that the full scope of work as described in this RFP will be commissioned.

## 5.7 PAYMENT TERMS

- a) Payments will be made in Indian Rupees only.
- b) The payment to be made to the Contractor for delivery of FASTags shall be made to the as per the following:

Payment Milestones		
Sr. No.	Milestone Description	Payment Percentage
Milestone 1.	Upon delivery of order quantity of FASTags at specified locations	75% of the Total Price
Milestone 2.	After receipt of acceptance of the delivered quantities from IHMCL within 30 days	25% of the Total Price

- c) Payment may be claimed on achievement of above said milestones.
- d) All payments shall be made subject to adjustment of applicable penalties.
- e) All Payments will be processed within 60 days of submission of undisputed invoice.
- f) Total Price shall be the quoted price per IHMCL FASTag multiplied by the ordered quantity of FASTag.

## 5.8 DELIVERY SCHEDULE & PENALTY FOR DELAYED DELIVERIES

- a) Delivery of order should be within 15 days from date of placing of order.
- b) In the event of the tested IHMCL FASTAG not being delivered securely within a period of 15 days from the date of Purchase Order, a penalty of one (1) percent of the total consideration for each week or part thereof the delay, subject to maximum amount of ten (10) percent of the total consideration will be charged to vendor.
- c) This amount of penalty so calculated shall be deducted from invoices pending for payment.
- d) The Bank also reserves the right to cancel the Purchase Order. In the event of such cancellation, the vendor is not entitled to any compensation. PLEASE NOTE THE DELIVERY SCHEDULE SHALL BE FOLLOWED STRICTLY AS STIPULATED. ANY DELAY SHALL BE VIEWED SERIOUSLY AND PENALTIES LEVIED.

## 5.9 INSPECTION & QUALITY CONTROL TESTS

- a) The Bidder is required to supply fifteen (15) additional FASTag units of each class included within the order, with each order without any additional cost, for testing purposes.
- b) IHMCL reserves the right to carry out pre-shipment factory / godown inspection at by a team of IHMCL officials or demand a demonstration of the solution proposed on a representative model in vendor 's office/plant.
- c) IHMCL may send a sample of the delivered FASTags on a random basis to lab testing for validation of the specifications and functionality testing.

- d) The Inspection and Quality Control tests before evaluation, prior to shipment of Goods and at the time of final acceptance would be as follows:
- i. Inspection/Pre-shipment Acceptance Testing of Goods as per quality control formats including functional testing, burn-in tests and mains fluctuation test at full load, facilities etc., as per the standards / specifications may be done at factory site of the Supplier before dispatch of goods, by the IHMCL Officials/ IHMCL's Consultants / Testing Agency.
  - ii. The vendor should intimate IHMCL before dispatching the goods to various locations/offices for conduct of pre-shipment testing.
  - iii. The inspection and quality control tests may be conducted on the premises of the Supplier, at point of delivery and / or at the Goods' final destination. Reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors, at no charge to IHMCL. If the testing is conducted at the point of delivery or at the final destination, due to failure by the vendor to provide necessary facility / IHMCL FASTAG at his premises, all the cost of such inspection like travel, boarding, lodging & other incidental Expenses of the Bank's representatives to be borne by the vendor.
  - iv. Nothing stated herein above shall in any way release the Supplier from any warranty or other obligations under this Contract.
  - v. On successful completion of acceptability test, receipt of deliverables, etc., and after the IHMCL is satisfied with the working on the system, the acceptance certificate will be signed by the representative of IHMCL.
  - vi. In case of issues with quality inspections, IHMCL reserves the right initiate appropriate action against the Bidder. Such action may include, ut are not limited to, cancellation of order, rejection of received lot with order to Bidders to replenish order with additional costs, forfeiture of bank guarantee, etc.
- e) IHMCL reserve rights to inspect, test and where necessary reject the products after the delivered at the specified locations.
- f) Nothing stated herein above shall in any way release the Vendor from any warranty or other obligations under this contract.

#### **5.10 DELIVERY & DOCUMENTATION**

- a) The Vendor shall provide such packing of the products as is required to prevent their damage or deterioration during transit to their final destination. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperature, salt and precipitation during transit and open storage. Size and weights of packing case shall take into consideration, where appropriate, the remoteness of the Products final destination and the absence of heavy handling facilities at all transit points.
- b) Delivery of the IHMCL FASTAG shall be made by the Vendor in accordance with the system approved / ordered. The details of the documents to be furnished by the Supplier are specified

hereunder:-

- i. 2 copies of Vendor's Invoice showing Contract number, Products description, quantity, unit price and Total amount.
  - ii. Delivery Note or acknowledgement of receipt of Products from the Consignee or in case of products from abroad original and two copies of the negotiable clean Airway Bill
  - iii. 2 copies of packing list identifying contents of each package.
  - iv. Manufacturer's / Vendor's warranty certificate.
- c) The above documents shall be received by IHMCL before arrival of Products (except where it is handed over to the Consignee with all documents) and if not received the Vendor will be responsible for any consequent expenses.
- d) Supply and delivery, of the IHMCL FASTAG shall be made by the vendor in accordance with the system approved / ordered.

#### **5.11 CHANGE ORDERS**

- a) IHMCL may, at any time, by a written order given to the Vendor, make changes within the general scope of the Contract in any one or more of the following:
- i. Method of shipment or packing;
  - ii. Place of delivery;
  - iii. Quantities to be supplied subject to 30% above or below the originally declared, quantities

#### **5.12 DELAYS IN THE VENDORS PERFORMANCE**

- a) Delivery of the IHMCL FASTAGS and performance of Services shall be made by the Vendor within the timelines prescribed.
- b) If at any time during performance of the Contract, the Vendor or its subcontractor(s) should encounter conditions impeding timely delivery of the Products and performance of Services, the Vendor shall promptly notify IHMCL in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Vendor's notice, IHMCL shall evaluate the situation and may, at its discretion, extend the Vendors' time for performance, with or without liquidated damages, in which case, the extension shall be ratified by the parties by amendment of the Contract.
- c) Except as provided in the above clause, a delay by the Vendor in the performance of its delivery obligations shall render the Vendor liable to the imposition of liquidated damages, unless an extension of time is agreed upon without the application of liquidated damages.

#### **5.13 LIQUIDATED DAMAGES**

- a) If the Vendor fails to deliver any or all of the Products or perform the Services within the time period(s) specified in the Contract, IHMCL may, without prejudice to its other remedies under

the Contract, and unless otherwise extension of time is agreed upon without the application of Liquidated Damages as mentioned in clause 5.12(c) above, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5 percent per week or part thereof of contract price subject to maximum deduction of 5% of the delivered price of the delayed Products or unperformed services for each week or part thereof of delay, until actual delivery or performance or for any loss is suffered by IHMCL due to Acts attributable to the Service Provider. Once the maximum deduction is reached, IHMCL may consider termination of the Contract.

#### **5.14 SLA/ PENALTY**

- a) The Vendor warrants that the products supplied under the Contract are new, unused, of the most recent or current model and they incorporate all recent improvements / instructions issued by IHMCL/ NHAI . The Vendor further warrants that all the Products supplied under this Contract shall have no defect, arising from design or wrong personalization of Tag i.e. incorrect or inadequate data is personalized in Tag or from any act of omission of the Vendor that may develop under normal use of the supplied products in the conditions prevailing in India.
- b) The Vendor under the Contract is required to provide 7 types of IHMCL FASTags based on the Vehicle Class as defined by NHAI / IHMCL having distinct colour code as decided by IHMCL/ NHAI.
- c) Once the tags are personalized with EPC ID, toll-able vehicle class and digital signatures, the tags are live. Vendor will be solely responsible for secured movement of IHMCL FASTAGs to destined for or designated location as advised by IHMCL after the tag personalization and should ensure to have adequate risk management controls.
- d) In the event of loss in transit of any consignment(s) or any part there of, the Vendor(s) would be liable to make good the loss (Monetary, Reputational etc.) and will be liable to attract the penalty as decided by the IHMCL from time to time. IHMCL may also decide to cancel the contract with the Vendor in such events.
- e) The warranty would be comprehensive in nature and vendor will warrant all the IHMCL FASTags against defects arising out of faulty design or wrong personalization of Tag i.e. incorrect or inadequate data is personalized in Tag etc. for a period of three years from the date of delivery of the IHMCL FASTag. The Vendor shall replace worn out or defective IHMCL FASTag at his own cost including the cost of transport.
- f) During the term of the contract, the Vendor will strictly ensure that requirement of IHMCL FASTag is delivered securely and completely to destined for or designate location as advise by IHMCL as per delivery schedule and for this purpose will provide the following:
  - i. Vendor will maintain sufficient inventory of IHMCL FASTag for all the 7 classes of

tollable vehicles.

- ii. In the event of inability of Vendor to comply with the procurement order due to technical reasons it will be responsibility of Vendor to inform IHMCL well within time to enable the IHMCL to divert the requirement and procure the IHMCL FASTag.
- iii. The Vendor shall replace defective or otherwise not usable tags within one 1 week from the date of intimation received.
- iv. Any penalty due during the Contract period will be adjusted against the invoice amount of the next invoice raised.

#### **5.15 PRICES**

- a) GST as applicable, which will be levied on the goods and services invoiced by the Service Provider to IHMCL, will be reimbursed on actual basis.
- b) IHMCL reserves the right to ask the Service Provider 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 IHMCL, for any purpose with IHMCL's Officials at IHMCL's Head Office or elsewhere, prior, during or after the conduct of an assignment.
- e) Prices quoted by the bidder shall be excluding GST and fixed for the entire Contract period.

#### **5.16 CONTRACT PERIOD**

The initial period of engagement shall be 03 years from date of signing of Contract Agreement. The period of engagement may be further extendable by additional 1 year at the sole discretion of NHAI/IHMCL.

#### **5.17 INSURANCE**

The Service Provider 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, theft, accidental damage, vandalism, fire, flood, and Force Majeure events.

#### **5.18 FORCE MAJEURE**

- a) 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.
- b) If a Force Majeure arises, the Service Provider shall promptly notify IHMCL in writing of such condition and the cause thereof. Unless otherwise directed by IHMCL, the Service Provider 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.

#### **5.19 INDEMNIFICATION**

- a) The Service Provider shall indemnify, defend, save and hold harmless, IHMCL, NHAI 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 Contract 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 Contract on the part of IHMCL Indemnified Persons.
- b) The Service Provider shall indemnify IHMCL Indemnified Persons from all legal obligations in respect of professionals deployed by the Service Provider. 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.
- c) In addition to the aforesaid, the Service Provider shall fully indemnify, hold harmless and defend 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 Contract. 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.

- d) The provisions of Clause 5.19 shall survive Termination.
- e) The remedies provided under Clause 5.19 are not exclusive and shall not limit any rights or remedies that may otherwise be available to IHMCL Indemnified Persons at law or in equity.

## 5.20 TERMINATION

- a) ON EXPIRY OF THE CONTRACT: Subject to the condition mentioned under Clause 5.16, the Agreement shall be deemed to have been automatically terminated on the expiry of the Contract Period unless IHMCL has exercised its option to further renew the Contract Period in accordance with the provisions, if any, of the Contract.
- b) 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 5.18.
- c) ON BREACH OF CONTRACT: IHMCL may terminate the Contract if the Service Provider causes a fundamental breach of the Contract. Fundamental breach of Contract include, but shall not be limited to, the following:
  - i. The Service Provider fails to carry out any obligation under the Contract.
  - ii. The Service Provider without reasonable excuse fails to commence the work in accordance with relevant clauses.
  - iii. Has failed to furnish the required securities or extension thereof in terms of the Contract.
  - iv. the Service Provider stops work and the stoppage has not been authorized by IHMCL;
  - v. the Service Provider 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
  - vi. If the Service Provider, in the judgment of the Employer, has engaged in the corrupt or fraudulent practice in competing for or in executing the Contract.
- d) The Service Provider sub-contracts any assignment under this Agreement without approval of IHMCL.
- e) Any other fundamental breaches as specified in the RFP.
- f) Notwithstanding the above, IHMCL may terminate the Contract in its sole discretion by giving 30 days prior notice without assigning any reason.
- g) Upon Termination (except on account of expiry of Term of this Agreement, Force Majeure), IHMCL shall be entitled at the sole discretion 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.

## **5.21 ARBITRATION/ RESOLUTION OF DISPUTES**

- a) 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 5.21 (d).
- b) 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.
- c) 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 Managing Director/ /CEO/Director , as the case may be, in case of the Service Provider 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 and/or Arbitration under the Arbitration and Conciliation Act, 1996, in accordance with the procedure specified in Clause 5.21 (d) and Clause 5.21 (e).
- d) 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 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 5.21 (e).
- e) Arbitration  
Any Dispute which is not resolved amicably by conciliation, as provided in Clause 5.21 (d), 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.

- f) The arbitrators shall make a reasoned award (the "Award").
- g) The Service Provider and IHMCL agree that an Award may be enforced against the Service Provider and/or IHMCL, as the case may be, and their respective assets wherever situated.
- h) 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 Clause.

## **5.22 Appropriation of Performance Security**

- a) Upon failure of the Service Provider to commence the services, for any reason whatsoever, within the period set forth in this Contract or the extended period thereunder, IHMCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to levy Damages as per Clause 5.13 hereinabove.
- b) 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 Contract 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 clause 5.20 hereof.

## **5.23 MISCELLANEOUS**

### **a) Standard of Performance**

The Service Provider 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 IHMCL. The firm shall promptly replace any personnel deployed under this contract that IHMCL considered unsatisfactory.

### **b) Representations and Warranties of the Parties**

The Parties represents and warrants to the each other that:

- i. It is duly organized 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;

- ii. It has taken all necessary corporate and other actions under applicable laws to authorize the execution and delivery of this Contract and to validly exercise its rights and perform its obligations under this Contract;
- iii. 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;
- iv. 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;
- v. 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;
- vi. 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;

**c) Waiver of immunity**

Each Party unconditionally and irrevocably:

- i. Agrees that the execution, delivery and performance by it of this Contract constitute commercial acts done and performed for commercial purpose;
- ii. 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;)
- iii. 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
- iv. Consents generally in respect of the enforcement of any judgment 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 judgment that may be made or

given in connection therewith).

**d) Waiver**

- i. 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:
  - 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;
  - Shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
  - Shall not affect the validity or enforceability of this Contract in any manner.
- ii. 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 there under 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.

**e) Liability for review of Documents**

Except to the extent expressly provided in this Contract:

- i. No review, comment or approval by IHMCL, any document submitted by the Service Provider 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
- ii. IHMCL shall not be liable to the Service Provider by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

**f) 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.

**g) Survival**

- i. Termination shall:
  - Not relieve the Contractor or IHMCL, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
  - 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.

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

**h) 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.

**i) 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.

**j) 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.

**k) 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.

**l) Successors and assigns**

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

**m) 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:

- i. 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;

- ii. 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
- iii. 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

**n) Sub-Contracting**

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

**o) 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 IHMCL's business or operations without prior written consent of IHMCL.

**p) 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.

**q) 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.

For & behalf of IHMCL

By

Signature

Authorised Representative

Name

Address

For & behalf of

Witness

(Contractor)

1.

Signature

Name

Address

By

Authorised Representative

2.

Signature

Name

Address

## **PART VI - Scope of Work**

- 6.1** The scope of work shall include supply of IHMCL FASTags as per quantity and timelines specified by IHMCL.
- 6.2** The quantity of FASTag to be supplied shall be 5,00,000 in multiple lots which may increase or decrease upto 50%. The size of each lot shall be minimum 25,000 to be delivered at locations as specified by IHMCL.
- 6.3** The FASTags supplied must adhere to technical specifications & the standards specified under Annexure-I of the RFQ IHMCL/ETC/Tag Supply/2018. The art work/design to be printed on FASTag has to be as per design specified by NHAI/MoRTH/IHMCL, and as provided in the RFQ for empanelment of Manufacturers of FASTag dated 30 Aug 2018 released by IHMCL.
- 6.4** **ACTIVITIES IN THE ASSIGNMENT**
- a) The following activities shall be performed by the respective parties:
  - b) IHMCL places the order of required number of FASTags to the Vendor.
  - c) The Vendor shall share the list of TIDs available to IHMCL
  - d) Corresponding to each TID, IHMCL shall share the list of EPC and User Memory Codes to be encoded in the FASTag.
  - e) The Vendor shall deliver the FASTag to IHMCL at the specified locations.
  - f) Vendor shall also share the list, and quantity, of FASTags that could not be manufactured. The final payment shall be made after deducting these FASTag from the original order count.



## Part VII – Forms

### 7.1 BID FORM

(In the Bidder's Letter Head)

Date:

\_\_\_\_\_  
From,

To,

(Name & Address of the Bidder)

General Manager,  
Indian Highways Management Co. Ltd.  
2<sup>nd</sup> 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 hereby, confirm that M/s <Name of the Company> is certified by <Name of the testing agency> and the Test Report/ Certification is valid as on the date of release of this RFP.

We confirm that this bid is valid for a period of 120 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 between us, 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" and other applicable law. 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 FORM OF PERFORMANCE SECURITY (BANK GUARANTEE)

(In the Bidder's Letter Head)

To

Indian Highways Management Co. Ltd.

2<sup>nd</sup> 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:

\*\* 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.

**7.3 FORMAT FOR FINANCIAL BID SUBMISSION**

(To be submitted in the excel format as available on the e-procurement portal)

<b>Name of the Firm:</b>	
<b>Name of Work:</b>	<b>Supply of IHMCL FASTag (inclusive of all taxes except GST) and secured delivery at the locations advised by IHMCL from time to time.</b>
<b>QUOTE# per IHMCL FASTag (In INR)</b>	<b>In Words (In INR)</b>
<b>* Inclusive of all levies &amp; taxes or as applicable taxes, but exclusive of GST.</b>	