



**NATIONAL HIGHWAYS AUTHORITY OF INDIA**  
**(MINISTRY OF ROAD TRANSPORT & HIGHWAYS)**  
**(GOVERNMENT OF INDIA)**  
**(Through E-Tendering Mode only)**

**Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.**

**BID DOCUMENT**

**Volume-I**

**June-2024**

---

**Office of the Regional Officer-Bhopal**  
National Highways Authority of India  
Regional Officer-Bhopal, E-6/47, Smriti Parisar,  
Near Sai Board, Arera Colony Bhopal (M.P.)-462016  
Phone: 0755-2426638  
E-mail: robhopal@nhai.org

**CONTENTS**

**Volume-I**

**TITLE**

SECTION I	NOTICE INVITING TENDER
SECTION II	INSTRUCTIONS TO BIDDERS & APPENDIX TO BID
SECTION III	QUALIFICATION INFORMATION
SECTION IV	FORM OF BANK GUARANTEE, AGREEMENT & LOA
SECTION V	CONDITIONS OF CONTRACT & CONTRACT DATA
SECTION VI	SCOPE OF WORK
SECTION VII	TECHNICAL SPECIFICATIONS
SECTION VIII	IMPLEMENTATION MANUAL
SECTION IX	ADDITIONAL CONDITIONS
SECTION X	BILL OF QUANTITY

Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.

**(SECTION-I)**  
**NOTICE INVITING TENDER**  
**E-Tender Mode Only**

**Notice Inviting Tender**  
**(National Competitive Bidding)**

NHAI/ROMP-IND/Biaora-Dewas/NH-52/2024

Date: 18.06.2024

1. The National Highways Authority of India (NHAI) hereby invites bids through “**e-tendering mode**” from experienced firms/organizations (hereinafter referred to as the “Bidders”) to bid for the works detailed in the table as mentioned below from the eligible bidders, excluding those firms who have been declared as non-performing by NHAI or blacklisted/debarred for specified period by NHAI.

Sl. No.	Section	NH- No.	State	Estimated Cost excluding GST (in Rs.)
1.	Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.	52	Madhya Pradesh	4,36,22,704/-

- 1.1 Cost of Bid documents (Non-Refundable): **Rs. 25,000/-** in favour of Regional Officer, NHAI, RO, Bhopal through RTGS into bank a/c no. 1471201001629 maintained in the name of National Highways Authority of India with Canara Bank, having IFSC code CNRB0001471.

- 1.2. The preliminary requirements (detailed requirements are given in the Bid Document) of bidding, firm / contractor for above packages are mentioned as under:-

Bid Security (Rs.)	Average Turn-over during last 3 years (in Rs )	Work of similar nature during last 7 years (in Rs )	Time for completion
8,72,500/- (2% of Bid Price)	1,30,86,800/- (30% of Bid Price)	Single work of <b>3,48,98,200/-</b> (80% of Bid Price) OR Two works of <b>2,18,11,400/-</b> (50% of Bid Price) OR Three works of <b>1,74,49,100/-</b> (40% of bid price)	1 Year

The scope of work includes the operation & maintenance of national Highways as per MoRTH specification and standards.

2. Bidding is open to eligible bidders under single stage e-tender wizards system bidding procedure

3. The currency of the contract shall be only in Indian Currency.
4. It is mandatory for all the bidders to have class-III Digital Signature Certificate (With Both DSC Components, i.e. Signing & Encryption in the name of authorized signatory (who will sign the Bid) from any of the licensed Certifying Agency (Bidders can see the list of licensed CA's from the link [www.cca.gov.in](http://www.cca.gov.in)) to participate in e-tendering of NHAI.
5. ***The authorized signatory Holding Power of Attorney shall only be the Digital Signatory. In case the authorized signatory holding Power of Attorney and Digital Signatory are not same, the bid shall be considered as Non-Responsive.***
6. New e-procurement Portal is accessible from Central Public Procurement Portal (CPPP) i.e. <http://eprocure.gov.in> and <https://etenders.gov.in/eprocure/app>. The user can get 24X7 Helpdesk support on 0120-4200462, 0120-4001002 and email: [support-eproc@nic.in](mailto:support-eproc@nic.in).
7. **e-Tender Service Provider:**  
E-Procurement portal developed by National Informatics Centre (NIC).  
Key Dates for download/view/submission/opening of bid.

Availability of Bid Documents (last date & time of sale of Bid documents):	From 18.06.2024 Up to 31.07.2024, 1130 Hrs
Last date & time of submission of e-bids (Bid due date):	Up to 31.07.2024, 1130 Hrs
The date of opening of bid online:	01.08.2024, 1230 Hrs At Regional Office, E-6/47, Smriti Parisar, Near Sai Board, Arera Colony, Bhopal (MP) 462016

8. The complete bid document can be viewed/ downloaded from the e-tender portal i.e. <http://eprocure.gov.in> or <https://etenders.gov.in/eprocure/app> or [www.nhai.gov.in](http://www.nhai.gov.in) free of cost. To participate for bidding, bidder have to pay **Rs. 25,000/- (non-refundable)** towards the fee of bidding document in favour of Regional Officer, NHAI, RO, Bhopal through RTGS into bank **A/c no. 1471201001629** maintained in the name of National Highways Authority of India, with **Canara Bank**, having **IFSC code CNRB0001471** on or prior to last date & time of sale of bid document.
9. The amendments/clarifications to the Bid Document if any shall be hosted on said websites.
10. The Bids shall be submitted online only in the prescribed format given on the said websites on or before the date and time as mentioned above. **No other mode of submission is acceptable.** The Technical Bid and Financial bid shall be opened online only.

11. Representatives of the bidders (maximum upto two) who choose to attend may attend the online opening of the bids at Regional Office, Bhopal on the date and time as mentioned above. However, such representatives shall be allowed to attend the opening of the bids only if they produce letter of authority on the letter head of the bidder, at the time of opening of bids as mentioned above.
12. It is clarified that, the bidders have to upload the details of cost of bid document, on or before the last date & time of sale of bid documents mentioned above on the e-tendering portal, otherwise, it will not be possible for them to upload the e-tender documents on the e-tendering portal. Bidders are advised to upload their bids well in time, to avoid last minutes rush on the server or complications in uploading. NHAI, in any case, will not be responsible for any type of problem in uploading the bid.
13. Submission of the Bids after the Bid Due date and time shall not be permitted. Time being displayed on e-tendering portal of NHAI ("Standard Time") shall be final and binding on Bidder. Bids are required to be submitted by Bidders, only as per the Standard Time and not the time as per their location/ country.
14. The Bidders are advised to submit their Bids well before the Bid Due Date. The Authority shall not be responsible for any delay in submission of Bids for any reason including server and technical problems. **NHAI reserves the right to accept or reject any or all Bids without assigning any reason thereof.**
15. In case of any problem with the submission of the Bid, the Bidder may have the assistance of help desk or use the help manual given on the said website.
16. Address for communication/ clarification if any;

**Office of The Regional Officer,**  
National Highways Authority of India,  
Regional Office,  
E-6/47, Smriti Parishar, Near Sai Board,  
Arera Colony, Bhopal (MP) 462016  
Phone/Fax: 0755-2426638/0755-2426698  
E-mail: robhopal@nhai.org

Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.

**(SECTION-II)**  
**INSTRUCTIONS TO BIDDERS**  
**& APPENDIX TO BID**

**Section II: Instructions to Bidders**  
**Table of Clauses**

Clause	A.1 Procedure under E-Tendering		Clause	D. Submission of Bids
	A.2 General			
1	Scope of Bid		19	Sealing and Marking of Bids
			20	Deadline for Submission of Bids
2	Source of Funds		21	Late Bids
3	Eligible Bidders		22	Modification & Withdrawal of Bids
4	Qualification of the Bidder			<b>E. Bid Opening &amp; Evaluation</b>
5	One Bid per Bidder		23	Bid Opening
6	Cost of Bidding		24	Process to be Confidential
7	Site Visit		25	Clarification of Bids and Contracting the Employer
	<b>B. Bidding Documents</b>		26	Examination of bids and Determination of Responsiveness
8	Content of Bidding Documents		27	Correction of Errors
9	Clarification of Bidding Documents		28	Evaluation and Comparison of Financial Bids
10	Amendment of Bidding Documents		29	Price Preference
	<b>C. Preparation of Bids</b>			<b>F. Award of Contract</b>
11	Language of Bid		30	Award Criteria
12	Documents Comprising the Bid		31	Employer's Right to Accept any Bid and to Reject any or all Bids
13	Bid Prices		32	Notification of Award and signing of agreement
14	Currencies of Bid and Payment		33	Performance Security
15	Bid Validity		34	Advances
16	Earnest Money/ Bid Security/ Forfeiture/ Debarment		35	Corrupt or Fraudulent Practices
17	Alternative Proposals by Bidders			
18	Format and Signing of Bid			



## **A.2 General**

### **1. Scope of Bid**

- 1.1** The Employer (i.e. Chairman, National Highways Authority of India) invites bids for “as described in these documents and referred to as “the works”. The name and identification number of the works is provided in the Notice Inviting Tender.
- 1.2** The successful Bidder will be expected to complete the Works by the intended Completion Date specified in the Contract Data (Part I General Conditions of Contract).
- 1.3** Throughout these bidding documents, the terms “bid” and “tender” and their derivatives (bidder/tenderer, bid/tender, bidding/tendering, etc.) are synonymous.
- 1.4** All Orders of Ministry of Finance/DPIIT/any other Government agencies, as applicable and prevalent on the date of LOA, shall be applicable.

### **2. Source of Funds**

- 2.1** The expenditure on this project will be met by National Highways Authority of India (NHAI).

### **3. Eligible Bidders**

- 3.1** This Invitation for Bids is open to all bidders meeting the qualification requirements prescribed in this document.
- 3.2** Bidders shall not be under a declaration of ineligibility 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.
- 3.3** Entities of countries which have been identified by Ministry of Road Transport & Highways as not allowing Indian companies to participate in their Government procurement for any item related to Ministry of Road Transport & Highways shall not be allowed to participate in Government procurement in India for all items related to Ministry of Road Transport & Highways, except for the list of items published by the Ministry of Road Transport & Highways permitting their participation.
- 3.4** For determining the eligibility of Bidder from a country which shares a land border with India the following shall apply:
  - i. Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of

Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23<sup>rd</sup> July 2020, which shall form an integral part if RFP and DCA (Copy enclosed).

- ii. **“Bidder from a country which shares a land border with India”** means:
- a. An entity incorporated, established or registered in such a country, or
  - b. A subsidiary of an entity incorporated, established or registered in such a country; or
  - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
  - d. An entity whose Beneficial Owner is situated in such a country; or
  - e. An Indian (or other) agent of such an entity; or
  - f. A natural person who is a citizen of such a country; or
  - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above.
- iii. **Beneficial owner for the purpose of (ii) above means:**
1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more judicial person, has a controlling ownership interest or who exercises control through other means.

**Explanation:**

- a. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.
  - b. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more judicial person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
  3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual;
  4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- iv. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- v. The Selected Bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in Clause 2.2.1(d)(ii) above.

### **Certificate regarding Compliance**

A certificate on the letterhead of Bidder shall be required to be submitted by the bidders certifying the following:

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority as defined in Public Procurement Order No. F.No. 6/18/2019 – PPD dated 23rd July 2020. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.”

It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/ termination and further legal action in accordance with law.

### **Validity of Registration**

In respect of RFP, registration should be valid at the time of submission of bids and at the time acceptance of bids. If the Bidder is validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.

## **4. Qualification of the Bidder**

4.1 DELETED.

**4.2** All bidders shall furnish scanned copy of the following information and documents with their bids as format provided in Section-3, Qualification Information.

**(a)** Scanned Copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder; scanned copy of written power of attorney of the signatory of the Bid to commit the Bidder; & original copy of

Written Power of attorney to be submitted in the envelop of physical form. (Refer clause 12.2 of ITB).

- (b) Scanned copies of Total monetary value of civil engineering construction works performed for each of the last three years;
- (c) Scanned copy of experience certificate in similar nature (Please refer clause 4.4 of section-II of RFP) and size in the last seven years with certificates from the concerned officer of the rank of Executive Engineer (or equivalent).
- (d) Scanned copy of Evidence of availability of items of construction named in Clause 4.4 B(b) (i).
- (e) Scanned copy of CV of personnel proposed to be employed for the Contract having the qualifications defined in Clause 4.4 B (b) (ii).
- (f) Scanned copy of Reports on the financial standing of the Bidder, and a certificate from Chartered Accountant as a proof of turnover for the last three years;
- (g) Deleted
- (h) Deleted
- (i) Deleted
- (j) Scanned copy of Information regarding any litigation or arbitration during the last five years in which the Bidder is involved, the parties concerned, the disputed amount, and the present status;
- (k) Deleted
- (l) Deleted.
- (m) **Self-Certification**

Self-certification by the Bidder that its Bid meets the Local Content requirement for 'Class – I Local supplier' / 'Class – II Local supplier', as the case may be. The Self-certification shall also have the details of the location(s) at which the local value addition is made. In case, bidder do not submit the aforesaid Certification, the bidder will be summarily treated as 'Non Local Supplier'.

In case of procurement for a value in excess of Rs.10 crores, the 'Class – I Local supplier' / 'Class – II Local supplier' shall have to provide a Certificate from the Statutory Auditor or Cost Auditor of the Company (in case of Companies) or from a practicing Cost Accountant or practicing Chartered Accountant (in respect of Suppliers other than Companies) giving the percentage of Local Content upon Construction of the Project

- (n) Scanned copy of certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

**4.3 Bids from joint ventures consortiums, combination, or any sort of arrangement between two or more than two entities are not allowed.**

**4.4 A. To qualify for award of the contract, each bidder in its name should have the following: -**

- (a) achieved an average annual financial turnover (in all classes of civil engineering construction works only) equal to the amount indicated in NIT during last three years ending 31<sup>st</sup> March of the last financial year duly certified by Chartered Accountant. (Not withstanding anything to the contrary contained herein, in the event that the bid due date falls within three months of the closing of the latest financial years, it shall ignore such financial year for the purpose of the bid and furnish annual financial turnover w.r.t. 3 years preceding in last financial year).
- (b) Satisfactorily Completed (**90% of contract value**) as a prime contractor (or as a nominated subcontractor duly verified by PD/EE of NHAI/PWD/any government organization, provided further that all other qualification criteria are satisfied) similar works during last Seven years ending last day of month previous to the one in which bids are invited, either of the following:
  - I. Three similar completed works costing not less than amount equal to 40% each of estimated cost.
  - II. Two similar completed works costing not less than amount equal to 50% each of estimated cost.
  - III. One similar completed work costing not less than amount equals to 80% each of estimated cost.

***(Similar works constitute experience in operation and maintenance/construction of 2/4/6 lane highway/roadwork).***

(Escalation factor as under shall be used to bring the value of such completed works to the level of financial year i.e. **2024-25**)

**Escalation factor** (for the cost of works completed during the last 7 years including year 2023-24 & financial figures required for the calculation of bid capacity) may be taken as follows: ***(For the cost of work completed, the escalation factor will be corresponding to the financial year in which work was completed).***

Year Before	Multiplying Factor
One .....	1.10
Two .....	1.21
Three .....	1.33
Four .....	1.46
Five .....	1.61
Six .....	1.77
Seven .....	1.95

- (c) Deleted
- (d) Deleted
- (e) Deleted

**4.4 B (a) Each bidder must produce:**

- (i) An affidavit on a Stamp Paper, duly attested from the Notary Public, that the information furnished with the bid documents is correct in all respects; and
- (ii) Such other certificates as defined in Section- III.
- (iii) A Bidder is required to submit, along with its Technical BID, a self-certification that the item offered meets the local content requirement for 'Class - I local Supplier' / 'Class - II local Supplier', as the case may be. The self-certification shall also have details of the location(s) at which the local value addition is made. In case, bidder has not submitted the aforesaid certification the bidder will be treated as 'Non-Local Supplier'.

In the above pretext, the Class - I Local Supplier, Class - II Local Supplier and the Non-Local Supplier are defined as under:

(i) 'Class - I local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class- I local Supplier' under this RFP. The 'local content' requirement to categorise a supplier as 'Class - I local Supplier' is minimum 50%.

(ii) 'Class - II local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class- II local Supplier' under this RFP. The 'local content' requirement to categorize a supplier as 'Class - II local Supplier' is minimum 20%.

(iii) 'Non - local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class - II local supplier' under this RFP.

(iv) 'Local Content' means the amount of value added in India which shall be the total value of item procured (excluding net domestic indirect

taxes) minus the value of imported content in the item (including all custom duties) as a proportion of the total value, in percent

In case of procurement for a value in excess of Rs. 10 crores, the 'Class – I local Supplier'/'Class – II local Supplier' shall provide a certificate from the statutory auditor or cost auditor of the Company (in case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than Companies) giving the percentage of local content.

- (iv) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 as per Format attached.
- (v) **Failure to submit the certificates/documents as specified above at (i),(ii) (iii) and (iv) shall make the bid non-responsive.**
- (b) Each bidder must demonstrate:
  - (i) Evidence of availability (either owned or leased or rented) of the key equipment for this work as stated in the Appendix to ITB.
  - (ii) Availability for this work of personnel with qualification & experience as stated in the Appendix to ITB.
  - (c) Deleted
  - (d) Deleted

**4.4.C** Deleted

**4.5** Sub-Contractors' experience and resources shall not be taken into account in determining the bidder's compliance with the qualifying criteria.

**4.6 Bid Capacity**

Bidders who meet the minimum qualification criteria will be qualified only if their available bid capacity is **more than the total bid value**. The available bid capacity will be calculated as under:

$$\text{Available Bid capacity} = (A * N * 2.5 - B)$$

Where

A = Maximum value of civil engineering works executed in any one year during the last three years (escalation factor as specified in this section shall be used to bring the maximum value of civil engineering works to the level of financial year i.e., **2024-25**) taking into account the completed as well as works in progress.

N = Number of years prescribed for completion of the works for which bid is invited.

B = Value (escalation factor as specified in this section shall be used to bring the value to the level of current financial year i.e. **2024-25**) of existing commitments and on-going works to be completed during the next 12 months (period of completion of the works for which bid is invited)

- 4.7** Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:
- (i) made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/or
  - (ii) record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc. or debarring from MoRTH and its implementing agencies/MP PWD etc.
  - (ii) tampered the bid document in any manner.

## **5. One Bid per Bidder**

- 5.1** Each Bidder shall submit only one Bid for the work. A Bidder who submits more than one Bid will cause such bids to be disqualified.

## **6. Cost of Bidding**

- 6.1** The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will, in no case, be responsible or liable for those costs.

## **7. Site Visit**

- 7.1** The Bidder, at own cost, responsibility and risk, is encouraged to visit, examine and familiarize himself/herself with the Site of Works and its surroundings including source of earth, water, road aggregates etc. and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense. Bidder may contact The Project Director PIU-Indore, NHA/Regional Office Bhopal in this regard.

## **B. Bidding Documents**

### **8. Content of Bidding Documents**

- 8.1** The set of bidding documents comprises the documents listed below and addenda issued in accordance with Clause 10:

#### **Volume- I:-**

- I Notice Inviting Tender
- II Instructions to Bidders & Appendix to Bid
- III Qualification Information
- IV Forms Bank Guarantee, Agreement & LOA
- V Conditions of Contract & Contract Data
- VI Scope of Work



VII Technical Specifications

VIII Implementation Manual, Maintenance Intervention Levels & Guidelines for e-tendering.

**Volume – II:-**

Bill of Quantities for works; (Should be filled in the prescribed format given in the Bid Document).

Bidders are required to quote a single rate against each item (for all items in the Bills) in BOQ. (Partially Filled/In complete Financial Bids shall be rejected unconditionally).

**8.2 Deleted**

**8.3** The bidder is expected to examine carefully all instructions, conditions of contract, contract data, forms, terms, specifications, bill of quantities, etc. in the Bid Document. Failure to comply with the requirements of Bid Documents shall be at the bidder's own risk. Pursuant to clause 26 hereof, bids, which are not substantially responsive to the requirements of the Bid Documents, shall be rejected.

**9. Clarifications on Bid Documents**

**9.1** A prospective Bidder requiring any clarification on the bid documents may notify the Employer in writing or by cable ("cable" includes facsimile) at the Employer's address indicated in the Notice Inviting Tender. The Employer will respond to any request for clarification received earlier than 10 days prior to the deadline for submission of bids. Copies of the Employer's response will be hosted on NHA website [www.nhai.gov.in](http://www.nhai.gov.in) or which are required in the opinion of the Employer including a description of the enquiry, but without identifying its source.

**9.2.1 Deleted**

**9.2.2 Deleted**

**9.2.3** The bidder is requested to submit any questions in writing or by cable so as to reach the Employer not later than 14 days from the date of NIT.

**9.2.4** The questions raised (without identifying the source of the enquiry) and the responses given will be posted without delay on website. Any modifications of the bid documents listed in Clause 8.1, which may become necessary as a result of the pre-bid clarifications or which are required in the opinion of the Employer shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 10.

**10. Amendment of Bidding Documents**

- 10.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 10.2 Any addendum thus issued shall be part of the bidding documents and shall be hosted on web site of NHAI.
- 10.3 To give prospective bidders reasonable time to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with Clause 20.2.

## C. Preparation of Bids

### 11. Language of Bid

- 11.1 All documents relating to the Bid shall be in English.

### 12. Documents Comprising the Bid

- 12.1. The bid to be submitted by the bidder as Volume V of the bid document (refer Clause 8.1) shall be in two separate parts:

**Part-I** – This shall be named **Technical Bid** and shall comprise of information submitted in section-III to be submitted online through e-portal of NHAI.

**Part-II** – It shall be named **Financial Bid** and shall comprise of Priced bill of quantities – to be submitted online through e-portal of NHAI.

- 12.2. Submission of Bids in Physical form has been dispensed with in the Bidding Process. The scanned copies of following documents is required to be uploaded during submission of e-bid on the e-tendering portal of NHAI, As per clause 12.1 above: However, Bidders shall be required to submit original of all the documents after declaration of bid evaluation result by Authority. Technical & Financial evaluation of Bid & declaration of result shall be done based on the documents received online after confirmation of Bid Security BG from the issuing bank and payment for Bid Document. Bidders failing to physically submit the original documents listed in Clause 12.2 of ITB shall be unconditionally debarred from bidding in NHAI projects for a period of 5 years from the date of issue of debarment notice. In case L-1 Bidder fails to submit the original documents listed in Clause 12.2 of ITB, the bidding process shall be annulled and tenders shall be re-invited.

- a) Original of Bid Security
- b) Proof of submission Bid Document Fee (Online Mode)
- c) Written Power of Attorney of the signatory (whose digital signature certificate is used during e-tender submission) of the bidder to commit the bid

- d) Affidavit duly notarized and Undertakings as per Section III.
- e) Information to be submitted in section-III
- f) Annual financial turnover (in all classes of civil engineering construction works only) during last three years ending 31st March of the previous financial year duly certified by Chartered Accountant.
- g) Original of documents as mentioned in Section III and other parts of RFP.
- h) Certificate by the Bidder that its Bid meets the Local Content requirement for as per clause 4.2 (m) of section –II of RFP.
- i) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

**12.3** The following documents, which are not submitted with the bid, will be deemed to be part of the bid.

Section	Particulars
1.	Notice Inviting Tender
2.	Instruction to the bidders
3.	Conditions of Contract
4.	Contract Data
5.	Scope of work
6.	Technical Specifications
7	Additional Conditions
8.	Implementation Manual and Maintenance Intervention Level
9	Additional Conditions

### 13. Bid Prices

**13.1** The Contract shall be for the whole Works, as described in Clause 1.1 based on the priced Bill of Quantities submitted by the Bidder.

**13.2** The bidder shall quote bid prices on appropriate format enclosed as part of tender document one-tender portal of NHA. Bidders will be required to quote a single percentage above/below the overall estimated amount. **The Bidders must quote the percentage over or below of the estimate rate in both words and figures. In case there is a difference between the quoted percentage in words and figures, percentage quoted in words shall prevail. If no percentage quoted then the bid shall be considered as non-responsive.**

**13.3** *All duties, taxes (excluding the Goods & Service tax), royalties and other levies payable by the Contractor under the Contract, or for any other cause, shall be included in the rates, prices, and total Bid price submitted by the Bidder. The*

***employer will perform duties in regards to the deduction of such taxes at sources as per applicable Law. The GST shall be paid on reimbursement basis (as applicable) subject to production of proof of such payment by the Contractor (Proof should contain name of work).***

**13.4** The rates and prices quoted by the Bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment.

#### **14. Currencies of Bid and Payment**

**14.1** The unit rates and the prices shall be quoted by the bidder entirely in Indian Rupees. All payments shall be made in Indian Rupees.

#### **15. Bid Validity**

**15.1** Bids shall remain valid for a period of 120 days after the deadline date for bid submission specified in Clause 20. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.

**15.2** In exceptional circumstances, prior to expiry of the original time limit, the Employer may request that the bidders may extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A bidder may refuse the request without forfeiting his bid security.

#### **16. Earnest Money/Bid Security/Forfeiture/Debarment**

**16.1** The bidder shall furnish, as a part of Bid, Bid Security, in the amount as specified in the NIT (Bank Guarantee//direct transfer (RTGS/NEFT/IMPS), receipt must be in favor of NHAI, payable at Bhopal. The Bid security will remain in force up to and including the date 45 days beyond the validity of the bid. The format of Bank Guarantee shall be in accordance with the sample form of Bid Security included in the Bid Document (Section-IV).

**16.2** The Bid Security shall, at the Bidder's option, be in the form of Bank Guarantee/ Direct Transfer (RTGS/NEFT/IMPS) only (the other form will not be acceptable) of 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 must be in the name of Employer. In case of foreign bank (issued by a branch in India) the net worth in respect of the Indian operations shall only be taken into account. It shall be valid for 45 days beyond the validity of the bid. Any bid having bid security for lesser value and shorter validity period shall be treated as non-responsive.

A. Bank Guarantee, in the name of the Employer, from following banks would be accepted: -

- (i) State Bank of India or its subsidiaries,
- (ii) Any Indian Nationalized Bank
- (iii) IDBI/ ICICI Bank
- (iv) A Foreign Bank (issued by a branch outside India) with a counter guarantee from SBI or its subsidiaries or any Indian Nationalized Bank.
- (v) Any Scheduled Commercial Bank approved by RBI having a net worth of not less than Rs.500 crores 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.

B. The acceptance of the 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 time to time.
- ii. The bank guarantee issued by a Cooperative Bank shall not be accepted.

**16.3** Any bid not accompanied by an acceptable Bid Security, shall be rejected by the Employer as non-responsive.

**16.4** The Bid Security of unsuccessful bidders will be returned within 28 days of the end of the Bid validity period specified in Sub-clause 15.1.

**16.5** The Bid Security of the successful Bidder will be discharged when the Bidders has signed the Agreement and furnished the required Performance Security.

**16.6** The Bid Security will be forfeited:

- a) if the Bidder withdraws the Bid after its submission during the period of Bid validity.
- b) if the Bidder does not accept the correction of the bid price, pursuant to Clause 27; or
- c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
  - i. sign the Agreement; and/or
  - ii. furnish the required Performance Security.

**16.7** In case of forfeiture of Bid security, the bidder shall also be debarred from participation in NHAI works for a period as decided by NHAI.

## **17. Alternative Proposals by Bidders**

**17.1** Bidder shall submit offers that fully comply with the requirement of the bidding documents. Conditional offer or alternate offer will not be considered further in the process of evaluation and the bid will be declared non-responsive.

**18. Format and Signing of Bid**

**18.1** The Bidder shall submit e-bid comprising of the documents as described in Clause 12 of the ITB.

**18.2 Deleted**

**18.3 Deleted**

**18.4 Deleted**

**D. Submission of Bids**

**19. Marking of Bids**

**19.1** The Bidders are advised to submit their Technical Bids well before the Bid Due Date. The Authority shall not be responsible for any delay in submission of Bids for any reason including server and technical problems. ***NHAI reserves the right to accept or reject any or all Bids without assigning any reason thereof.***

**19.2** In case of any problem with the submission of the Bid, the Bidder may have the assistance of help desk or use the help manual given on the said website.

**19.3 Deleted**

**19.4 Deleted**

**19.5 DELETED.**

**19.6 DELETED.**

**19.7 DELETED.**

**20. Deadline for Submission of Bids**

**20.1** The Bidder shall ensure that the complete e-Bid is uploaded on NHAI e-tender portal on or before the Bid Due Date before the time specified in NIT/e-portal. Complete e-Bid to be uploaded on NHAI e-tender portal before due date and time.

**20.2** NHAI assumes no responsibility for inability of a bidder to submit bids through NHAI's e-tendering portal on account of delay in submission at bidder's end. Bidder shall ensure that they submit the bid well before the "Due Date & Time of Bid-Submission". NHAI shall not be responsible if bidder is not able to submit the bid on account of failure in network/internet connection or any other technical reason.

**20.3** The Employer may, at his discretion, extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, 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 as extended.

**21. Deleted**

**22. Modification and Withdrawal of Bids**

22.1 Bidders may modify or withdraw their e-bids as directed on the e-tendering portal, before the Bid Due Date and time as prescribed in Clause 20.

22.2 DELETED.

22.3 No bid may be modified after the deadline for online submission of bids.

22.4 Withdrawal or modification of a Bid between the deadline for submission of bids and the expiration of the original period of bid validity specified in Clause 15.1 above or as extended pursuant to Clause 15.2 shall result in the forfeiture of the Bid Security pursuant to clause 16.

22.5 Bidders may modify the prices of their bids before deadline of online submission of bid.

22.6 No Late and delayed bids after Bid Due date/time shall be permitted in e tendering portal System. Time being displayed on our e-Tendering Portal shall be final and binding on bidder and bids have to be submitted by bidders considering this time only and not the time as per their location/country.

**E. Bid Opening and Evaluation**

**23. Bid Opening**

Bid opening shall be carried out in two stages. Firstly, 'Technical Bid' of all the bids received (except those received late) shall be opened on the date and time mentioned in Notice Inviting Tender (NIT) through online process of e-tendering. 'Financial Bid' of those bidders whose technical bid has been determined to be substantially responsive shall be opened on a subsequent date through online process of e-tendering, which will be notified to such bidders. Bidder shall have to submit Originals of all documents as mentioned in Clause 12.2 after declaration of bid evaluation result by Authority. Bidder failing to submit the Original Documents as mentioned in Clause 12.2 shall be unconditionally debarred from bidding in NHA projects for a period of 5 years.

23.1 DELETED

23.1.1. DELETED

23.1.2 DELETED

- 23.2** In all other cases, the amount of Bid Security, forms and validity shall be announced. Thereafter, the Employer at the opening as the Employer may consider appropriate, will announce the bidders' names and such other details.
- 23.3** The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Clause 23.1.
- 23.4** (i) The bids accompanied with valid bid security, bid document fee, tender processing fee will be taken up for evaluation with respect to the Qualification Information and other information furnished in Part I of the bid pursuant to Clause 12.1.
- (ii) Deleted
- (iii) Deleted
- (iv) As soon as possible, the Evaluation Committee will finalize the list of responsive bidders whose financial bids are eligible for consideration. However, to assist in the examination, evaluation of technical bids, the Employer may at his discretion, ask any bidder for clarification of his bid, however, no additional documents in support of clarification will be entertained.
- 23.5** (i) The Employer shall inform the bidders, on the website whose technical bids are found responsive, of the date, time and place of opening of the financial bids. The bidders so informed, or their representative, may attend the meeting of opening of financial bids.
- (ii) **Bidders** may be asked to submit Originals of all the documents listed under and as per clause 12.2 of Section-II after declaration of Result of Evaluation of Technical Bid by the Authority :-
- a) Original of Bid Security in the form of Bank Guarantee / proof of Online deposition.
  - b) Original Power of Attorney for Signing of Bid.
  - c) Original of Experience certificates apostle at Foreign Origin, if any.
  - d) Affidavit duly Notarized
  - e) Certificate by the Bidder that its Bid meets the Local Content requirement for as per clause 4.2 (m) of section –II of RFP.
  - f) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017
- (iii) Lowest successful bidder shall submit the original documents required as per clause 12.2 of Section-II and clause 23.5 of Section-II above before issuance of Letter of Award, failing which shall be unconditionally debarred from Bidding in NHA Projects for a period of 5 Years.
- 23.6** At the time of the opening of the “Financial Bid”, the names of the bidders whose bids were found responsive in accordance with clause 23.5 will be announced. The financial bids of only these bidders will be opened. The responsive bidder’s names, the Bid prices, the total amount of each bid, pursuant to clause 22 and such other details as the Employer may consider



appropriate will be announced by the Employer at the time of bid opening. Any Bid price, which is not read out and recorded, will not be taken into account in Bid Evaluation.

**23.7** The Employer shall prepare the minutes of the opening of the Financial Bids.

**24. Process to be Confidential.**

**24.1** 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 person 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

**25. Clarification of Bids and Contacting the Employer**

**25.1.** To assist in the examination, evaluation, and comparison of Bids, the Employer may, at his discretion, ask any Bidder for clarification of their -Bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with Clause 27.

**25.2** Subject to sub-clause 25.1, no Bidder shall contact the Employer on any matter relating to his bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, it should do so in writing.

**25.3** Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders' bid.

**26. Examination of Bids and Determination of Responsiveness**

**26.1** During the detailed evaluation of "Technical Bids", the Employer will determine whether each Bid.

- (a) meets the eligibility criteria defined in Clauses 3 and 4;
- (b) the required documents uploaded by the bidder are in order; and
- (c) is substantially responsive to the requirements of the Bidding Documents. During the detailed evaluation of the "Financial Bids", the responsiveness of the bids will be further determined with respect to the remaining bid conditions, i.e., priced bill of quantities, technical specifications and drawings etc.

**26.2** DELETED.

**26.3** DELETED.

**27. Correction of Errors.**

**27.1** Financial Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

***a) Where there is a discrepancy between the rates in figures and in words, the rate in words will govern.***

**27.2** The amount started in the Financial Bid will be corrected by the Employer in accordance with the above procedure for the correction of errors and shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security shall be forfeited in accordance with Sub-clause 16.6.

## **28. Evaluation and Comparison of Financial Bids**

**28.1** The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.

**28.2** In evaluating the Bids, the Employer will determine for each bid the evaluated bid price by adjusting the Bid price after making any correction for errors pursuant to Clause 27.

**28.3** If the Bid of the successful Bidder is seriously unbalanced in relation to the Engineers/Employers estimate of the cost of work of whole work, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, the Employer may require that the amount of the performance security set forth in Clause 33 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 as decided by the Employer shall be final, binding and conclusive on the bidder.

**28.4** A bid, in which an item or overall financial quote is priced unrealistically low (Item rate) and which cannot be substantiated satisfactorily by the bidder, may be rejected as non-responsive.

**28.5** The bidder shall be declared as the successful bidder in pursuance to the procedure defined hereunder:

- i. Among all the responsive bidder, the lowest will be termed as L1. If L1 is 'Class – I Local Supplier', the contract will be awarded to L1.
- ii. If L1 is not 'Class – I local supplier', the lowest bidder among the 'Class – I local supplier', will be invited to match L1 price subject to Class – I local supplier's quoted price falling within margin of purchase preference, and the contract will be awarded to such 'Class- I local supplier' subject to matching the L1 price.

- iii. If case such lowest eligible 'Class – I local supplier' fails to match the L1 price, the 'Class – I Local Supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class – I local supplier' within the margin of purchase preference matches the L1 price, the contract shall be awarded to the L1 bidder.

'Margin of purchase preference' means the maximum extent to which the price quoted by a 'Class – I local supplier' may be above the L1 or the purpose of purchase preference. The margin of purchase preference shall be 20%.

**28.6 In case the successful Bidder fails to submit the originals as per clause 12.2 of Section-II and clause 23.5 of Section-II, the bidding process shall be annulled and further action will be initiated against the bidder as per provision of RFP.**

## **29. Price Preference**

**29.1** There will be no price preference to any bidder.

## **F. Award of Contract**

### **30. Award Criteria**

**30.1** Subject to Clause 32, the Employer will award the Contract to the Bidder whose Bid has been determined:

- i. to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price.
- ii. Deleted.

### **31. Employer's Right to accept any Bid and to Reject any or all Bids**

**31.1** Notwithstanding Clause 30, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.

### **32. Notification of Award and Signing of Agreement.**

**32.1** The bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex or facsimile confirmed by registered letter. This letter (hereinafter and in the Part I General Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay to the Contractor in consideration of the execution, completion and maintenance of the Works, and of routine maintenance of roads by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

**32.2.** The notification of award will constitute the formation of the Contract, subject only to the furnishing of a performance security in accordance with the provisions of Clause 33.

32.3. The Agreement 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.

32.4 Upon furnishing by the successful Bidder of the Performance Security, the Employer will promptly notify the other Bidders that their Bids have been unsuccessful.

### **33. Performance Security**

**33.1** Within 10 (ten) days after receipt of the letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security of **Ten percent** of the Contract price, valid for the period of 28 days after the expiry of defect liability period of 3 year plus additional security for unbalanced Bids in accordance with Clause 28.3 of ITB and sign the contract. **The validity shall account for additional 3 months time to account for BG verification, signing of contract and start date.**

**33.2** The performance security/additional security shall be either in the form of a Bank Guarantee, in the name of the Employer, from a Bank as specified in case of bid security.

**33.3** Failure of the successful bidder to comply with the requirement of sub-clause 33.1 shall constitute sufficient ground for cancellation of the award and for forfeiture of the Bid Security and debarment for a period as specified in Clause 16.7.

### **34. Advances**

**34.1** The Employer will Mobilization Advance as provided in Part I General Conditions of Contract.

### **35. Corrupt or Fraudulent Practices**

**35.1** The bidder and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the bidding process. Notwithstanding anything to the contrary contained herein, the Employer may reject any bid without being liable in any manner whatsoever to the bidder if it determines that the bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the bidding process.

**35.2** Without prejudice to the rights of the Employer under Clause 35 hereinabove, if an bidder is found by the Employer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the bidding process, such bidder shall not be eligible to participate in any tender issued by the Employer during a period of 2 (two) years from the date such bidder is found by the Employer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive

practice, undesirable practice or restrictive practice, as the case may be.

**35.3** For the purposes of this Clause 35, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the bidding process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Employer who is or has been associated in any manner, directly or indirectly, with the bidding process or has dealt with matters concerning the Contract or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Employer, shall be deemed to constitute influencing the actions of a person connected with the bidding process); engaging in any manner whatsoever, whether during the bidding process or after the award or after the execution of the Contract, as the case may be, any person in respect of any matter relating to the Works, who at any time has been or is a legal, financial or technical adviser of the Employer in relation to any matter concerning the Works;
- (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the bidding process;
- (c) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the bidding process;
- (d) “undesirable practice” means establishing contact with any person connected with or employed or engaged by the Employer with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the bidding process; and
- (f) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among bidder with the objective of restricting or manipulating a full and fair competition in the bidding process.

The Employer will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question and will declare the firm ineligible, either indefinitely or for a stated period of time, to bid for any work with National Highways Authority of India, if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for the contract, or in its execution.

The Employer requires the bidders/Contractors to strictly observe the laws against fraud and corruption enforced in India, namely, Prevention of Corruption Act, 1988.

**35.4** The Bidder will sign Integrity Pact with NHAI as attached herewith.

### Appendix to bid

(4.4. B) (b) (i) The minimum no. of key equipment's to be deployed on contract work.

Name of the Equipment	Quantity (in Nos)	Age (in Years)
Sensor Paver finisher (9 m width )	1	5
Generator (250 kVA)	1	5
Vibratory Roller (8 T)	1	5
Static Roller (8/10 T)	1	5
Bitumen/emulsion sprayer (1750 sqm/hr)	1	5
Mechanical Broom (1250 sqm per hour)	1	5
Air compressor (250 cfm Capacity)	1	5
Grader/Backhoe loader	1	5
Road marking Machine	1	5
Pneumatic Tyred Roller	1	5
Tipper/dumper Truck (10 Ton Capacity)	10	5
Batch type hot mix plant (6/10 T/Hr capacity) with indirect heating arrangements	1	5
Reflectometer for measuring the reflectivity of thermoplastic paint/signboards	1	5

Any other equipment required for carrying out work shall be deployed by the contractor as per Ministry's specification and as per direction of Engineer.

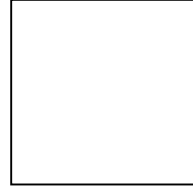
**Note:** The bidder must upload scanned copy of the documentary evidence in support of his owning/leased/ rented of the above equipment's. In case the bidder proposes to hire or take the above equipment on lease, he should, along with the lease/rent agreement, attach the proof of ownership of these equipment's with the company/ entity from whom the equipment's are proposed to be hired on lease/ rent.

4.4 B (b) (ii) The Number of Technical Personnel, Qualifications and Experience will be as follows:

Sl. No	Personnel	Qualification	Particular Experience (minimum requirement)	No. of Persons with vehicles
1.	Project Manager	Graduation in Civil Engineering + 5 Years Exp.	5 years as Project Manager on NH/SH, bridge construction works	1
2	Site Engineer cum Surveyor Engineer	Diploma in Civil Engineering + 5years Exp. Or Graduation in Civil Engineering + 3 Year Experience	3 years on highway construction /Maintenance works	1
3	Material Cum Quality Control Engineer	Diploma in Civil Engineering + 5 years Exp or Graduation in Civil Engineering + 3 Yrs Exp	Material Cum Quality Control Engineer: 5 years on highway construction/ Maintenance works	1

**Note:** The detailed signed and scanned CV's of the Key Technical Personnel, signed by the key personnel himself, must be uploaded along with the bid. The name and educational qualification of other personnel should be given. Noncompliance of the above or non furnishing of the CV as above or conditional deployment of any of the above personnel or proposal to employ lesser number of personnel than above shall make the bid non responsive and financial bid shall not be opened.

## Format of Curriculum Vitae (CV) For Proposed Key Staff



1. Proposed Position: \_\_\_\_\_

2. Name of Staff: \_\_\_\_\_

3. Date of Birth: \_\_\_\_\_ (Please furnish proof of age)

4. **Nationality:** \_\_\_\_\_

5. Educational Qualification:

(Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degrees obtained). **(Please furnish proof of qualification)**

### Contact Address with Phone and mobile numbers:

6. Membership of Professional Societies: \_\_\_\_\_

7. Publication:

(List of details of major technical reports/papers published in recognized national and international journals)

8. **Employment Record:**

(Starting with present position, list in reversed order, every employment held. List all positions held by staff member since graduation, giving dates, names of employing organization, title of positions held and location of assignments. For experience **period of specific assignment must be clearly mentioned**, also give client references, where appropriate).

9. Summary of the CV

(Furnish a summary of the above CV. The information in the summary shall be precise and accurate. The information in the summary will have bearing on the evaluation of the CV).

A) Education:

i) Field of Diploma/Graduation and year

ii) Field of post-graduation and year

iii) Any other specific qualification



- B) Experience
- i) Total experience in highways: \_\_\_\_\_ Yrs
  - ii) Responsibilities held:
    - i) \_\_\_\_\_ Yrs.
    - ii) \_\_\_\_\_ Yrs.
    - iii) \_\_\_\_\_ Yrs.
  - iii) Relevant Experience: \_\_\_\_\_ Yrs.
- C) Permanent Employment with the Firm (Yes/No): If yes, how many years:  
If no, what is the employment?  
Arrangement with the firm?

Certification:

1 *I am willing to work on the project and I will be available for entire duration of the project assignment and I will not engage myself in any other assignment during the currency of this assignment on the project*

2 **I, the undersigned, certify that to the best of my knowledge and belief, this bio- data correctly describes myself my qualification and my experience.**

**Signature of the Candidate** \_\_\_\_\_

Place \_\_\_\_\_

Date \_\_\_\_\_

**Signature of the Authorized Representative of the firm** \_\_\_\_\_

Place \_\_\_\_\_

Date \_\_\_\_\_

Note: Each page of the CV shall be signed in ink by both the staff member and the Authorized Representative of the firm.

Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.

**(SECTION III)**

**QUALIFICATION INFORMATION**

### SECTION III

#### QUALIFICATION INFORMATION

The information to be filled in by the Bidder in the following pages will be used for purposes of post qualification as provided for in Clause 4 of the Instructions to Bidders. This information will not be incorporated in the Contract.

#### Qualification Information

##### 1. For Individual Bidders

##### 1.1. Constitution or legal status of Bidder

*[Upload scanned copy of original]*

Place of registration:

\_\_\_\_\_

Principal place of business:

\_\_\_\_\_

##### 1.2 Power of attorney of signatory of Bid *[upload scanned copy & also supply either original or **duly notarized** copy in physical form of bid]*

##### 1.3. Total value of Civil Engineering construction work performed in the last three years including current year (in Rs. Lakhs) refer ITB Clause 4.4 A (a)

*[upload scanned copy & also supply either original or **duly notarized** copy in physical form of bid]*

20..-20..-----

20..-20..-----

20..-20..-----

**Total -----**

**Average per year**

1.4 (a) Work performed as prime contractor, work performed in the past as a nominated sub- contractor will also be considered, provided further that all other qualification criteria are satisfied (in the same name) of a similar nature during the last Seven years\_to qualify as per ITB Clause 4.4A(b).

Project Name	Name of the Employer*	Description of work	Contract No.	Value of Contract (Rs. Crore)	Date of issue of work order	Stipulated period of completion	Actual date of completion*	Remarks explaining reasons for delay & work Completed

*\* Upload certificate(s) from the Employer (to be given by an officer at the rank of Executive Engineer (or equivalent))*

Note: In case of nominated sub-contractor – a certificate from the Executive Engineer (or equivalent) of the Prime Employer should be obtained from whom an approval for subcontractor has been obtained.

1.4 (b) Information on Bid Capacity (works for which bids have been submitted and accepted and works which are yet to be completed) as on the date 7 days before the last date for bid submission (asper Cl 4.6 of the ITB).

(i) Existing commitments and on-going works(B)

Description of works	Place & State	Contract No.	Name & Address of Employer	Value of Contract (Rs Cr)	Stipulated Period of Completion	Value of works* remaining to be completed (RsCr)	Escalation factor	Anticipated date of completion	Escalated value of remaining work during completion period of work for which bids are invited
1	2	3	4	5	6	7	8	9	10

*\* Upload certificate(s) from the Employer (to be given by an officer at the rank of Executive Engineer (or equivalent))*

Note: In case of nominated sub-contractor – a certificate from the Executive Engineer (or equivalent) of the Prime Employer should be obtained from whom an approval for subcontractor has been obtained.

(ii) Details of works for which bid submitted and accepted (i.e. where contract signing is pending)

Description of works	Place & State	Name & Address of Employer	Date of issue of Letter of Acceptance (LOA) *	Value given in LOA	Stipulated period for completion	Value of work during completion period of work for which bids Are invited
1	2	3	4	5	6	7

\*Upload copy of LOA

(iii) Bid Capacity (Bidder shall calculate, mention his bid capacity and enclose the supporting calculation)

A=Rs...Lakh (enclose the details)

N = (6 months)

B = Rs. ....lakh (enclose the details)

$$\begin{aligned} \text{Assessed available bid capacity} &= A \times N \times 2.5 - B \\ &= \text{Rs. ....lakhs} \end{aligned}$$

1.5 Availability of Key Equipment essential for carrying out the Works [Ref. Clause 4.4(B)(b)]

(i). The Bidder should list all the information requested below.

Item of Equipment	Requirement		Availability Proposals			Page No of the Proof attached
	No.	Capacity	Owned/ Leased/ rented	Nos./ Capacity	Age/ Condition	

Note: The bidder must upload the documentary evidence in support of his owning/leased/ rented of the above equipment .In case the bidder proposes to hire or take the above equipment on lease then the bidder must ,along with the lease/rent agreement ,attach the proof of ownership of these equipment with the company/ entity from whom the equipment are proposed to be hired on lease/rent.

1.6 Qualification and Experience of Key Personnel required for administration and execution of the Contract[Ref.Clause4.4(B)(b)(ii)].Upload biographical data for technical personnel (Refer also to Cl. 4.2 (e) of Instruction to Bidders).

(Refer also to Sub Clause 9.1 of the Conditions of Contract).

Position	Name	Qualification	Total Professional Experience (Years)	Experience in the proposed position (Years)

Note: The detailed and signed CV's of all the Key Technical Personnel ,signed by the key personnel himself ,must be uploaded along with the bid as per proforma given in Appendix to ITB. Non-compliance of the above or non-furnishing of the CV as above or conditional deployment of any of the above personnel or proposal to employ lesser number of personnel than above may make the bid non-responsive and financial bid may not be opened.

1.7. Information on litigation history in which the Bidder is involved.

Other Party (ies)	Employer	Cause of Dispute	Amount Involved	Remarks showing Present Status

2. Bidder should upload the scanned copy of the following affidavits/ undertakings as per formats enclosed here in after & also send original copy of Affidavit/Undertakings: -

- (i) Affidavit (it should be on stamp paper attested by Notary Public)
- (ii) Undertaking regarding minimum investment of cash towards working capital.
- (iii) Undertaking that the Bids shall remain valid for the period specified in Clause 15.1. of the ITB.
- (iv) Affidavit as undertaking for deployment of Key Equipment as defined in Appendix of ITB.
- (v) Certificate by the Bidder that its Bid meets the Local Content requirement for as per clause 4.2 (m) of section –II of RFP.
- (vi) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

## AFFIDAVIT

### **FORMAT- 2(i)**

1. I, the undersigned, do hereby certify that all the statements made in the enclosed attachments are true and correct.
2. The undersigned also hereby certifies that neither our firm M/s \_\_\_\_\_ have abandoned any work on National Highways in India 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 authorise (s) and request(s) any bank, person, firm or corporation to furnish pertinent information deemed necessary and requested by NHAI 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 NHAI and within the prescribed time.

(Signed by an Authorised Representative of the Firm)

\_\_\_\_\_

Name of the Representative

\_\_\_\_\_

Name of Firm

\_\_\_\_\_

DATE

**To be notarized by Notary**



on the letter head of the bidder)

**UNDERTAKING (Regarding Minimum Investment)**

**FORMAT- 2(ii)**

I, the undersigned do hereby undertake that our firm M/s \_\_\_\_\_ would invest a minimum cash up to 25% of the value of the work during implementation of the Contract towards the working capital.

\_\_\_\_\_  
(Signed by an Authorized Representative of the Firm)

\_\_\_\_\_  
Name of the Representative

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
DATE

(on the letter head of the bidder)

**UNDERTAKING (Bid Validity)**

**FORMAT – 2 (iii)**

I, the undersigned do hereby undertake that our firm M/s \_\_\_\_\_ agree to abide by this bid for a period of 120 days after the date fixed for receiving the same and it shall be binding on us and may be accepted at any time before the expiration of that period.

\_\_\_\_\_  
(Signed by an Authorized Representative of the Firm)

\_\_\_\_\_  
Name of the Representative

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
DATE

(on the letter head of the bidder)

### Undertaking

I, the undersigned do hereby undertake that our firm M/s..... agree to provide and will deploy required equipment as mentioned in the Appendix to ITB of the work\_\_\_\_\_ (Name of work) .**Further it is certified that the documents submitted as an evidence of availability of the key equipment /Quotations of Key Equipment(in the name of both Employer and Bidder)** for this work as stated in the Appendix to ITB(**with make and specifications as defined in RFP**), are genuine and correct. If anything, contrary to the details as submitted is found at any stage NHA I would be at liberty to debar/blacklist my firm for an appropriate period as decided by NHA I.

\_\_\_\_\_  
(Signed by an Authorized Representative of the Firm)

\_\_\_\_\_  
Name of the Representative

(on the letter head of the bidder)

**Self Certificate towards Local Content**

To,  
General Manager (Tech)  
Regional Officer - MP  
National Highways Authority of India  
E-6/47, Arera Colony, Bhopal -462016

**Sub:** Name of Work : .....

Dear Sir,

With reference to your Bid document dated \*\*\* \*\*\$, I/we, (Name of bidder .....), having examined the Bidding Documents and understood their contents, hereby certified that the items offered in our Bid meets the local content requirement for

- (a) **'Class-I local supplier'** contributing minimum local content 50%.  
OR
- (b) **'Class-II local supplier'** contributing minimum local content 20%.  
OR
- (c) **'Non Local supplier'** contributing local content less than 20%.  
*(\*Please strike out whichever is not applicable)*

'Local Content' means the amount of value added in India which shall be the total value of item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all custom duties) as a proportion of the total value, in percent.

Details of locations (s) at with the local value addition is made is as follows :

S.No.	Description (Items)	Percentage of local content	Locations

Yours faithfully,

Date:  
Place:

(Signature of the Authorised signatory)  
(Name and designation of the of the Authorised signatory)  
Name and seal of Bidder

**Notes:**

{ In case of procurement for a value in excess of Rs. 10 crores, the 'Class – I local Supplier'/'Class – II local Supplier' shall provide a certificate from the statutory auditor or cost auditor of the Company (in case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than Companies) giving the percentage of local content.}

(on the letter head of the bidder)

**Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017**

General Manager (Tech)  
Regional Officer - MP  
National Highways Authority of India  
E-6/47, Arera Colony, Bhopal -462016

**Sub:** Name of Work : .....

Dear Sir,

With reference to your bid document dated \*\*\* \*\*\$, I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

*I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;*

*I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority as defined in Public Procurement Order No. F. no. 6/18/2019 – PPD dated 23<sup>rd</sup> July 2020 and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.*

*I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.*

Yours faithfully,

Date:  
Place:

(Signature of the Authorised signatory)  
(Name and designation of the of the Authorised signatory)  
Name and seal of Bidder

**Notes:**

{Where applicable, evidence of valid registration by the Competent Authority shall be attached}

**SECTION-IV)**

**FORMS OF BANK GUARANTEES LOA &  
AGREEMENT**

FORM OF BANK GUARANTEE FOR BID SECURITY

WHEREAS \_\_\_\_\_ (Name of Tenderer) (hereinafter called the Tenderer) wishes to submit his tender for ..... **[Name of work]** herein after called “the Tender”

KNOW ALL MEN by these present that we \_\_\_\_\_ (Name of Bank) of \_\_\_\_\_ (Name of country) having our registered office at \_\_\_\_\_ ( ) (hereinafter called the „Bank“) are bound unto the National Highways Authority of India (hereinafter called “the Employer”) in the sum of the Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) \*for which payment can truly be made to the said Employer. The Bank bind themselves, their successors and assigns by these present with the common seal of the Bank this day of and undertake to pay the amount of Rs. \_\_\_\_\_ to the employer upon receipt of his first written demand without the employer having to substantiate his demand.

The conditions of this obligation are:

- (a) If the tenderer withdraws his tender during the period of Tender validity specified in the Form of Tender. Or
- (ii) If the Tenderer having been notified of the acceptance of his Tender by the Employer during the period of tender validity.
- (a) fails or refuses to execute the Form of Agreement in accordance with the instructions to bidders, if required; or
- (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders.

We undertake to pay to the Employer upto the above amount upon receipt of his first written demand, without the employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of any one of the above conditions, specifying the occurred condition or conditions.

This guarantee will remain in force upto and including the date 45 days beyond the validity of the bid as stated in the Instructions to Bidders or as it may be extended by the Employer, at any time prior to the closing date for submission of the Tenders Notice of which extension to the Bank is hereby waived. Any demand in respect of this guarantee should be made on the Bank on or before the date of expiry of this guarantee.

“The guarantor/ bank hereby confirm that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of NHAI after obtaining details thereof from NHAI”:

S.No.	Description	Remarks
1	Name of Beneficiary	National Highways Authority of India
2	Name of Bank	Canara Bank
3	Address of Bank Branch	Arera Colony Branch, Bhopal
4	Account No.	1471201001629
5	IFSC Code	CNRB0001471

This guarantee shall also be operatable at Arera Colony branch at Bhopal (M.P.), from whom, confirmation regarding the issue of this guarantee or extension/ renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

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

SIGNATURE OF AUTHORISED REPRESENTATIVE OF THE BANK

NAME AND DESIGNATION  
EMPLOYEE CODE  
NUMBER SEAL OF THE BANK \_

SIGNATURE OF THE WITNESS (IF THIS IS TO BE WITNESSED AS PER BANK'S POLICY)

NAME OF THE WITNESS  
ADDRESS OF THE WITNESS



**FORM OF BANK GUARANTEE FOR PERFORMANCE SECURITY**

To

The Chairman  
National Highways Authority of India  
G5 & 6, Sector – 10, Dwarka,  
New Delhi – 110075

WHEREAS..... (name and address of contractor) hereinafter called “the contractor” has undertaken, in pursuance of Letter of Acceptance No. .... Dated ..... to execute..... (name of Contract and brief description of Works) (hereinafter called “the contract”).

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

AND WHEREAS...(Name and address of bank)..... 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 Rs..... (amount of guarantee) (Rupees..... (in words), , 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.

This guarantee shall be valid until 28 days from the date of expiry of the Defects Liability Period Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs. \_\_\_\_\_(Rs. \_\_in words) and the guarantee shall remain valid till \_\_\_\_\_. Unless a claim or a demand in writing is served upon us on or before \_\_\_all our liability under this guarantee shall cease.

**“The guarantor/ bank hereby confirm that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of NHAI with details as under”:**

S.No.	Description	Remarks
1	Name of Beneficiary	National Highways Authority of India
2	Name of Bank	Canara Bank
3	Address of Bank Branch	Arera Colony Branch, Bhopal
4	Account No.	1471201001629
5	IFSC Code	CNRB0001471

Signature and seal of the Guarantor with Name, Designation, Employee Code Number & Telephone Number.....

Name of the Issuing Bank/ Branch .....

Name of the Controlling Branch/Bank.....

Address & Telephone Number.....

Address & Telephone Number.....

Date.....

In the presence of (if this is to be witnessed as per bank's policy).....

1.....

.....

(Name, Address & Occupation)

2.....

.....

(Name, Address & Occupation)

An amount shall be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract including additional security for unbalance bids, if any and denominated in Indian Rupees.

**FORM OF LETTER OF APPLICATION**

To,

The Regional Officer, RO-MP  
National Highways Authority of India  
E-6/47, Smriti Parisar, Near Sai Board,  
Arera Colony, Bhopal (M.P.)-462016  
E-mail: robhopal@nhai.org,  
Phone No. 0755-2426638,  
Fax No.-0755-2426698

**DESCRIPTION OF WORKS: ..... [Name of work]**

Dear Sir,

Having examined the Bid Document, Instruction to Bidders Qualification Information, Scope of works, etc. for the subject work. We, hereby submit our bid for the subject work.

It is certified that the information furnished in this document is true and correct. The proposal is unconditional and unqualified. We undersigned accept that NHAI reserves the right to reject any or all application without assigning any reason.

Thanking  
you,

Yours faithfully,

(Authorized Signatory)  
for and on behalf of M/s\_\_\_\_\_

**FORM OF LETTER OF ACCEPTANCE**

No. ....

Dated .....

To

**M/s**.....

**Sub.:** ..... **Name of Work** .....

Sir,

Based on your bid submitted on ..... in compliance of bidding document of NHAI for execution of the work of ..... , it is hereby notified that your bid for a contract price of **Rs**..... (**Rupees in words**.....) has been accepted for and on behalf of NHAI

You are hereby requested to furnish Performance Security plus additional security in the form detailed in para. 33.2 of ITB for an amount equivalent to **Rs**..... (**Rupees in words**.....) within 10 days as per provisions of clause 33 of ITB of the bid document and sign the contract agreement failing which the actions as stipulated in clause 33 of ITB shall be taken.

Thanking you,

Yours faithfully,

(.....)  
Regional Officer-Bhopal

## FORM OF AGREEMENT

### AGREEMENT

This agreement made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ between the National Highways Authority of India, New Delhi (hereinafter called "the Employer" of the one part and \_\_\_\_\_(here in after called "the Contractor") of the other part.

AND WHEREAS the Employer invited bids from eligible bidders for the execution of certain works, viz.....

AND WHEREAS pursuant to the bid submitted by the Contractor, vide \_\_\_\_\_(here in after referred to as the "BID" or "OFFER") for the execution of works, the Employer by his letter of acceptance dated \_\_\_\_\_accepted the offer submitted by the Contractor for the execution and completion of such works and remedying of any defects thereon, on terms and conditions in accordance with the documents listed in para 2 below.

AND WHEREAS the Contractor by a deed of undertaking dated \_\_\_\_\_ has agreed to abide by all the terms of the bid, including but not limited to the amount quoted for the execution of Contract, as stated in the bid, and also to comply with such terms and conditions as may be required from time to time.

AND WHEREAS the contractor has agreed to undertake such works and has furnished a performance security pursuant to clause 33 of the instructions to bidders (Section-I).

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this agreement words and expressions shall have the same meaning as are respectively assigned to them in the conditions of contract hereinafter referred to;
2. the following documents shall be deemed to form and be read and construed as part of this agreement viz.
  - (a) Agreement,
  - (b) Letter of Acceptance
  - (c) Contractor's Bid,
  - (d) Contract Data,
  - (e) Conditions of Contract
  - (f) Technical Specifications,
  - (g) Drawings, if any
  - (h) Implementation Manual and Maintenance Intervention Level
  - (i) Scope of Work
  - (j) Bill of Quantities, and
  - (k) Any other document listed in the Contract Data.

3. The foregoing documents shall be construed as complementary and mutually explanatory one with another. Should any ambiguity or discrepancy be noted then the order of precedence of these documents shall be subject to the order as listed above and interpreted in the above order of priority.
4. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the contract.
5. the employer hereby covenants to pay the contractor in consideration of the execution and completion of the works and remedying of defects therein, the contract price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS WHEREOF the parties here to have caused this agreement to be executed the day and year above written. Signed, sealed and delivered by the said Employer through his Authorized Representative and the said Contractor through his Power of Attorney holder.

**Binding Signature of Employer** \_\_\_\_\_

For and on behalf of National Highways Authority of India

**Binding Signature of Contractor** \_\_\_\_\_

For and on behalf of M/s. \_\_\_\_\_

In the presence of

1. Name :
- Address:

2. Name :
- Address:

In the Presence of

1. Name:
- Address:

2. Name:
- Address:

Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.

**(SECTION-V)**

**CONDITIONS OF CONTRACT AND  
CONTRACT DATA**

<b>Table of Clauses</b>	
<p><b>A. General</b></p> <p>1. Definitions</p> <p>2. Interpretation</p> <p>3. Language and Law</p> <p>4. Engineer's Decisions</p> <p>5. Delegation</p> <p>6. Communications</p> <p>7. Subcontracting</p> <p>8. Other Contractors</p> <p>9. Personnel</p> <p>10. Employer's and Contractor's Risks</p> <p>11. Employer's Risks</p> <p>12. Contractor's Risks</p> <p>13. Insurance</p> <p>14. Site Investigation Reports</p> <p>15. Queries about the Contract Data</p> <p>16. Contractor to Construct the Works &amp; do maintenance</p> <p>17. The Works to Be Completed by the Intended Completion Date</p> <p>18. Approval by the Engineer</p> <p>19. Safety</p> <p>20. Discoveries</p> <p>21. Possession of the Site</p> <p>22. Access to the Site</p> <p>23. Instructions</p> <p>24. Deleted</p> <p>25. Arbitration</p> <p>26. Deleted</p> <p><b>B. Time Control</b></p> <p>27. Programme</p> <p>28. Extension of the Intended Completion Date</p> <p>29. Delays Ordered by the Engineer</p> <p>30. Management Meetings</p> <p><b>C. Quality Control</b></p> <p>31. Identifying Defects</p> <p>32. Tests</p> <p>33. Correction of Defects</p> <p>34. Uncorrected Defects</p> <p>35. Bill of Quantities</p> <p><b>D. Cost Control</b></p> <p>36. Variations</p> <p>37. Payments for Variations</p> <p>38. Cash Flow Forecasts</p>	<p>39. Payment Certificates</p> <p>40. Payments</p> <p>41. Compensation Events</p> <p>42. Taxes and currencies for payment</p> <p>43. Price adjustment -</p> <p>44. Security Deposit/ Retention Money</p> <p>45. Liquidated Damages</p> <p>46. Advance Payment</p> <p>47. Securities</p> <p>48. Cost of Repairs</p> <p><b>E. Finishing the Contract</b></p> <p>49. Completion</p> <p>50. Taking Over</p> <p>51. Final Account</p> <p>52. Operating and Maintenance Manual</p> <p>53. Termination</p> <p>54. Payment upon Termination</p> <p>55. Property</p> <p>56 Release from Performance</p> <p><b>F. Other Conditions of Contract</b></p> <p>57. Labour</p> <p>58. Compliance with Labour Regulations</p> <p>59. Drawings and Photographs of the Works</p> <p>60. The Apprenticeship Act, 1961</p> <p>61. Obligations relating to Local Content</p>
	56



## **Section V**

### **Conditions of Contract**

#### **A. General**

##### **1. Definitions**

**1.1** Terms which are defined in the Contract Data are not defined in the Conditions of Contract but keep their defined meanings. Capital initials are used to identify defined terms.

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.

**Compensation Events** are those defined in Clause 41 hereunder.

**The Completion Date** is the date of completion of the Works as certified by the Engineer, in accordance with Clause 49.1.

**The Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3.

**The Contract Data** defines the documents and other information, which comprise the Contract.

**The Contractor** is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.

**The Contractor's Bid** is the completed upon the online submission of the Bid and subsequent submission of documents to be submitted in the physical form as required under the ITB.

**The Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

**Days** are calendar days; months are calendar months.

A **Defect** is any part of the Works not completed in accordance with the Contract.

**The Defects Liability Certificate** is the certificate issued by Engineer, after the Defect Liability Period has ended and upon correction of Defects by the Contractor.

**The Defects Liability Period** is the period named in contract data and calculated from the Completion Date.

**Defect liability period for whole of the work of Bill shall be 3 year calculated from the date of issue of completion certificate by Engineer.**

**Drawings** include calculations and other information provided or approved by the Engineer for the execution of the Contract.

**The Employer** is the party as defined in the Contract Data, who employs the Contractor to carry out the Works. The Employer may delegate any or all of its functions to a person or body nominated by him for specified functions.

**The Engineer** is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering the Contract.

**Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

**The Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

**The Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time after the approval from Employer.

**Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.

**Plant** is any integral part of the Works that shall have a mechanical, electrical, electronic, chemical, or biological function.

The **Site** is the area defined as such in the Contract Data.

**Site Investigation Reports** are those that were included in the bidding documents and are factual interpretative reports about the surface and subsurface conditions at the Site.

**Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Engineer.

The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

A **Sub-Contractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

**Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Engineer after the approval from NHAI, which varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, maintain, and handover to the Employer, **as defined in the Contract Data.**

## **2. Interpretation**

- 2.1** 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 Engineer will provide instructions clarifying queries about these Conditions of Contract.
- 2.2** If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3** The documents forming the Contract shall be interpreted in the following order of priority.
  - (a) Agreement,
  - (b) Letter of Acceptance
  - (c) Contractor's Bid,
  - (d) Contract Data,
  - (e) Conditions of Contract
  - (f) Technical Specifications,
  - (g) Drawings, if any
  - (h) Implementation Manual and Maintenance Intervention Level
  - (i) Scope of Work
  - (j) Bill of Quantities, and
  - (k) Any other document listed in the Contract Data.

## **3. Language and Law**

- 3.1** The language of the Contract and the law governing the Contract are stated in the Contract Data.

## **4. Engineer's Decisions**

- 4.1** Except where otherwise specifically stated, the Engineer will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

## **5. Delegation**

**5.1** The Engineer, duly informing the Employer, may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

## **6. Communications**

**6.1** Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

## **7. Subcontracting**

**7.1** The Contractor may subcontract any portion of work, up to a limit specified in Contract Data, with the prior approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

**7.2** The Contractor shall not be required to obtain any consent from the Employer for:

- a. the sub-contracting of any part of the Works for which the Sub-Contractor is named in the Contract;
- b. the provision of labour or labour component.
- c. the purchase of Materials which are in accordance with the standards specified in the Contract.

**7.3** Beyond what has been stated in clauses 7.1 and 7.2, if the Contractor proposes sub-contracting of any part of the work during execution of the Works, because of some unforeseen circumstances to enable him to complete the Works as per terms of the Contract, the Employer will consider the following before according approval:

- a) The Contractor shall not sub-contract the Works more than the limit specified in Contract Data.
- b) The Contractor shall not sub-contract any part of the Work without prior consent of the Employer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any of his sub-Contractor, his agents or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents and workmen.

**7.4** The Engineer should satisfy himself before recommending to the Employer whether

- a) the circumstances warrant such sub-contracting; and
- b) the sub-Contractor so proposed for the Work possess the experience, qualifications and equipment necessary for the job proposed to be entrusted to him in proportion to the quantum of Works to be sub-contracted.

## **8. Other Contractors**

- 8.1** The Contractor shall cooperate and share the Site with other Contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 8.2** The Contractor should take up the works in convenient reaches as decided by the Engineer to ensure there is least hindrance to the smooth flow of traffic including movement of vehicles and equipment of other Contractors till the completion of the Works.

## **9. Personnel**

- 9.1** The Contractor shall employ the technical personnel named in the Contract Data or other technical persons approved by the Engineer. The Engineer will approve any proposed replacement of technical personnel only if their relevant qualifications and experience are substantially equal to or better than those of the personnel stated in the Contract Data. If the personnel stated in the contract data are not deployed on site by the contractor, a penalty of Rs 50,000/- Per Month in case of Project Manager and Rs 25,000/- Per month in case of other key personnel will be imposed upto maximum period of 03 Months. Thereafter, it will be treated as a breach of contract and action will be taken as per clause 53.
- 9.2** If the Engineer asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Works in the Contract.

## **10. Employer's and Contractor's Risks**

- 10.1** The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

## **11. Employer's Risks**

- 11.1** The Employer is responsible for the excepted risks which are (a) in so far as they directly affect the execution of the Works in the Employer's country, the risks of war, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot commotion or disorder (unless restricted to the Contractor's employees), natural calamities and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive, or (b) a cause due solely to the design of the Works, other than the Contractor's design.

## **12. Contractor's Risks**

**12.1** All risks of loss of or damage to physical property and of personal injury and death, which arise during and in consequence of the performance of the Contract other than the excepted risks, referred to in clause 11.1, are the responsibility of the Contractor.

### **13. Insurance**

**13.1** The Contractor at his cost shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of defect liability period for events (a) to (d), in the amounts and deductibles stated in the Contract Data for the following events which are due to the Contractor's risks:

- a) loss of or damage to the Works, Plant and Materials;
- b) loss of or damage to Equipment;
- c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- d) Personal injury or death.

**13.2** Insurance policies and certificates for insurance shall be delivered by the Contractor to the Engineer for the Engineer's approval before the Start Date. All such insurance shall provide for compensation to be payable in Indian Rupees to rectify the loss or damage incurred.

**13.3** If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be debt due.

**13.4** Alterations to the terms of insurance shall not be made without the approval of the Engineer.

**13.4** Both parties shall comply with any conditions of the insurance policies.

### **14. Site Investigation Reports**

**14.1** The Contractor, in preparing the Bid, may rely on any Site Investigation Reports referred to in the Contract Data, supplemented by any other information available to him, before submitting the bid.

### **15. Queries about the Contract Data**

**15.1** The Regional Office, MP(West) shall clarify queries on contract data.

## **16. Contractor to Construct the Works & do maintenance**

**16.1** The Contractor shall construct, install and maintain the Works in accordance with the documents forming part of the contract.

## **17. The Works to Be Completed by the Intended Completion Date**

**17.1** The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

## **18. Approval by the Engineer**

**18.1** The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer, who is to approve them if they comply with specifications and drawings.

**18.2** The Contractor shall be responsible for design of Temporary Works.

**18.3** The Engineer's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

**18.4** The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

**18.5** All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Engineer before their use.

## **19. Safety**

**19.1** The Contractor shall be responsible for the safety of all activities on the Site.

## **20. Discoveries**

**20.1** Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

## **21. Possession of the Site**

**21.1** The Employer shall give complete possession of the Site to the Contractor on the date of signing of agreement.

## **22. Access to the Site**

- 22.1** The Contractor shall allow access to the Site and to any place where work in connection with the Contract is being carried out, or is intended to be carried out to the engineer and any person/persons/agency authorized by:
- a. The Engineer
  - b. The Employer

## **23. Instructions**

- 23.1** The Contractor shall carry out all instructions of the Engineer, which comply with the applicable laws where the Site is located.
- 23.2** The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by Auditors appointed by the Employer if so required by the Employer.

## **24. Deleted**

## **25. ARBITRATION**

- 25.1** In case of dispute or difference arising between the Employer and a Contractor relating to any matter arising out of or connected with this agreement, such disputes or differences shall be settled as set forth below:
- (i) The Dispute shall be finally referred to Society for Affordable Resolution of Disputes (hereinafter called as SAROD), a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). 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. *The Dispute shall be governed by Substantive Law of India.*
  - (ii) The appointment of Tribunal, Code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time. The rules of SAROD are as per Annex-I.
  - (iii) Arbitration may be commenced during or after the Contract Period, provided that the obligations of Authority and the Contractor shall not be altered by reason of the Arbitration being conducted during the Contract Period.
  - (iv) The seat of Arbitration shall be New Delhi or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.
  - (v) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.



- 25.2 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.
- 25.3 The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.
- 25.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 25.5 **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 Contractor and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 25, 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.

**26 Deleted**

**B. Time Control**

**27. Programme**

- 27.1 The Engineer shall issue the indent of work in stages specifying the time limit for the same as and when required. The Contractor shall submit to the Engineer for approval a programme within the time stipulated in the Contract Data showing the general methods, arrangements, order, and timing for all the activities in the Works, along with monthly cash flow forecasts.
- 27.2 An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining Works, including any changes to the sequence of the activities.
- 27.3 The Contractor shall submit to the Engineer for approval an updated Programme at intervals. If the Contractor does not submit an updated Programme within this period, the Engineer may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold

this amount until the next payment after the date on which the overdue Programme has been submitted.

- 27.4** The Engineer's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer again at any time. A revised Programme shall show the effect of Variations and Compensation Events.

## **28. Extension of the Intended Completion Date**

- 28.1** The Engineer shall extend the Intended Completion Date only after the approval of NHAI if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Works, which would cause the Contractor to incur additional cost.

- 28.2** The Engineer shall decide whether and by how much time to extend the Intended Completion Date within 21 days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

## **29. Delays Ordered by the Engineer**

- 29.1** The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works. Delay/delays totaling more than 30 days will require prior written approval of the Employer.

## **30. Management Meetings**

- 30.1** The Engineer may require the Contractor to attend a management meeting. The business of a management meeting shall be to review the plans for the Works.
- 30.2** The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all those who attended the meeting.

## **C. Quality Control**

### **31. Identifying Defects**

- 31.1** The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect.

## **32. Tests**

- 32.1** The contractor shall be solely responsible for:
- a. Carrying out the mandatory tests prescribed in the documents forming part of contract.
  - b. For the correctness of the test results, whether performed in his laboratory or elsewhere.
- 32.2** If the Engineer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples.
- 32.3** Subject to further condition in contract data

## **33. Correction of Defects noticed during the Defect Liability Period.**

- 33.1** The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be.
- 33.2** Every time notice of a defect is given, the Contractor shall correct the notified defect at his own cost within the length of time specified by the Engineer's notice. If the contractor is in default the Engineer shall cause the same to be made good by other workmen and deduct the expenses from any sums that may be due to the contractor.

## **34. Uncorrected Defects**

- 34.1** If the Contractor has not corrected a Defect/completed the work, to the satisfaction of the Engineer, within the time specified in the Engineer's notice, the Engineer will assess the cost of having the Defect corrected/completed, and the Contractor will pay this amount.
- 34.2** If the Contractor has not completed the work to the satisfaction of the Engineer, within the time specified in the Engineer's notice/indent, in no case exceeding one month, the Engineer will assess the cost of having the work completed and get the work completed through some other agency and the Contractor will pay this amount in addition to the damages specified as per clause 45.

## **D Cost Control**

### **35. Bill of Quantities**

**35.1** The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning and maintaining works to be done by the Contractor.

**35.2** The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rates in the Bill of Quantities for each item for the work executed.

#### **35.3 Changes in Quantities**

**35.3.1** The Engineer shall, having regard to the scope of the Works and the sanctioned estimated cost, have power to order Changes in the Quantities with the approval of NHAI

**35.3.2** Engineer is also empowered to order omission of any item of BOQ, after approval from Authority for which contractor shall not make any type of claim from NHAI.

#### **35.3.3 Deleted**

### **36. Variations**

**36.1.** All variations shall be included in updated programmes produced by the Contractor. The Authority/Employer shall, having regard to the scope of the Works and the sanctioned estimated cost shall order variation as per extent Policy Guidelines of NHAI and after approval from Authority.

**36.2** Such variation may be for any change in quantity of any item in the Bill of Quantities.

**36.3** Such variation may be for execution of any quantity of any new item which is not available in the Bill of Quantities.

### **37. Payments for Variations**

**37.1** If rates for Variation items are specified in the Bill of Quantities, the Contractor shall carry out such work at the same rate.

**37.2** The rates for any new item not specified in the Bill of Quantities, shall be derived by the Engineer from the rates of the similar items in the Bill of Quantities.

**37.3** **In case the rate for the new item cannot be determined in the a manner as specified in Clause 37.2, the rates for the new item shall be derived from,** current schedule of rates of the MP PWD for Road Bridge works along with Tender Discount/premium.

37.4 If the rate for new item cannot be determined in the manner specified in Clause 37.2 & 37.3, the Contractor shall, within 7 days of the issue of order of Variation work, inform the Engineer the rate which he proposes to claim, supported by analysis of the rates based on data book of MORTH. The Engineer shall assess the quotation and determine the rate based on prevailing market rates within 15 days of the submission of the claim by the Contractor after seeking approval from NHA.

### **38. Cash Flow Forecasts**

**38.1** When the Programme is updated, the Contractor shall provide the Engineer with an updated cash flow forecast.

### **39. Payment Certificates**

**39.1** The Contractor shall submit to the Engineer monthly statements of the value of the work executed less the cumulative amount certified previously supported with detailed measurement of the items of work executed.

**39.2** The Engineer shall check the Contractor's monthly statement within 15 days and certify the amount to be paid to the Contractor after taking into account any credit or debit for the month in question.

**39.3** The value of work executed shall be determined, based on measurements by the Engineer.

**39.4** The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

**39.5** The value of work executed shall also include the valuation of Variations and Compensation Events.

**39.6** The Engineer / Employer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

**39.7** The final bill shall be submitted by the contractor within one month of the

actual date of completion of the work; otherwise the Engineers certificate of the measurement and of the total amount payable for work accordingly shall be final and payment made accordingly within a period of sixty days as far as possible.

#### **40. Payments**

**40.1** Payments shall be adjusted for deductions for, security deposit, other recoveries in terms of the Contract and taxes at source, as applicable under the law. The Employer shall pay the Contractor the amounts Engineer had certified within 28 days of the date of each certificate.

**40.2** The Authorized Representative of the Employer shall make the payment certified by the Engineer.

**40.3** Items of the Works for which no rate or price has been entered in the Bill of Quantities, will not be paid for by the Employer and shall be deemed to be covered by other rates and prices in the Contract.

#### **41 Compensation Events**

**41.1** The following shall be Compensation Events unless they are caused by the Contractor:

- a) The Engineer orders a delay or delays exceeding a total of 30 days.
- b) The effects on the Contractor of any of the Employer's Risks.

**41.2** If a Compensation Event would prevent the Works being completed before the Intended Completion Date, the Intended Completion Date shall be extended. The Engineer shall decide whether and by how much the Intended Completion Date shall be extended after the approval of the employer.

**41.3** The contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Engineer/Employer.

#### **42. Taxes & Currencies for payments**

**42.1** All duties, taxes (excluding the Goods & Service tax), royalties and other levies payable by the Contractor under the Contract, or for any other cause, shall be included in the rates, prices, and total Bid price submitted by the Bidder. The employer will perform duties in regards to the deduction of such taxes at sources as per applicable Law. The GST shall be paid on reimbursement basis (as applicable) subject to production of proof of such payment by the Contractor (Proof should contain name of work).

**42.2** All payments will be made in Indian Rupees.

**43. Price Adjustment-** Deleted.

**44. Security Deposit / Retention Money**

**44.1** The Employer shall retain security deposit of five percent of the amount from each payment due to the Contractor until Completion of the whole of the Works.

**44.2** The security deposit/retention money and the performance security will be released to the Contractor when the Defect Liability period is over, and the Engineer has certified that the Defects, if any, notified by the Engineer to the Contractor before the end of this period have been corrected.

**44.3** If the contractor so desires then the Security Deposit/retention money can be released on submission of unconditional Bank Guarantee at the following two stages:-

(a) At a point after the progress of work in financial term (gross value of work done) has reached 50% of the contract amount

(b) After the retention money has been deducted to the full value (5% of the Contract Amount).

**44.3** Deleted

**45. Liquidated Damages**

**45.1** The Contractor shall pay liquidated damages to the Employer at the rate or part thereof stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's other liabilities.

**45.2** If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting in the next payment certificate. The contractor shall not be paid interest on the over payment of liquidated damages.

**46. Advance Payment**

46.1 Deleted

46.2 Deleted

46.3 Deleted.

#### **47. Securities**

**47.1** Subject to further condition in contract data, the Performance Security equal to **Three percent** of the contract price and additional security for unbalanced bids shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the form given in the Contract Data and by a prescribed bank. The Performance Security shall be valid until a date 28 days after the expiry of Defect Liability Period and the additional performance security for unbalanced bids shall be valid until a date 28 days from the date of issue of the certificate of completion. The validity shall account for additional 3 months' time to account for BG verification, signing of contract and start date

#### **48. Cost of Repairs**

**48.1** Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Period shall be remedied/ rectified by the Contractor at their cost if the loss or damage arises from the Contractor's acts or omissions.

### **E. Finishing the Contract**

#### **49. Completion**

**49.1** When the whole of the works has been completed as per the provision of the Contract, the Contractor shall request the Engineer to issue a certificate of Completion of the Works. The Engineer shall, within 14 days of the date of receipt of such request, either issue to the Contractor, with a copy to the Employer, a completion certificate, stating the date on which, the works were completed in accordance with the contract, or give instructions in writing to the contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such certificate.

#### **50. Taking Over**

**50.1** The Employer shall take over the Site and the Works within seven days of the Engineer's issuing a certificate of Completion of all the items included in the three bills.

#### **51. Final Account**

**51.1** The Contractor shall supply to the Engineer with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is



not, the Engineer shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate within 56 days of receiving the Contractor's revised account.

## **52. Operating and Maintenance Manual**

**52.1** If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them within 28 days from date of issue of certificate of completion.

**52.2** If the Contractor does not supply the Drawings and/or manuals by the stipulated date or they do not receive the Engineer's approval, the Engineer shall withhold the amount equal to **Rs. 5 lakhs** from payments due to the Contractor.

## **53. Termination**

**53.1** The Employer may terminate the Contract if the Contractor causes a fundamental breach of the Contract.

**53.2** Fundamental breaches of Contract include, but shall not be limited to, the following:

- a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer.
- b) the Contractor is declared as bankrupt or goes into liquidation other than for approved reconstitution or amalgamation.
- c) the Engineer/Employer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer.
- d) the Contractor does not maintain a Security, which is required.
- e) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in clause 45.
- f) the Contractor fails to provide insurance cover as required under clause 13;
- g) 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. For the purpose of this clause, "corrupt practice" means offering, giving, receiving, or soliciting of anything 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.

- h) if the Contractor has not completed at least thirty percent of the value of Work required to be completed after half of the completion period has elapsed.
- i) if the Contractor fails to set up a field laboratory with the prescribed equipment, within the period specified; and
- j) any other fundamental breach as specified in the Contract Data.

**53.3** Notwithstanding the above, the Employer may terminate the Contract for convenience.

**53.4** If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible but in no case later than 7 days.

#### **54. Payment upon Termination**

**54.1** If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

**54.2 Deleted**

#### **54.3 CURTAILMENT OF DLP & RECOVERY**

**If, the Contractor is engaged by NHA1 at site for 4/6/8 laning project before expiry of DLP, then the balance DLP period shall be condoned by recovery of an amount equal to 1% of contract value per annum (considering 365 days per annum) proportionately. In this regard decision of NHA1 shall be final and binding on the contractor.**

#### **55. Property**

**55.1** All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer for use for completing balance work if the Contract is terminated because of the Contractor's default.

#### **56. Release from Performance**

**56.1** If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of the Employer or the Contractor, the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## **F. Other Conditions of Contract**

### **57. Labour**

**57.1** The Contractor shall, make arrangements of his own cost and expenses for the engagement of all staff and labour, local or others; for their payment, housing, feeding and transport; and for compliance with various labour laws/ regulations.

**57.2** The Contractor shall, as asked by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such other information as the Engineer may require.

### **58. COMPLIANCE WITH LABOUR REGULATIONS**

**58.1** During the currency of the Contract, the Contractor and his sub-Contractors shall abide at all times by all existing labour enactments and rules made thereunder, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be notified already or that may be notified under any labour law in future either by the State or the Central Government or the local authority. Salient features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Contractor, the Engineer/Employer shall have the right to deduct any money due to the Contractor including from his performance security/ retention money. The Employer/Engineer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer. The employees of the Contractor and the Sub-Contractor in no case shall be treated as the employees of the Employer at any point of time.

#### **58.2 SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK.**

- a) **Workmen Compensation Act 1923:-** The Act provides for compensation in case of injury by accident arising out of and during the course of employment.
- b) **Payment of Gratuity Act 1972:-** Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed the prescribed minimum years (say, five years) of service or more or

on death the rate of prescribed minimum days" (say, 15 days) wages for every completed year of service. The Act is applicable to all establishments employing the prescribed minimum number (say, 10) or more employees.

c) **Employees P.F. and Miscellaneous Provision Act 1952:** The Act Provides for monthly contributions by the Employer plus workers at the rate prescribed (say, 10% or 8.33%). The benefits payable under the Act are:

- i. Pension or family pension on retirement or death as the case may be.
- ii. Deposit linked insurance on the death in harness of the worker.
- iii. Payment of P.F. accumulation on retirement/death etc.

d) **Maternity Benefit Act 1951:** - The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.

e) **Contract Labour (Regulation & Abolition) Act 1970:-** The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by Law. The principal Employer is required to take Certificate of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer if they employ prescribed minimum (say 20) or more contract labour.

f) **Minimum Wages Act 1948:** - The Employer is to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act if the employment is a scheduled employment. Construction of buildings, roads, runways are scheduled employment.

g) **Payment of Wages Act 1936:** - It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.

h) **Equal Remuneration Act 1979:** - The Act provides for payment of equal wages for work of equal nature to male and female workers and for not making discrimination against female employees in the matters of transfers, training and promotions etc.

i) **Payment of Bonus Act 1965:** - The Act is applicable to all establishments employing prescribed minimum (say, 20) or more workmen. The Act provides for payments of annual bonus within the prescribed range of percentage of wages to employees drawing up to the prescribed amount of wages, calculated in the prescribed manner. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. States may have different number of employment size.

j) **Industrial Disputes Act 1947:** - The Act lays down the machinery and

procedure for resolution of industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.

k) **Industrial Employment (Standing Orders) Act 1946:** - It is applicable to all establishments employing prescribed minimum (say, 100, or 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get these certified by the designated Authority.

l) **Trade Unions Act 1926:** - The Act lays down the procedure for registration of trade unions of workmen and Employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.

m) **Child Labour (Prohibition & Regulation) Act 1986:** - The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulations of employment of children in all other occupations and processes. Employment of child labour is prohibited in building and construction industry.

n) **Inter-State Migrant Workmen's (Regulation of Employment & Conditions of Service) Act 1979:-** The Act is applicable to an establishment which employs prescribed minimum (say, five) or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as Housing, Medical-Aid, Travelling expenses from home up to the establishment and back etc.

o) **The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996:-** All the establishments who carry on any building or other construction work and employs the prescribed minimum (say, 10) or more workers are covered under this Act. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the building or construction work and other welfare measures, such as canteens, first-aid facilities, ambulance, housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.

p) **Factories Act 1948:-** The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing the prescribed minimum (say, 10) persons or more with aid of power or another prescribed minimum (say, 20) or more persons without the aid of power engaged in manufacturing process.

## **59. Drawings and Photographs of the Works**

- 59.1** The contractor shall do photography/videography of the site firstly before the start of the work, secondly mid-way in the execution of different stages of work and lastly after the completion of the work. No separate payment will be made to the contractor for this.
- 59.2** The Contractor shall not disclose details of Drawings furnished to him and works on which he is engaged without the prior approval of the Engineer in writing. No photograph of the works or any part thereof or plant employed thereon, except those permitted under clause 59.1, shall be taken or permitted to be taken by the Contractor or by any of his employees or any employees of his sub-Contractors without the prior approval of the Engineer in writing. No photographs/ Videography shall be published or otherwise circulated without the approval of the Engineer in writing.

## **60. The Apprenticeship Act 1961**

- 60.1** The Contractor shall duly comply with the provisions of the Apprenticeship Act 1961 (III of 1961), the rules made thereunder and the orders that may be issued from time to time under the said Act and the said Rules and on his failure or neglect to do so he shall be subject to all liabilities and penalties provided by the said Act and said Rules.

## **61 Obligations relating to Local Content**

The Contractor [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project Highway of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE – II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144 (xi) of GFR, 2017.

## Rules ANNEX-I ARBITRATION RULES OF SAROD

1. Scope of Application
2. Definitions
3. Notice, Calculation of Periods of Time
4. Commencement of Arbitration
5. Response by Respondent
6. Filing of Case Statements
7. Contents of Case Statements
8. Default in Filing and Serving Case Statements
9. Further Written Statements
10. SAROD to Provide Assistance
11. Appointment of Tribunal
12. Multi-party Appointment of the Tribunal
13. Appointment of Substitute Arbitrator
14. Independence and Impartiality of the Tribunal
15. Code of Ethics for Arbitrators
16. Challenge of Arbitrators
17. Decision on Challenge
18. Removal of the Tribunal
19. Re-hearing in the Event of Replacement of the Tribunal
20. Jurisdiction of the Tribunal
21. Fees of SAROD and Arbitral Tribunal
22. Transmission of File of the Tribunal
23. Juridical Seat of Arbitration
24. Language of Arbitration
25. Conduct of the Proceeding
26. Communications between Parties and the Tribunal
27. Party Representatives
28. Hearings
29. Documents - only Arbitration
30. Witnesses
31. Experts Appointed by the Tribunal
32. Rules applicable to substance of dispute
33. Closure of Hearings
34. Additional Powers of the Tribunal
35. Deposits to Costs and Expenses
36. Decision Making by the Tribunal
37. The Award
38. Additional Award
39. Correction of Awards
40. Settlement
41. Interest
42. Costs
43. Waiver
44. Exclusion of Liability
45. General Provisions
46. Amendment to Rules

## PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between NHAI and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Redressal of Disputes (SAROD) has been formed as a Society under Societies Registration Act, 1860 with registration No. S/RS/SW/I044/2013. It has been formed by National Highways Authority of India (NHAI) and National Highways Builders Federation (NHBF) with founding members as mentioned in the Memorandum of Association of SAROD.

## SAROD ARBITRATION RULES

### Rule 1 - Scope of Application

Where any agreement, submission or reference provides for arbitration at the Society for Affordable Redressal of Disputes (“SAROD”), or under the Arbitration Rules of the SAROD and where the case is a domestic arbitration shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD where the amendments take effect before the commencement of the Arbitration. Parties may adopt following clause for inclusion in the contract:-

“Any dispute or difference whatsoever arising between the parties and of relating to the construction, interpretation, application, meaning, scope, operation or effect of this contract or the validity or the breach thereof, shall be settled by arbitration in accordance with the rules of arbitration of the “SAROD” and the award made in pursuance thereof shall be final and binding on the parties subject to Provisions of The Arbitration and Conciliation Act, 1996”.

These rules shall come into effect from the day of approval by Governing Body of SAROD.

### Rule 2 - Definitions

These Rules shall be referred to as “the SAROD Arbitration Rules”.

2.1 In these Rules:

“**Act**” means the ‘Arbitration and Conciliation Act 1996’ of India and any statutory modifications or re-enactments thereof.

“**SAROD**” means the Society for Affordable Redressal of Disputes.

“**SAROD Arbitrator Panel**” means the list of persons admitted to serve as arbitrators under these Rules.

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

“**NHBF**” means the National Highways Builders Federation.



**“GOVERNING BODY”** means Governing Body of SAROD as defined in Article 9 of Memorandum of Association.

**“PRESIDENT”** means President of Governing Body of SAROD as defined in Rules & Regulation of SAROD

**“SECRETARY”** means Secretary of SAROD as defined in Rules & Regulation of SAROD. **“TRIBUNAL”** means either a Sole Arbitrator or all arbitrators when more than one is appointed.

**“PARTY”** means a party to an arbitration agreement,

**“E-Arbitration”** means submission of pleadings, defence statement etc by E-mail and holding of proceedings via video conferencing.

### **Rule 3 - Notice, Calculation of periods of Time**

For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee’s last known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.

The transmission is deemed to have been received on the day of transmission.

### **Rule 4 - Commencement of Arbitration**

Any party wishing to commence an arbitration under these Rules (“the Claimant”) shall file with the Secretary and serve on the other party (“the Respondent”), a written Notice of Arbitration (“the Notice of Arbitration”) which shall include the following:

- a. a request that the dispute be referred to arbitration;
- b. the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
- c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
- d. a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
- e. a brief statement describing the nature and circumstances of the dispute;
- f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice or Arbitration is filed;
- g. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
- h. the name of the Claimant's nominated arbitrator.

A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration

The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

#### **Rule 5 – Response by Respondent**

Within 14 days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

- a. A confirmation or denial of all or part of the claims;
- b. Brief statement of the nature and circumstances of any envisaged counterclaims
- C A comment in response to any proposals contained in the Notice of Arbitration; and
- d. The name of the respondent's nominated arbitrator.

A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

#### **Rule 6 – Filing of Case Statements**

Within 30 days after the filing of the Notice of Arbitration, the claimant

must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case alongwith all documents to be relied upon by the Claimant.

Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defense and counterclaim (if any) alongwith all documents to be relied upon by the Respondent.

Within 30 days after the service of the statement of Respondent's defense, if the Claimant intends to challenge anything in the statement of Respondent's defense and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defense to counterclaim.

No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.

The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,

The party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

## **Rule 7 – Contents of Case Statements**

The case statements must contain the detailed particulars of the party's claim, defence or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.

It must:

- a. Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
- b. State fully its reasons for denying any allegation or statement of the other party.
- c. State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.

A case statement must be signed by or on behalf of the party making it.

## **Rule 8 - Default in Filing and Serving Case Statements**

If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.

If the Respondent fails to submit a Statement of Respondent's Defense, the Tribunal may nevertheless proceed with the arbitration and make the award.

#### **Rule 9 - Further Written Statements**

The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.

All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

#### **Rule 10 - SAROD to Provide Assistance**

At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.

Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

#### **Rule 11 - Appointment of Tribunal**

The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.

In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defence and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,

An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD Arbitration Panel as at the date of the appointment,

In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

#### **Rule 12 - Multiparty appointment of the Tribunal**

If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.

If the parties are unable to do so, upon the lapse of the 21 day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

#### **Rule 13 - Appointment of Substitute Arbitrator**

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

#### **Rule 14 - Independence and Impartiality of the Tribunal**

The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

#### **Rule 15 - Code of Ethics for Arbitrators**

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

## **Appointment**

A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

In this code, the masculine includes the feminine.

## **Disclosure**

A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances.

A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

- (a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
- (b) The extent of any prior knowledge he may have of the dispute.

## **Bias**

The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

## **Communications**

Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

No arbitrator shall confer with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.

Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

### **Fees**

In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD.

### **Conduct**

Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

### **Confidentiality**

The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

This Code is not intended to provide grounds for the setting aside of any award.

### **Rule 16 - Challenge of Arbitrators**

An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartially or independence and also if he or she has committed any misconduct.

An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,

A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.

A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.

The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.

The Notice of Challenge must state the reasons for the challenge.

The arbitration shall be suspended until the challenge is resolved or decided upon.

When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

#### **Rule 17 - Decision on Challenge**

If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.

If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

#### **Rule 18 - Removal of the Tribunal**

The Governing Body may on the application of a party remove an arbitrator:

- a. Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
- b. Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
- c. Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD.

The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.

Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.

The Governing Body's decision on the application is final and is not subject to appeal or review.

#### **Rule 19 - Re-hearing in the Event of Replacement of the Tribunal**



If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

#### **Rule 20 - Jurisdiction of the Tribunal**

The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. In either case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the appointment of an arbitrator.

The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.

In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration not with sanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

#### **Rule 21 – Fees of SAROD and Arbitral Tribunal Fee Schedule**

**Registration Fee (Non - Refundable):** Rs, 10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

#### **Rule 22- Transmission of File to the Tribunal**

he Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.

The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion,

including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

### **Rule 23 - Judicial Seat of Arbitration**

Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.

Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

### **Rule 24 - Language of Arbitration**

The language of arbitrators shall be English. In case of material existing in any other language, other than English the same has to be translated to English language.

### **Rule 25 - Conduct of the Proceedings**

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10.AM to 5PM with a recess of one hour.

### **Rule 26 - Communication between Parties and the Tribunal**

Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.

Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or all other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.

The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.

A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

### **Rule 27 - Party Representatives**

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

### **Rule 28 - Hearings**

Unless the parties have agreed on documents-only arbitration, the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g. submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the time table with without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.

Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.

In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.

All meetings and hearing shall be in private unless the parties agree otherwise.

### **Rule 29 - Documents Only Arbitration**

**29.1** The Disputes may be decided without an oral hearing if it is so agreed by the parties.

Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.

Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

### **Rule 30 - Witnesses**

The Tribunal may require each party to give notice of the names and

designations of the witnesses it intends to call and reasons for legal necessity of such witness.

No party shall call any expert witness without the leave of the Tribunal.

Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,  
A Witness may be required by the Tribunal to testify under oath or affirmation.

Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,

Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,

The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

### **Rule 31 - Experts Appointed by the Tribunal**

Unless otherwise agreed by the parties, the Tribunal may:

- a. appoint one or more experts to report the Tribunal on specific issues;
- b. require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.

Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.

Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

**Rule 32 - Rules applicable to substance of dispute- (1)** Where the place of arbitration is situated in India,

32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

### **Rule 33 - Closure of Hearing**

The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.

The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

### **Rule 34 - Additional Powers of the Tribunal**

In addition to the powers conferred by the Act, the Tribunal shall also have the power to:-

- a. Allow any party, upon such terms (as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
- b. Extend or abbreviate any time limits provided by these Rules;
- c. Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
- d. Order the parties to make any property or thing available for inspection
- e. Order any parties to produce to the Tribunal, and to the other parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power which the Tribunal determines to be relevant;
- f. Make orders or give directions to any party for interrogatories;
- g. Make orders or give directions to any party for an interim injunction or any other interim measure;
- h. Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

### **Rule 35 - Deposits to Costs and Expenses**

The Tribunal's fees and SAROD administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.

The Claimant shall deposit with the SAROD half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD one-half of the fees payable at the time of filing the Statement of Respondent's Defence and Counterclaim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.

Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently

become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of.

The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.

All deposit(s) shall be made to and held by the SAROD. Any interest which may accrue on such deposit(s) shall be retained by the SAROD.

If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders.

The parties shall remain jointly and severally liable to the SAROD for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

### **Rule 36 - Decision Making by the Tribunal**

Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.

If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting Arbitrator alone as if acting as a sole arbitrator.

However, in the case of a three-member Tribunal the presiding arbitrator may, after consulting the other arbitrators, make procedural rulings alone.

### **Rule 37 - The Award**

It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.

The Tribunal shall assemble at the assigned place in SAROD and shall exercise utmost secrecy and confidentiality in writing the award,

Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the

arbitrator or arbitrators.

The Tribunal may make interim awards or separate awards on different issues at different times.

All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.

The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.

The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD.

By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.

Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

#### Rule 38 - Additional Award

Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete

the additional award within 30 days after the receipt of the request.

#### Rule 39 - Correction of Awards

Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.

If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 days of the date of the Award.

#### **Rule 40 - Settlement**

If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,

The Parties shall:

- a. Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:
- b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD and the Tribunal.

If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.

Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

#### **Rule 41 - Interest**

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

#### **Rule 42 - Costs**

The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.

In this Rule, “costs of the arbitration” shall include:

- a. The fees and expenses of the Tribunal and the administration fees of the SAROD as determined by the Secretary in accordance with the Schedule of Fees;
- b. The costs of tribunal appointed experts or of other assistance rendered: and
- c. All expenses which are reasonably incurred by the SAROD in connection with the arbitration.

The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of



party appointed experts etc) of one party shall be paid by the other party.

**Rule 43 - Waiver**

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing to such non-compliance shall be deemed to have waived its right to object.

**Rule 44 - Exclusion of Liability**

The Tribunal, the President, the SAROD and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,

After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD and any of its officers a witness in any legal proceedings arising out of the arbitration.

**Rule 45 - General Provisions**

In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

**Rule 46 - Amendment to Rules**

These Rules may from time to time be amended by the Governing Body of SAROD.

**Contract Data**

Items marked “N/A” do not apply in this Contract.

S. No.	Description	Clause Reference
1.	The Employer is <b>Chairman, NHAI</b> <b>Address:G-5 &amp; 6, Sector-10,</b> <b>Dwarka, New Delhi</b>  Name of authorized Representative of Employer: <b>The Regional Officer-MP</b> <b>National Highways Authority of India</b> <b>E-6/47, Smriti Parisar, Near Sai Board,</b> <b>Arera Colony, Bhopal (M.P.)-462016</b> <b>E-mail: robhopal@nhai.org</b> <b>Phone No. 0755-2426638</b>	[Cl.1.1]
2.	The Engineer will be intimated later	[Cl.1.1]
3.	The Intended Completion Date for whole of the work in: 12 months.	[Cl.1.1, 17&28]
4.	The Site is located at <b>Biaora-Dewas section of NH-52 in the state of Madhya Pradesh.</b>	[Cl.1.1]
5.	The Start Date shall be 7 days after the date of issue of the Notice to proceed	[Cl.1.1]
6.	(a) The name and identification number of the Contract is: [Cl.1.1]  <b>Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.</b>  “(b) The Works consist of “ <b>Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.</b>	[Cl.1.1]
7.	(a) The law which applies to the Contract is the law of Union of India. (b) The language of the Contract documents is English	[Cl.3.1]
8.	The limit of subcontracting is 49% of initial contract price	[Cl.7.1]
9.	Schedule of Other Contractor – NIL	[Cl 8.1]
10.	Technical personnel are as given in the ITB (section-II).	[Cl 9.1]
11.	Amount for insurance are: a) Rupees equivalent to Contract price. b) Rupees equivalent to 5% of Contract price. c) Rupees equivalent to 5% of Contract price. d) Rupees 5 lakhs for multiple incidents. As per standard industrial norms. And deductible as per premium rate	[Cl.13.1]

12.	Site Investigation Report – NIL	[Cl 14.1]
13.	(A) The period for submission of the programme for approval of Engineer shall be 3 days from the issue of Letter of Commencement. (B) (a) Identified indented work – Weekly Indent-3 days before start of week (2) Emergent Indent – Within 24 hours.	[Cl.27.1]
14.	Amount to be withheld for delays in submission of updated programme: 1% of value of work corresponding to the updated programme	[Cl.27.3]
15.	The period for setting up a field laboratory with the prescribed equipment relevant to items of work in BOQ is 7 days from the days from the date of notice to start work.	[Cl.32]
16.	The Defect Liability Period will be 03 Year works from the actual Date of Completion.	
17.	(a) Amount of liquidated damages for delay in completion of works- <i>For identified Indented work 0.1 percent of the Indented value, rounded off to the nearest thousand, per day with the minimum of Rs. 1000/-per day</i> (b) Maximum limit of liquidated damages for delay in completion of work <i>10 per cent of the Initial Contract Price rounded off to the nearest thousand.</i>	[Cl.45.1]
18.	The standard form of Performance Security acceptable to the Employer Shall be an unconditional Bank Guarantee of the type as presented in the Bidding Documents.	[Cl. 47.1]
19.	Other fundamental breach is that the contractor has failed to complete 75% of value of indented work in any 3 indents issued by the Engineer.	[Cl. 53.2 (j)]
20.	The percentage to apply to the value of work not completed representing the Employer's additional cost for completing the work shall be 20%.	[Cl. 54.1]

## **Section-VI** **Scope of Work**

## SCOPE OF WORK

### 6. General:

The works include construction of service road on Bioara-Dewas section of NH-52. The scope broadly includes construction as per below as per quantities given in BOQ:

Sl no	Description	Remarks
1	Locations	04 nos. (Construction of new service road at 03 locations and descoped service road construction at 01 location)
2	Length of Service Road/Slip Road	240 Rm Auxiliary Lane, 737m service road
3	Other works in scope	Street lighting as per IRC norms, 255m. RCC Drain, Traffic signage, road marking and other Miscellaneous works
4	Crust adopted	BC: 30mm, DBM: 90mm; WMM: 250mm & GSB: 200 mm, 500 mm Subgrade

A tentative PnP and TCS of the proposed works is attached herewith as Annexure-A.

### Priority of work:

As per directions of Engineer/NHAI.

**(SECTION-VII)**

**TECHNICAL SPECIFICATIONS**

## **TECHNICAL SPECIFICATIONS**

### **7.1 PREAMBLE:**

The Technical Specifications contained herein shall be read in conjunction with the other Bidding Documents as specified.

### **7.2 GENERAL REQUIREMENTS**

The Technical Specifications in accordance with which the entire work described hereinafter shall be executed and completed by the Contractor shall comprise of the following:

#### **PART – I – GENERAL TECHNICAL SPECIFICATIONS**

The General Technical Specifications shall be the “SPECIFICATIONS FOR ROAD AND BRIDGE WORKS” (FIFTH REVISION, 2013) issued by the Ministry of Road Transport & Highways, Government of India and published by the Indian Roads Congress, hereinafter referred to as MORT&H Specifications.

#### **PART – II – SUPPLEMENTARY TECHNICAL SPECIFICATIONS**

When an Amended/Modified/Added Clause supersedes a Clause or part thereof in the said Specifications, then any reference to the superseded clause shall be deemed to refer to the Amended/Modified/Added Clause or part thereof.

In so far Amended/Modified/Added Clause may come in conflict or be inconsistent with any of the provisions of the MOST Specifications under reference, the Amended/Modified/Added clause and the additional specifications shall always prevail.

7.2.2 In the absence of any definite provisions on any particular issue in the aforesaid Specifications, reference may be made to the latest codes and specifications of IRC and BIS in that order, Where even these are silent, the construction and completion of the works shall conform to sound engineering practice as approved by the Engineer and, in case of any dispute arising out of the interpretation of the above, the decision of the Engineer shall be final and binding on the Contractor.

7.2.3 The Authority/Client shall get the 3<sup>rd</sup> party quality audit of Bituminous work or any other work if required from any nearest reputed government technical institute for its gradation, bitumen content and thickness for every km and construction agency shall bear the cost of these tests.

7.2.4 Repairing / filling of all potholes/cracks on the National Highway stretch

shall be performed only by using mechanized method with facility to have integrated operation for proper cutting in shape i.e., square/rectangular, cleaning, priming, laying and compacting by mechanical means.

- 7.2.5 The Contractor will sign the checklist of deliverables enclosed as Appendix at Section II, 4.4 B (b) (iii) which shall be used as a basic monitoring tool so as to ensure that the O&M/renewal obligations are actually fulfilled.

The above provisions are to be complied with by the Contractor/Executing Agency without any financial implication payable to them.

**Further if, the Contractor has not been able to fulfill the above mentioned provisions within a cure period of 15 days, Authority will fulfill these provisions at the risk and cost of the Contractor/Executing Agency.**



Construction and Maintenance of auxiliary lane and service road on road safety on Biaora to Dewas Section from Km. 191.200 to Km. 332.460 of NH- 52 (Old NH-3) in the State of Madhya Pradesh under Road safety improvement.

**(SECTION-VIII)**  
**IMPLEMENTATION MANUAL**

## **SECTION – VIII IMPLEMENTATION MANUAL**

### **8.1 Introduction**

8.1.1 Maintenance & Rehabilitation work of highway through one agency is the work of typical nature, which shall continue up to the expiry of base period specified in the contract (excluding defect liability period). These works need attention, efficiency, continuous monitoring and responsive management. This implementation manual spells out detailed guide-lines for implementing the maintenance programme successfully, defining the various activities to be accomplished by the Employer and the Contractor.

8.1.2 This package includes routine, periodic, recurrent and urgent maintenance activities to repair highway surface, shoulders, road side, drainage facilities, CD work, signs, markings and inspection facilities. The works of different nature at scattered locations within specified time frame need to be performed conforming to specifications and standards in order to keep carriageway in perfect condition.

### **8.2 Maintenance Procedures**

8.2.1 Deleted

### **8.3 Deleted**

8.3.1 Deleted

### **8.4 Resource Estimation**

8.4.1 The Engineer shall workout the yearly requirement of funds based on unit prices rates quoted by Contractor and quantities of various items proposed to be executed. A tentative programme shall be drawn on the basis of resources available with the contractor at different times of maintenance period including available establishment, equipment and labour availability with him. Cash flow available with the contractor shall also be basic input to determine proposed maintenance programme.

### **8.5 Identification of Priorities**

8.5.1 The Engineer shall work out order of priority, judiciously in order that jobs that have the stronger claim or resources placed ahead of the list and those having least claim are placed at the end.

8.5.2 Deleted

8.5.3 Deleted

8.5.4 Deleted

## 8.6 Work Scheduling

8.6.1 The work of road is of unpredictable nature so quantities shown against each item or work are only representative. It is expected that they would be consumed during the entire base period of works but employer would not be responsible to pay any compensation etc. in case there is variation to any extent in quantity of actual execution of particular item of work with respect to representative quantity shown in BOQ for that particular work.

8.6.2 Scrutinized work proposals shall be negotiated by the Engineer with Contractor for quantity and time to complete those particular activities and accordingly they shall be classified into two groups:

Group – I: Works of short duration of completion (up to 2 months)

Group – II: Works of larger duration of Completion (more than 2 months)

8.6.3 For works under Group I, Weekly Indent, Monthly Indent, Quarterly indents shall be issued and for works classified under Group 2, the Engineer shall issue bi-annual indents. These indents shall mean to identify, quantity the various works which contractor is expected to execute on his unit rates quoted by him at specified locations within the time period assigned in the indents. Each indent shall be treated as part of the work for which contractor has submitted Bids. The terms & conditions applicable in bid document shall also be applicable to these indented works.

8.6.4 In case of urgency requiring immediate actions to remove road blockade, to construct temporary diversion or urgent preventive measures to reduce extent of expected damages or to make precautionary arrangements to handle emergencies, Engineer shall issue interim indents for such works / arrangements to be complied with by the contractor in responsible manner without loss of time.

## 8.7 Work Management

8.7.1 The success of Contract maintenance system lies with good work management. The contractor shall draw activities which shall be accomplished by in house crew and portion of the work to be accomplished with sub contractors.

8.7.2 The contractor can also consider to introduce communication system (like mobile, etc). on the Highway for better and efficient management of site.

## 8.8 Work Control & Quality Assurance

8.8.1 The Engineer shall adopt random sampling procedures to ensure quality control. Engineer shall carry out in- process inspections and end product inspections to collect samples and shall carry out testing in order to determine the degree of adherence to the maintenance standards of delivered or constructed material. Any testing / checking of works by Engineer shall not absolve the contractor from his responsibility to execute works strictly in

accordance of MoRT&H / IRC / IS specifications or laid down standards in bid document.

- 8.8.2 A quality control laboratory equipped with all instruments required to perform tests as indicated in MoRT&H / IRC / IS specifications at frequency mentioned therein shall have to be provided by the contractor. Contractor shall ensure that testing of all material delivered or constructed is regularly carried out by his filed staff as per standard norms and results of these tests are recorded in specified manner and made available to Engineer whenever required by him. The contractor shall provide the QC laboratory, as incidental to work and no separate payment shall be made for this item. The QC lab shall also be made available to Engineer for conducting tests of his own.
- 8.8.3 Work Control & Quality Assurance The Engineer shall adopt random sampling procedures to ensure quality control. Engineer shall carry out in- process inspections and end product inspections to collect samples and shall carry out testing in order to determine the degree of adherence to the maintenance standards of delivered or constructed material. Any testing / checking of works by Engineer shall not absolve the contractor from his responsibility to execute works strictly in accordance of MoRT&H / IRC / IS specifications or laid down standards in bid document.
- 8.8.4 A quality control laboratory equipped with all instruments required to perform tests as indicated in MoRT&H / IRC / IS specifications at frequency mentioned therein shall have to be provided by the contractor. Contractor shall ensure that testing of all material delivered or constructed is regularly carried out by his filed staff as per standard norms and results of these tests are recorded in specified manner and made available to Engineer whenever required by him. The contractor shall provide the QC laboratory, as incidental to work and no separate payment shall be made for this item. The QC lab shall also be made available to Engineer for conducting tests of his own.
- 8.8.5 In- process inspections shall be carried out by the Engineer to witness and or to verify the quality / quantity of work, when activity is in process with aim to judge justification of payment. Engineer shall carry out end product inspections after completion of the activity to provide satisfactory evidence about acceptability of the contractors work.
- 8.8.6 The results of in process inspections, end product inspections and quality control tests shall form basis of acceptance of completed works and issuance of Non Conformance Report (NCR)ss. Items of Works or unit of material or the end product do not meet the specifications / standards shall be identified by “Non-Conformance- Report” and can become basis of rejection of work on establishing the authorized disposition.

8.8.7 Non Conformance Report: Defective or uncompleted work shall not be paid. Such work shall also be notified to the Contractor within 10 days of submission of bill through non-conformance report (NCR). The NCR shall clearly identify the item of work that is non – conforming either to specification or to a specific requirement in the contract document. Once NCR is identified, it shall be evaluated and of the dispositions would be established.

- a. “Do” Identifies the work which has not been done at all at site within specified time limit. An NCR issued with “Do” disposition for the work should immediately be undertaken by contractor.
- b. “Re-Do” Identified the work, that is non conforming of all quality aspects. Such works be totally removed & redone.
- c. “Re-work” Requires part of particular item identified in this category be reworked to bring it to the quality required.
- d. “Use-as-is” Applied where Engineer accepts work “as-is” notwithstanding the fact that it does not exactly conform to the contract requirements. This work shall be accepted only for agreed reduced rates with respect to unit rates quoted in financial bid by the contractor otherwise shall be re-classified under disposition “Do” or “Re-Do”

## 8.9 Payment Procedures

8.9.1 The contractor shall submit to the Engineer after the end of each month bill in two copies, each signed by authorized contractor’s representative in standard format, showing the amounts to which the contractor considered himself to be entitled upto the end of the month. These bills should be prepared each indentwise.

- The Engineer after scrutiny of the bills shall certify and recommend the payments for completed accepted works within 14 days of presentation of bill to him to the employer subject to deductions as per bid documents.
- The employer shall pay the amount due to the Contractor under certificate and recommendations by the Engineer within 28 days after it has been delivered to the Employer.

## 8.10 Records & Documentation

8.10.1 The results of all inspections shall be documented. The test results containing documentary evidence of activities and data relevant to the quality of work and performance of the contractor shall also be documented. The field daily to be filled by Site Engineer of Contractor shall be a basic form of documentation. The activities to be entered in daily dairy are

- The description of day’s activities, number and type of crew on job, equipment on job weather and temperature
- Any measurement made to determine pay quantities
- Daily summary of material issued in the job
- A record of significant conversations with and direction given to the

contractor

- A record of bottlenecks with the progress or execution of the work
- A record of material testing in lab
- Details of visit by officials

8.10.2 The Contractor shall carryout road roughness measurement as directed by Engineer for the entire stretch at the end of the pavement maintenance and shall submit the complete record to NHA. There shall not be any separate payment on account of this. The payment pertaining to this shall be deemed to be included in the items of works.

8.11 Deleted

**(SECTION-IX)**  
**ADDITIONAL CONDITIONS**

### **ADDITIONAL CONDITIONS**

Before tendering, the tenderer shall inspect the site of work and shall full acquaint himself the above terms and conditions with regard to site, nature of soil, availability of material suitable location for execution of work and time involved in the work (over the entire duration of contract) including local conditions that restrictions, obstructions and other conditions, as required for satisfactory and timely execution of the work. His rates should take into consideration all such factors like supply and storage of materials, man and machinery, land etc. and contingencies. No claim whatsoever shall be entertained by the NHAI on this account.

- 1 The contractor must study the specifications and conditions carefully before tendering.
- 2 Before the start of the work, the contractor shall submit the program of execution of work, get it approved from the Engineer/NHAI and strictly adhere the same for the timely completion of the project work.
- 3 The contractor shall have to make approaches to the site, if so required and keep them in good condition for transportation of labour and materials as well as inspection of work by the Engineer. Nothing extra shall be paid on this account.
- 4 The contractor shall all times carryout work on the highway in a manner creating No interference in the flow of traffic as per direction of Engineer/Employer
- 5 All arrangements for traffic diversion during construction including maintenance of diversion road shall be considered as incidental to the work and contractor's responsibility and nothing shall be payable to him in this respect. However, if any new diversion road is constructed by the contractor, the same shall be paid separately.
- 6 The work shall be carried out in such a manner so as not to interfere or effect or disturb either works, being executed by other agencies, if any.
- 7 Any damage done by the contractor to any existing work shall be made good by him at his own cost.
- 8 The work shall be carried out in the manner complying in all respect with the requirement of relevant bye-laws of the local bodies under the jurisdiction of which the work is to be executed and nothing extra shall be paid on this account.
- 9 For completing the work in time, the contractor might be required to work in two or more shifts including night shifts and no claim whatsoever shall be entertained on this account notwithstanding the facts that the contractor will have to pay to the labourers and other staff engaged directly or indirectly on the work according to the provision of the law regtulation and the agreement entered upon and/or extra amount for any other reason.
- 10 The contractor shall make his own arrangements for obtaining electric connection(s) as required and make necessary payment directly to the department concerned. The Department will however make all reasonable recommendations to the authority concerned in this regard.
- 11 The contractor or his authorized representative should always be available at the site of work to take instructions from Engineer or his authorized representative and ensure proper execution of work(s) or work should not be done in the absence of such authorized representative.
- 12 The structural and other drawings for the work, shall at all times, be properly corrected before executing the work.



- 13 The contractor shall maintain in good condition all works executed till the completion of the entire work allotted to the contractor.
- 14 No payment will be made to the contractor for damage caused by rains, or other natural calamities during the execution of works and no such claims on this account will be entertained.
- 15 Royalty at the prevalent rates and all other incidental expenditure shall have to be paid by the contractor on all the boulders, metal, earth, sand, bajri etc. collected him for the execution of the work direct to the concerned Revenue Authority of the state or central Govt. His rates are deemed to include all such expenditure and nothing extra shall be paid.
- 16 The contractor shall take all necessary measures for the safety of traffic during construction period, erect and maintain such barricades, including signs, markings, flags, lights and flagman, as necessary at either end of the excavation embankment and at such intermediate points as directed by the Engineer for the proper identification of construction area. The Contractor's rate shall include above items of work and nothing extra shall be paid to Contractor. He shall be responsible for all damages and accidents caused due to negligence on the part.
- 17 The contractor shall provide suitable barricading with suitably painted single row of the sheets about 3'0" wide (90cms) nailed or bolted with wooden poles spaced 2 to 3 meter apart and each pole 1.6m to 2m long, 8 cm to 10 cm dia. The poles will be embedded to mobile iron pedestal rings suitably framed for giving stable support without hindrances to the traffic as per direction of the Engineer/NHAI. All management (including, watch and ward) of barricades shall be the full responsibility of the contractor. The barricade shall be removed only after completion of the work or part of the work. The contractor's rates which include all above items of work and nothing extra shall be paid to the contractor over and above his quoted rates.
- 18 The temporary warning lamps shall be installed at all barricades during the hours of darkness and kept lit at all times during these hours.
- 19 The malba/garbage, removed from the site shall be disposed off by the contractor at any suitable place as directed by the Engineer.
- 20 All work and materials brought and left upon the ground by the contractor or by his order for the purpose of forming part of the works are to be considered to be the property of the NHAI and the same are not to be removed or taken away by the contractor or any other person without special license and consent in writing of the Engineer/NHAI but the NHAI is not be in any way responsible for any loss or damaged which may happen to or in respect of any such work or materials either by the same being lost or damaged by weather or otherwise.
- 21 The Contractor will be responsible to provide deep hand pump/tube well at site of work to make potable and safe drinking water to labour engaged in execution of work.
- 22 The rates for all items of work, unless clearly specified otherwise, shall include the cost of all labour, materials dewatering and other inputs involved in the execution of the items. If any reason contractor fails to quote his rate for any item provided in the schedule of quantities it will be assumed that contractor is ready to execute that item free of cost.
- 23 Unless otherwise provided in the schedule of quantities the rates tendered by the

- contractor shall be all-inclusive and shall apply to all heights, depths, leads and lifts.
- 24 The contractor shall bear all incidental charges for cartage, storage and safe custody of materials.
- 25 The nature of work is such that contractor may have to carry out a part of work announced not less than Rs. 50,000/- (Fifty Thousand) or full work on short notice of 48 hours from Engineer in writing on site order book or through special messenger. Failure to comply with the instruction or delay in taking up the work as per schedule issued by the Engineer shall attract penalty clause as mentioned in the agreement. In addition, a fine of Rs.1000/-per day for each day of default shall be recovered from contractor and decision of Engineer shall be final, binding and not open to arbitration.
- 26 Existing drains, pipes, cables, overhead wires, sewer lines, water line and similar services encountered in the course of the execution of the work shall be protected against the damages by the contractor. The contractors shall not store material or otherwise occupy any part of the site in a manner likely to hinder the operation of such services.
- 27 The contractor will not have any claim in case of any delay by the Engineer in removal of trees or shifting, removing of telegraph, telephone or electric lines (overhead and underground), water and sewer lines and other structure etc. if any, which may come in the way of the work. However, suitable extension of time can be granted to cover such delay.
- 28 Stipulated material shall be arranged by the contractor at site of work or all the items where such materials are required.
- i) Tendered rates are inclusive of all taxes and levies payment under the respective statutes. However, pursuant to the constitution (46<sup>th</sup> amendment) Act 1982, it also further tax or levy is imposed by statute, after the date of receipt of tenders and the contractor there upon necessarily and properly pays such taxes/levies, the contractor shall be reimburse the amount so paid, provided such payment, if any, is not in the opinion of General Manager (Tech) / Project Director whose decision shall be final and binding) attributable to delay in execution of the work within the control of the contractor.
  - ii) The contractor shall keep necessary books of account and other documents for the purpose of this condition as may be necessary and shall allow inspection of the same by a duly authorized representative of Govt. and further shall furnish such other information/documents as Engineer may require.
  - iii) The contractor shall within a period of 30 days of imposition of any further tax or levy in pursuant to the constitution of (46<sup>th</sup> Amendment) Act 1982, given a written notice thereof to the Engineer that the same is given pursuant to this condition together with all necessary information relating thereto.
- 29 Contractor may be required to execute this work under foul position. The decision

of the Engineer whether the position is foul or not shall be final and the binding of the contractor and nothing extra for executing the work in foul position is payable, beyond what is provided in the schedule of quantities.

**Draft Integrity Pact Format applicable for works having value of Rs. 5 Cr. and above**

(To be executed on the plain paper and submitted alongwith Technical Bid/ Tender documents for tenders having a value of Rs. 5 crore or more. To be signed by the bidder and same signatory competent/ authorized to sign the relevant contract on behalf of the NHAI)

(Madhya Pradesh Division)

Tender No. ....

**INTEGRITY PACT**

This integrity Pact is made at .....on this ..... day of.....2024.

**Between**

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI), a statutory body constituted under the National Highways Authority of India Act, 1988, which has been entrusted with the responsibility of development, maintenance and management of National Highways, having its office at G- 5 & 6, Sector-10, Dwarka, New Delhi, hereinafter referred to as "The Principal", which expression shall, unless repugnant to the meaning of contract thereof, include its successors and permitted assigns)

**AND**

..... hereinafter referred to as "The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s)" and which expression shall unless repugnant to be meaning or context thereof include its successors and permitted assigns.

**Preamble**

Whereas, the Principal intends to award, under laid down organizational procedure, contract/s for .....The Principal values full compliance with all relevant laws of the land, rules of land, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and for Contractor(s)/ Concessionaire(s)/ Consultant(s).

And Whereas in order to achieve these goals, the Principal will appoint an Independent External Monitors (IEMs), who will monitor the tender process and the execution of the contract for compliance with the Principles mentioned above.

And whereas to meet the purpose aforesaid, both the parties have agreed to enter into this Integrity Pact (hereafter referred to as "Integrity Pact") the terms and conditions of which shall also be read as integral part and parcel of the Tender documents and contract between the parties.

Now, therefore, in consideration of mutual covenants stipulated in this pact, the parties hereby agree as follows and this pact witnesses as under:

#### **Article-1: Commitments of the Principal**

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
  - a) No employee of the Principal, personally or through family members, will in connection with the Tender for, or the execution of a Contract, demand, take a promise for or accept, for self, or third person, any material or immaterial benefit which the person is not legally entitled to.
  - b) The Principal will, during the Tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the Tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - c) The Principal will exclude all known prejudiced persons from the process.
2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act or any other Statutory Acts or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions as per its internal laid down Rules/Regulations.

#### **Article - 2: Commitments of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s).**

The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

- a) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
- b) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contract, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- c) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will not commit any offence under the relevant IPC/PC Act and other Statutory Acts; further the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will not use improperly, for purposes of completion or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- d) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) of foreign origin shall disclose the name and address of the Agents/ Representatives in India, if any. Similarly, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further, details as mentioned in the 'Guidelines on Indian Agents of Foreign Suppliers' shall be disclosed by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s). Further, all the payments made to the Indian Agent/Representative have to be Indian Rupees only.
- e) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract. He shall also disclose the details of services agreed upon for such payments.
- f) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- g) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will not bring any

outside influence through any Govt. bodies/quarters directly or indirectly on the bidding process in furtherance of his bid.

- h) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) who have signed a Integrity pact shall not approach the court while representing the matter to IEMs and shall wait for their decision in the matter.

**Article- 3 Disqualification from tender process and exclusion from future contracts.**

- 1) If the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s), before award or during execution has committed a transgression through a violation of any provision of Article- 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) from the tender process.
- 2) If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) for any future tenders/ contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the Principal taking into consideration the full facts and circumstances of each case particularly taking into account the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) and the amount of the damage. The exclusion will be imposed for a minimum period of 6 months and maximum period of 2 years.
- 3) A transgression is considered to have occurred if the Principal after due consideration of the available evidence concludes that "On the basis of facts available there are no material doubts".
- 4) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) with its free consent and without any influence agrees and undertakes to respect and uphold the Principal's absolute rights to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- 5) The decision of the Principal to the effect that a breach of the provisions of this Integrity Pact has been committed by the

Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) shall be final and binding on the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s), however, the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) can approach IEM(s) appointed for the purpose of this Pact.

- 6) On occurrence of any sanctions/ disqualification etc. arising out from violation of integrity pact, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) shall not be entitled for any compensation on this account.
- 7) Subject to full satisfaction of the Principal, the exclusion of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) could be revoked by the Principal if the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) can prove that he has restored/ recouped the damage caused by him and has installed a suitable corruption prevention system in his organization.

#### **Article- 4: Compensation for Damages.**

- 1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Article-3, the Principal shall be entitled to forfeit the Earnest Money Deposit/ Bid Security or demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security apart from any other legal right that may have accrued to the Principal.
- 2) In addition to 1 above, the Principal shall be entitled to take recourse to the relevant provisions of the contract related to Termination of Contract due to Contractor/ Concessionaire/Consultant's Default. In such case, the Principal shall be entitled to forfeit the Performance Bank Guarantee of the Contractor/ Concessionaire/ Consultant and/ or demand and recover liquidated and all damages as per the provisions of the contract/concession agreement against Termination.

#### **Article- 5: Previous Transgressions**

- 1) The Bidder declares that no previous transgressions occurred in the last 3 years immediately before signing of this Integrity Pact with any other Company in any country conforming to the anticorruption/ Transparency International (TI) approach or with any other Public Sector Enterprise/ Undertaking in India or any Government Department in India that could justify his exclusion from the tender process.
- 2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action for his exclusion can be taken as mentioned under Article-3 above for transgressions of Article-2 and shall be liable for compensation for damages as per Article-4 above.



**Article - 6: Equal treatment of all Bidders/ Contractors/ Concessionaires/ Consultants/ Subcontractors.**

- 1) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) undertake(s) to demand from all sub-contractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- 2) The Principal will enter into agreements with identical conditions as this one with all Bidders/ Contractors/ Concessionaires/ Consultants and subcontractors.
- 3) The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

**Article- 7: Criminal charges against violating Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)/ Sub-contractor(s).**

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

**Article- 8: Independent External Monitor (IEM)**

- 1) The Principal appoints Smt. Gauri Kumar, IAS (Retd.), Sh. Ashish Bhauguna, IAS (Retd.) as Independent External Monitor (IEM) as Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- 2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, NHAI.
- 3) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s). The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)

- will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors.
- 4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality. The Monitor has also signed on 'Non-disclosure of Confidential Information' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform Chairman, NHAI and recuse himself/herself from that case.
  - 5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/Concessionaire/Consultant. The parties offer to the Monitor the option to participate in such meetings.
  - 6) As soon as the Monitor notices, or believes, to notice any transgression as given in Article-2, he may request the Management of the Principal to take corrective action, or to take relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
  - 7) The Monitor will submit a written report to the Chairman, NHAI within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
  - 8) If the Monitor has reported to the Chairman, NHAI, a substantiated suspicion of an offence under relevant IPC/PC Act or any other Statutory Acts, and the Chairman, NHAI has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
  - 9) The word 'Monitor' would include both singular and plural.

#### **Article- 9 Pact Duration**

This Pact begins when both parties have legally signed it (in case of EPC i.e. for projects funded by Principal and consultancy services). It expires for the Contractor/ Consultant 12 months after his Defect Liability Period is over or 12 months after his last payment under the contract whichever is later and for all other unsuccessful bidders 6 months after this Contract has been awarded. (In case of BOT Projects) It expires for the concessionaire 24 months after his concession period is over and for all other unsuccessful Bidders 6 months after this Contract has been awarded. Any violation of

the same would entail disqualification of the bidder and exclusion from future dealings.

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

#### **Article - 10 Other Provisions**

- 1) This pact is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.
- 2) Changes and supplements as well as termination notices need to be made in writing.
- 3) If the Bidder/Contractor/Concessionaire/Consultant is in a partnership or a Joint Venture partner, this pact must be signed by all partners or members.
- 4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- 5) Issue like warranty/Guarantee etc. shall be outside the purview of IEMs.
- 6) In the event of any contradiction between the Integrity Pact and its Annexure, the clause in integrity pact shall prevail.
- 7) Any disputes/ differences arising between the parties with regard to term of this pact, any action taken by the Principal in accordance with this Pact or interpretation thereof shall not be subject to any Arbitration.
- 8) The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provision of the extent law in force relating to any civil or criminal proceedings.

In witness whereof the parties have signed and executed this pact at the place and date first done mentioned in the presence of following witnesses:-

(For & On behalf of the Principal)

(For & On behalf of  
Bidder/Contractor/Concessionaire/ Consulting)

(Office Seal)

Place \_\_\_\_\_

Date \_\_\_\_\_

Witness 1:  
(Name & Address)

Witness 1:  
(Name & Address)

Witness 2:  
(Name & Address)

Witness 2:  
(Name & Address)