

**Government of India
Ministry of Railways**

RFP No.2009/H-1/11/35 Dated 30.12.2010

**SETTING UP OF
MEDICAL COLLEGE WITH EXISTING
RAILWAY HOSPITAL AT KHARAGPUR**

REQUEST FOR PROPOSAL

FOR APPOINTMENT OF

CONSULTANT

FOR

**PREPARATION OF FEASIBILITY
REPORT AND BID DOCUMENTS**

**Railway Board
Rail Bhavan, Raisina Road
New Delhi – 110001
India**

DISCLAIMER

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

This RFP is not an agreement and is neither an offer nor invitation by MOR to the prospective Applicants or any other party. The purpose of this RFP is to provide interested parties with information to assist in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by MOR in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for MOR, their employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

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

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

MOR also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon the statements contained in this RFP.

MOR may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that MOR is bound to select or to appoint the selected/preferred applicant for the Consultancy and MOR reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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

GLOSSARY

Additional Costs	As in Item F of Form-2 of Appendix-II
Agreement	As defined in Schedule-2
Agreement Value	As defined Clause 6.1 (b) of Schedule 2
Applicant	As defined in Clause 2.1.1
Authorised Representative	As defined in Clause 2.13.3 (iii)
Award	As defined Clause 9.4.3 of Schedule 2
Bid Security	As defined Clause 2.20.1
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conditions of Eligibility	As defined in Clause 2.2
Confidential Information	As defined Clause 3.3 of Schedule 2
Conflict of Interest	As defined in Clause 2.3.1
Consortium	As defined in Clause 2.1.1
Consultancy	As defined in Clause 1.2
Consultancy Team	As defined in Clause 8.1 of Schedule-1
Consultant	As defined in Clause 1.2
Dispute	As defined Clause 9.2.1 of Schedule 2
Documents	As defined in Clause 2.9
Effective Date	As defined in Clause 2.2 of Schedule-2
Eligible Applicant	As defined in Clause 2.2.1
Financial Expert	As defined in Clause 2.1.4
Financial Proposal	As defined in Clause 2.15.1
Feasibility Report	As defined in Clause 4.1 of Schedule-1
INR, Re, Rs.₹	Indian Rupee
IR	Indian Railways
Key Date	As defined in Clause 6.2 of Schedule-1
Team	As defined in Clause 2.1.3
LOA	Letter of Award
MOR	As defined in Clause 1.1.1
Objective	As defined in Clause 2 of Schedule-1
Official Website	As defined in Clause 1.11.2

Performance Security	As defined in Clause 7.1.1 of Schedule-2
Personnel	As defined in Clause 1.1.1(n) of Schedule-2
Project	As defined in Clause 1.1.1
Professional Personnel	As defined in Clause 2.14.6
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clause 1.5 and 1.8
Revenue Model	As defined in Clause 1.2
RFP	As defined in Disclaimer
Rules	As defined in Clause 9.4.1 of Schedule-2
Services	As defined in Clause 1.1.1(q) of Schedule -2
Selection Process	As defined in Clause 1.6
Sole Firm	As defined in Clause 2.1.1
Statement of Expenses	As defined in Note 13, Form-2 of Appendix- II
Statutory Auditor	An Auditor appointed under Applicable Laws
Sub - Consultant	As defined in Clause 1.1.1(r) of Schedule-2
Support Personnel	As defined in Clause 2.14.6
TOR	Terms of Reference as in Schedule - I
US\$	United States Dollar

The words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires, have the meaning ascribed thereto herein.

TABLE OF CONTENTS

S. No.	Contents	Page No.
	Request for Proposals	
1	Introduction	1
2	Instructions to Applicants	7
	A. General	7
	B. Documents	16
	C. Preparation and Submission of Proposal	19
	D. Evaluation Process	27
	E. Appointment of Consultant	30
3	Criteria for Evaluation	33
4	Fraud and corrupt practices	38
5	Pre-Bid Conference	40
6	Miscellaneous	41
	Schedule	43
1	Terms of Reference	45
2	Form of Agreement	59
	Annex-1: Terms of Reference	93
	Annex-2: Deployment of Personnel	94
	Annex-3: Estimate of Personnel Costs	95
	Annex-4: Approved Sub-Consultant	96
	Annex-5: Cost of Services	97
	Annex-6: Payment Schedule	98
	Annex-7: Bank Guarantee for Performance Security	99
	Appendices	104
1.	Appendix-I: Proposal	105
	Form 1: Letter of Proposal	105

	Form 2: Particulars of the Applicant	109
	Form 3: Statement of Legal Capacity	112
	Form 4: Power of Attorney	113
	Form 5: Statement of Financial Capacity	115
	Form 6: Particulars of Key Personnel	116
	Form 7: Proposed Methodology and Work Plan	117
	Form 8: Abstract of Eligible Assignments of the Applicant	118
	Form 9: Abstract of Eligible Assignments of Key Personnel	119
	Form 10: Eligible Assignments of Applicant	120
	Form 11: Eligible Assignments of Key Personnel	121
	Form 12: CV of Professional Personnel	122
	Form 13: Deployment of Personnel	123
	Form 14: Surveys and Field Investigation	124
	Form 15: Proposal for Sub-Consultant	125
2.	Appendix-II: Financial Proposal	126
	Form 1: Covering letter	126
	Form 2: Financial Proposal	127
	Form3: Estimate of Personnel Costs	130

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1. INTRODUCTION

1.1 Background

- 1.1.1. The President of India acting through Director General/Railway Health Services, Ministry of Railways, Railway Board (the “**MOR**”) has decided to undertake setting up of 18 Medical and 6 Nursing Colleges through PPP on Design, Build, Finance, Operate and Transfer (the DBFOT) basis through a private entity (the “**Concessionaire**”) to be selected through a competitive bidding (individually a “Project or collectively “Projects”). The places selected for Medical Colleges are Chennai, Hyderabad, Bilaspur, Lucknow, Barasat, Bhubaneswar, Mysore, Kharagpur, Guwahati, Dibrugarh, Jodhpur, Gardenreach, Nagpur, Ahmedabad, Kolkata, Bhopal, Jammu & Trivandrum. The setting up of Medical & Nursing Colleges is proposed to be done in two phases. Phase-I would cover 5 Medical Colleges viz. Chennai(Southern Railway), Guwahati(Northeast Frontier Railway), Kharagpur(South Eastern Railway), Secunderabad (South Central Railway) and Lucknow(Northern Railway) and 6 Nursing Colleges are Delhi(Northern Railway), Mumbai(Central Railway), Chennai(Southern Railway), Secunderabad (South Central Railway), Lucknow(North Eastern Railway) and Jabalpur(West Central Railway). MOR will provide the Railway Hospital and Railway Land. The private partner will construct and operate the Medical and Nursing Colleges on the Railway Land. The private sector may also maintain the infrastructure and equipments of the Medical/Nursing College. Key objective of this project is to enhance and widen the opportunities for higher education facilities in the medical field to wards of Railway employees and State of the Art medical treatment in the specialized fields to the railway employees with modern medical infrastructure.
- 1.1.2 With a view to facilitating invitation of bids for the Projects, MoR would conduct a feasibility studies for determining the technical

feasibility and financial viability of the Projects. If found technically feasible and financially viable, the Projects may be awarded on DBFOT basis to a private entity (the “Concessionaire”) selected through a competitive bidding process. The Projects would be implemented in accordance with the terms and conditions stated in the concession agreement to be entered into between the MoR and the Concessionaire (the “Concession Agreement”).

- 1.1.3 In pursuance of the above, MoR has decided to carry out the process for selection of a Consultant for preparing the Feasibility Report and bid documents for development of a Medical College at Kharagpur, South Eastern Railway by twining it with the existing Railway Hospital through Public Private Partnership (PPP).

1.2 Request for Proposal

MOR now invites Proposals (the “**Proposals**”) for selection of a Technical Consultant (the “**Consultant**”) who shall prepare a Feasibility Report for development of the Project. The Feasibility Report shall include basic details of the sites, the business environment and prospects of the projects, statutory approvals and requirement for the projects and a preliminary financial appraisal of the project in conformity with the TOR (collectively the “Consultancy”).

The Consultant will also develop the revenue model, prepare the draft concession agreement which would form the basis for the Model Concession Agreement for setting up of Medical College through Public Private Partnership (the “MCA”) and assist the MoR in the bidding process. The Consultant shall prepare these Reports in accordance with the Terms of Reference specified at Schedule-1 (the “TOR”).

- 1.2.1 MoR intends to select the Consultant through (an open competitive bidding) in accordance with the procedure set out herein.

1.3 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to MOR and the Project site, sending written queries to MOR, and attending a Pre-Bid Conference on the date and time specified in Clause 1.10.

1.4 Sale of RFP Document

RFP document can be obtained between 11:00 hrs and 16:00 hrs on all working days on payment of a fee of ₹5,000 (Rupees Five Thousand only) in the form of a crossed cheque drawn on any Scheduled Bank in India in favour of **FA & CAO, Northern Railway and payable at Delhi**. The document can also be downloaded from the Official Website of the Ministry of Railways. In case of a downloaded form, the Applicant needs to deposit the aforesaid fee prior to participating in the Pre-Bid Conference or at least five working days prior to submitting the Proposal.

1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 120 days from the Proposal Due Date (the “**PDD**”).

1.6 Brief description of the Selection Process

The MOR has adopted a single stage, two-step selection process (collectively the “Selection Process”) in evaluating the Proposals comprising technical and financial bids to be submitted in two separate sealed envelopes. In the first step, a technical evaluation will be carried out as specified in Clause 3.1. Based on this technical evaluation, a list of short-listed applicants shall be prepared as specified in Clause 3.2. In the second step, a financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. The first ranked Applicant shall be selected for negotiation as specified in clause 2.24 (the “Selected Applicant”) while the second ranked Applicant will be kept in reserve.

1.7 Currency conversion rate and payment

1.7.1 For the purpose of technical evaluation of Applicants, [₹47] per US\$ shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall be first be converted to US\$ as on the date 60 (sixty) days prior to the Proposal Due Date, and the amount so derived in US\$ shall be converted into INR at the aforesaid rate.

The conversion rate of such currencies shall be daily representative exchange rates published by the International Monetary Fund for the relevant date.

1.7.2 All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP. The Consultant may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Consultant.

1.8 Schedule of Selection Process

MOR would endeavour to adhere to the following schedule:

	Event Description	Estimated Date
1.	Last date for receiving queries/clarifications	25.01.2011
2.	Pre-Proposal Conference	01.02.2011
3.	MOR response to queries	10.02.2011
4.	Proposal Due Date or PDD	21.02.2011
5.	Letter of Award (LOA)	Within 30 days of PDD
6.	Signing of Agreement	Within 10 days of LOA
7.	Validity of Applications	120 days of Proposal Due Date

1.9 Pre-Bid visit to the Project site and inspection of data

Prospective applicants may visit the Project site and inspect the available data at any time prior to PDD. For this purpose, they will provide at least 7 days' notice to the nodal officer specified below with a copy to the Nodal Officer at Railway-Board as defined in clause 1.11:

Nodal Officer in S.E. Rly.:

Chief Medical Supdt., Railway Hospital, Kharagpur.

Add: Main Hospital Kharagpur,
Post Kharagpur, distt. Medinipur West,
West Bengal - 721301

e.mail : cmsgkp@railnet.ser.gov.in
bibek1953@gmail.com

Phone No. 9002081500 (M)
03222-255526

1.10 Pre-Proposal Conference

The date, time and venue of Pre-Bid Conference shall be:

Date: 01.02.2011

Time: 11:00 hours

Venue: Conference Hall
Railway Board,
Raisina Road,
New Delhi-110001

1.11 Communications

1.11.1 All communications including the submission of Proposal should be addressed to:

Executive Director/Health Planning
Room No.347 A
Ministry of Railways
(Govt. of India)
Rail Bhawan, Rafi Marg,
New Delhi 110 001
Fax No.: 011 23389623
email: edhp@rb.railnet.gov.in

1.11.2 The Official Website of MOR is:

<http://www.indianrailways.gov.in>

Note: Please open the page 'Railway Tenders' and then page 'Health' to access all the posted and uploaded documents related to this RFP.

1.11.3 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

RFP No.2009/H-1/11/35 Dated 30.12.2010

SETTING UP OF MEDICAL COLLEGE AT KHARAGPUR

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Proposal

2.1.1 Detailed description of the objectives, scope of services, deliverables and other requirements related with this Consultancy are specified in this RFP. In case an applicant firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it may participate in the Selection Process either individually (the “**Sole Firm**”) or as lead member of a consortium of firms (the “**Lead Member**”) in response to this invitation. The term applicant (the “**Applicant**”) means the Sole Firm or the Lead Member, as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2 Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by MOR through the Selection Process specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that MOR’s decisions are without any right of appeal whatsoever.

2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this Part-2 of the RFP. The Technical proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II. Upon selection, the Applicant shall be required to enter into an agreement with the Authority in the form specified at Schedule-2.

2.1.4 Key Personnel

The Consultancy Team should consist of the following key personnel who shall discharge their respective responsibilities as specified below:

Key Personnel	Responsibilities
Team Leader cum Finance Expert	He will co-ordinate and supervise the multidisciplinary team for this Consultancy. He will also prepare the Revenue Model, Bid Documents. He shall devote at least 20 working days on project site and another 20 working days offsite.
Legal Expert	He will be responsible for preparation of Concession Agreement and legal review of bid documents. He shall devote at least 7 working days on project site and another 30 working days offsite.
Medical Expert	He will prepare the Maintenance and Operation Plan and shall also coordinate environmental/clearance aspects of the Project. He shall devote at least 20 working days on project site and another 20 working days offsite.
Construction Expert	He will define the scope of the construction required and also provide a preliminary design & Layout of the complex. He will devote at least 15 working days on project site and 15 working days off site.

The other professional persons required for the assignment including the market survey may be selected by the Consultant. However, their Bio-data and consent letters signed in ink should be sent in the enclosed proforma to the MOR. The Consultant may engage the requisite support staff for the Consultancy.

Note: - No. of working days include meeting with MoR at Delhi.

2.2 Conditions of Eligibility of Applicants

- 2.2.1 Applicants must read carefully the minimum conditions of eligibility (the “Conditions of Eligibility”) provided herein. Proposals of only those applicants who satisfy the Conditions of Eligibility will be considered for evaluation.
- 2.2.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfil the following:
- (A) **Technical Capacity:** The Applicant shall have, over the past 5 (five) years preceding the PDD, undertaken a minimum of 3(three) Eligible Assignments as specified in Clause 3.1.4

- (B) **Financial Capacity:** The Applicant shall have received a minimum income of [₹ 1 crore] per annum from professional fees during each of the 3 (three) financial years preceding the Proposal Due Date. For the purpose of evaluation, Applicants having comparatively larger revenues from professional fees shall be given added weightage. For the avoidance of doubt, professional fees hereunder refers to fees received by the Applicant for providing advisory or consultancy services to its clients.
- (C) **Availability of Key Personnel:** The Applicant shall offer and make available all Key Personnel meeting the requirements specified in sub-clause (D) below.
- (D) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Professional Experience	Experience on Eligible Assignments
Team Leader cum Finance Expert	CA/ or equivalent	10 years	He should have led the feasibility study teams for (two) Eligible Assignments. He should have undertaken financial analysis and modeling for (two) Eligible Assignments.
Legal Expert	Master/Bachelor in Law or equivalent	5 years	He should have worked as sole expert or led the legal team in development of concession agreement relating to at least (two) Eligible Assignments.
Medical Expert	MBBS doctor with Hospital Administration	5 years	He should have led the project planning for at least one successful projects in the Health Sector specifically for the setting up and operation of a Medical/Nursing College.
Construction Expert	Master/Bachelor in Civil Engineering	5 years	He should have led the project construction for at least one successful project in the Health Sector. He

			should have also knowledge of environmental aspects of the Project.
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- 2.2.3 The Applicant shall enclose with its Proposal, certificate(s) from its Statutory Auditors stating its total revenues from professional fees during each of the past three financial years and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Applicant does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Applicant.
- 2.2.4 The Applicant should submit Power of Attorney as per the format at Form-4 of Appendix-I; provided, however, that such Power of Attorney would not be required if the Application is signed by a partner of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 2.2.5 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.2.6 An Applicant or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.
- 2.2.7 While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making due provision for incorporation of the requested information.

2.3 Conflict of Interest

- 2.3.1 An Applicant shall not have a conflict of interest, that may affect the Selection Process or the Consultancy (the “**Conflict of Interest**”). Any Applicant found to have a Conflict of Interest shall be disqualified, MOR shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payment to the MOR for, inter alia, the time, cost and effort of the MOR including consideration of the such Applicant’s Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 2.3.2 MOR requires that the Consultant provide professional, objective, and impartial advice and at all times hold MOR’s interests paramount, avoid conflicts with other assignments or their own corporate interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other employers, or that may place it in a position of not being able to carry out the assignment in the best interests of MOR.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Applicant, its consortium member (the “**Member**”) or Associate (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension under, or a public

financial institution referred to in section 4A of the Companies Act, 1956. For the purpose of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

- (b) a constituent of such Applicant is also a constituent of another Applicant; or
- (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
- (d) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other Applicant; or
- (f) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- (g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project,

and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or

- (h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor (s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

- 2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/lenders at any time; provided further that this restriction shall not apply to consultancy/advisory

services performed for the MOR in continuation of this Consultancy or to any subsequent consultancy/advisory services performed for the MOR in accordance with the rules of the MOR. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

2.4 Number of Proposals

No Applicant or its Associate shall submit more than one Application for the Consultancy. An Applicant applying individually or as an Associate shall not be entitled to submit another application either individually or as a member of any consortium, as the case may be.

2.5 Cost of Proposal

The Applicant shall be responsible for all of the costs associated with the preparation of their Proposal and their participation in the Selection Process including subsequent negotiation, visits to MOR, project site etc. MOR will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.6 Project inspection and site visit

- 2.6.1 Applicants are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the location, surroundings, access to the Project site, climate, drawings and other data with MOR, applicable laws and regulations or any other matter considered relevant by them. Visits shall be organised for the benefit of prospective Applicants on dates, time and venue as specified in Clause 1.9.

2.7 Acknowledgement by Applicant

- 2.7.1 It shall be deemed that by submitting the Proposal, the Applicant has:
- (a) made a complete and careful examination of the RFP;
 - (b) received all relevant information requested from MOR; and

- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of MOR or relating to any of the matters referred to in Clause 2.6 above.
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 MOR shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by MOR.

2.8 Right to reject any or all Proposals

2.8.1 Notwithstanding anything contained in this RFP, MOR reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.8.2 MOR reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or discovered, or
- (b) the Applicant does not provide, within the time specified by MOR, the supplemental information sought by MOR for evaluation of the Proposal.

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If the Applicant is the Lead Member of a consortium, then the entire consortium may be disqualified/ rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then MOR reserves the right to consider the next best

Applicant take any such measure as may be deemed fit in the sole discretion of MOR, including annulment of the Selection Process.

B. DOCUMENTS

2.9 Contents of the RFP

2.9.1 This RFP comprises the contents as listed below and would additionally include any Addendum / Amendment issued in accordance with Clause 2.11

Request for Proposal

1	Introduction
2	Instructions to Applicants
3	Criteria for Evaluation
4	Fraud and corrupt practice
5	Pre-Proposal Conference
6	Miscellaneous

1. **Schedules**

Terms of Reference

2. **Form of Agreement**

Annex-1: Terms of Reference

Annex-2: Deployment of Personnel

Annex-3: Estimate of Personnel Costs

Annex-4: Approved Sub-Consultant

Annex-5: Cost of Services

Annex-6: Payment Schedule

Annex-7: Bank Guarantee for Performance Security

3. **Guidance Note on Conflict of Interest**

Appendices

Appendix-I: Proposal

Form 1: Letter of Proposal

Form 2: Particulars of the Applicant

Form 3: Statement of Legal Capacity

Form 4: Power of Attorney

Form 5: Statement of Financial Capacity

Form 6: Particulars of Key Personnel

Form 7: Proposed Methodology and Work Plan

Form 8: Abstract of Eligible Assignments of the Applicant

Form 9: Abstract of Eligible Assignments of Key Personnel

Form 10: Eligible Assignments of Applicant

Form 11: Eligible Assignments of Key Personnel

Form 12: CV of Professional Personnel

Form 13: Deployment of Personnel

Form 14: Surveys and Field Investigation

Form 15: Proposal for Sub-Consultant

Appendix-II: Financial Proposal

Form 1: Covering letter

Form 2: Financial Proposal

Form3: Estimate of Personnel Costs

2.10 Clarifications

- 2.10.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

"Queries/Request for Additional Information concerning RFP for....."

MOR shall endeavour to respond to the queries within the period specified therein but not later than 7 days before Proposal Due Date. The responses will be sent by fax or e-mail. MOR will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

- 2.10.2 MOR reserves the right not to respond to questions raised or provide clarifications sought, in its sole discretion and nothing in this clause 2.10 shall be construed as obliging the MOR to respond to any question or to provide any clarification.

2.11 Amendment of RFP

- 2.11.1 At any time prior to the deadline for submission of Proposal, MOR may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website and by conveying the same to the prospective Applicants (who have purchased the RFP document) by fax or e-mail.

- 2.11.1 All such amendments will be notified in writing through fax or e-mail to all Applicants who have purchased the RFP document. The amendments will also be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Applicants.
- 2.11.2 In order to afford the Applicants a reasonable time in which to take an amendment into account, or for any other reason, MOR may, at its own discretion, extend the Proposal Due Date.

C. PREPARATION AND SUBMISSION OF PROPOSAL

2.12 Language

The Proposal with all accompanying documents (the “**Documents**”) and all communications in relation to or concerning the Selection Process shall be in the English Language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.13 Format and signing of Proposal

- 2.13.1 The Applicant shall provide all the information sought under this RFP. MOR would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.13.2 The Applicant shall prepare one original set of the Proposal (together with originals/copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”. In addition, the Applicant shall submit 2 (two copies) of the Proposal along with Documents, marked “COPY”. In the event of any discrepancy between the original and its copies, the original shall prevail.

2.13.3 The Proposal and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant shall who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be intialled. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the “Authorised Representative”) as detailed below:

- (i) by the proprietor, in case of a proprietary firm;
- (ii) by the partner holding the Power of Attorney, in case of a partnership firm;
- (iii) by a duly authorised person (the “**Authorised Representative**”) holding the Power of Attorney, in case of a Limited Company or a corporation; or
- (iv) by the Authorised Representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarised by a notary public in the form specified in Appendix-I (Form-4) shall accompany the Proposal.

2.13.4 Applicants should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause 2.17.1. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and such unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Authority reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.23.

2.14 Technical Proposal

2.14.1 Applicants shall submit the technical proposal in the formats at Appendix-I (the “**Technical Proposal**”).

2.14.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:

- (a) The Bid Security is provided;
- (b) all forms are submitted in the prescribed formats and signed by the prescribed signatories;
- (c) Power of Attorney, if applicable, is executed as per Applicable Laws;
- (d) CVs of all Professional Personnel have been included;
- (e) Key Personnel have been proposed only if they meet the conditions of Eligibility laid down at Clause 2.2.2(D) of the RFP;
- (f) no alternative proposal for any key Personnel is being made and only one CV for each position has been furnished;
- (g) the CVs have been recently signed and dated in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned / countersigned CVs shall be rejected;
- (h) the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP; and
- (i) Professional Personnel proposed have good working knowledge of English language;
- (j) Key Personnel would be available for the period indicated in the TOR;
- (k) no Key Personnel should have attained the age of 75 (seventy five) years at the time of submitting the proposal; and
- (l) the proposal is responsive in terms of Clause 2.21.3

2.14.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4 If an individual Member makes an averment regarding his qualification, experience, age, and it turns out to be false, or his

commitment regarding availability for the project is not fulfilled at any stage after signing of the Agreement, he shall be debarred for any future assignment of the MOR for a period of 5 (five) years. The award of this Consultancy to the Applicant shall also be liable to cancellation in such an event.

- 2.14.5 The technical Proposal shall not include any financial information relating to the Financial Proposal.
- 2.14.6 The proposed team shall be composed of experts and specialists (the “**Professional Personnel**”) in their respective areas of expertise and managerial/support staff (the “**Support Personnel**”) such that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the format at Form-12 of Appendix-I.
- 2.14.7 An Applicant may, if it considers necessary, propose suitable Sub-Consultant in specific areas of expertise. Credentials of such sub-consultants should be submitted in Form-15 of Appendix-I. A Sub-consultant, however, shall not be a substitute for any Key Personnel.
- 2.14.8 MOR reserves the right to verify all statements, information, and documents submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the MOR to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the MOR thereunder.
- 2.14.9 If case it is found that during the evaluation or any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be,

the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the MOR without the MOR being liable in any manner whatsoever to the Applicant or Consultant, as the case may be.

In such an event, MOR shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the MOR for, inter alia, time, cost and effort of the MOR, without prejudice to any other right or remedy that may be available to MOR.

2.15 Financial Proposal

2.15.1 Applicants shall submit the Financial proposal in the formats at Appendix-II (the “Financial Proposal”) clearly indicating the total cost of the Consultancy (Item [G]) of Form 2 of Appendix-II) in both figures and words, in Indian rupees, and signed by the Applicant’s Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.15.2 While submitting the Financial Proposal, the Applicant shall ensure the following:

- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), accommodation, air fare, equipment, printing of documents, market surveys, etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- (ii) The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payment

shall be subject to deduction of taxes at source as per Applicable Laws.

- (iii) Costs (including break down of costs) shall be expressed in INR.

2.16 Submission of Proposal

2.16.1 The Applicants shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialed by the Authorized Representative of the Applicant as per the terms of RFP. In case the proposal is submitted on the document down loaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by MOR and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by MOR, the latter shall prevail.

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of MOR, RFP Notice no., Consultancy name as indicated at Clause 1.11.1 and 1.11.3 and the name and address of the Applicant. It shall bear on top, the following:

“Do not open, except in presence of the Tender Opening Committee”

If the envelope is not sealed and marked as instructed above, MOR assumes no responsibility for the misplacement or premature opening of the contents of the Proposal and consequent losses, if any, suffered by the Applicant.

2.16.3 The aforesaid outer envelope will contain two separate sealed envelopes, one clearly marked ‘Technical Proposal’ and the other clearly marked ‘Financial Proposal’. The envelope marked “Technical Proposal” shall contain

- (i) Application in the prescribed format (Form-1 of Appendix-I) along with Forms 2 to 15 of Appendix-I and supporting documents; and
- (ii) Bid Security as specified in Clause 2.20.1

The envelope marked “Financial Proposal” shall contain the financial proposal in the prescribed format (Forms 1, 2 & 3 of Appendix-II).

2.16.4 The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and must be signed by the Authorised Representative of the Applicant. All pages of the original Technical Proposal and Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.

2.16.5 The complete Proposal must be delivered on or before the specified time on Proposal Due Date. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.

2.16.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.

2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment upto and including acceptance of the Feasibility Report by the MOR and discharge of all obligations of the Consultant under the Agreement.

2.17 Proposal Due Date

2.17.1 Proposal should be submitted at or before 11:00 hrs on the Proposal Due Date at the address provided in Clause 1.8 at the address provided in Clause 1.11 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.

2.17.2 MOR may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.

2.18 Late Proposals

Proposals received by MOR after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

2.19 Modification/ substitution/ withdrawal of Proposals

- 2.19.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by MOR prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.
- 2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.19.3 Any alteration / modification in the Proposal or additional information material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by MOR, shall be disregarded.

2.20 Bid Security

- 2.20.1 The Applicant shall furnish as part of its Proposal, a Bid Security of ₹25,000 (Rupees twenty five thousand) or US\$ 556 in the form of a Demand Draft issued by one of the Nationalised/ Scheduled Banks of India in favour of the FA & CAO, Northern Railway payable at Delhi, returnable except in case of the two highest ranked Applicants as required in Clause 2.24.1. In the event that the first ranked Applicant commences the assignment as required in Clause 2.29, the second ranked Applicant, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from PDD. The Selected Applicant’s Bid Security shall be returned, upon the Applicant signing the Agreement and completing the Deliverables assigned to it for the first 2 (two) months of the Consultancy in accordance with the provisions thereof.
- 2.20.2 Any Bid not accompanied by the Bid Security shall be rejected by the MOR as non-responsive.
- 2.20.3 MOR shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 2.20.4 The Applicant, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the

MOR's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the MOR as the mutually agreed pre-estimated compensation and damage payable to the MOR for, inter alia, the time, cost and effort of the MOR in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- (a) if any Applicant submits a non-responsive Proposal;
- (b) if an Applicant engages in any of the Prohibited Practices specified in Section 4 of this RFP;
- (c) if an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;
- (d) in the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause 2.24.1;
- (e) in the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses 2.28 and 2.29 respectively; or
- (f) if the Applicant is found to have a Conflict of Interest as specified in Clause 2.3.

D. EVALUATION PROCESS

2.21 Evaluation of Proposals

2.21.1 MOR shall open the Proposals at 11:30 hrs on the Proposal Due Date, at the place specified in Clause 1.11.1 and in the presence of the Applicants who choose to attend. The Envelopes marked "Technical Proposal" shall be opened first. The envelopes marked "Financial Proposal" shall be kept sealed for opening at a later date.

2.21.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.

2.21.3 Prior to evaluation of Proposals, MOR will determine whether each Proposal is responsive to the requirements of the RFP. MOR may, in

its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:

- (a) the Technical Proposal is received in the form specified at Appendix-I;
- (b) is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.17;
- (c) it is accompanied by the Bid Security as specified in Clause 2.20.1.
- (d) it is signed, sealed, bound together in hard cover and marked as stipulated in Clause 2.13 and 2.16;
- (e) it is accompanied by the Power(s) of Attorney as specified in Clause 2.2.4;
- (f) it contains all the information (complete in all respects) as requested in the RFP;
- (g) it does not contain any condition or qualification; and
- (h) it is not non-responsive in terms hereof.

2.21.4 MOR reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by MOR in respect of such Proposals.

2.21.5 MOR shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.

2.21.6 After the technical evaluation, MOR shall prepare a list of pre-qualified and shortlisted Applicants in terms of Clause 3.2 for opening of their Financial Proposals. A date, time and venue will be notified to all Applicants for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified and shortlisted Applicants along with their Technical Score will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present. MOR will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.3. and 3.4.

2.21.7 Applicants are advised that Selection will be entirely at the discretion of the MOR. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.

2.21.8 Any information contained in the Proposal shall not in any way be construed as binding on MOR, its agents, successors or assigns, but shall be binding against the Applicant if any Consultancy is subsequently awarded to it.

2.22 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising MOR in relation to or matters arising out of, or concerning the Selection Process. MOR will treat all information submitted as part of Proposal in confidence and will require all those who have access to such material to treat the same in confidence. MOR will not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or MOR.

2.23 Clarifications

2.23.1 To facilitate evaluation of Proposals, MOR may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by MOR for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.23.2 If an Applicant does not provide clarifications sought under Sub-Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, MOR may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning of such interpretation of MOR.

E. APPOINTMENT OF CONSULTANT

2.24 Negotiations

2.24.1 The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 70% (seventy per cent) marks as required under Clause 3.1.2 shall be replaced by the Applicant with a better candidate to the satisfaction of the MOR. In case the Selected Applicant fails to reconfirm its commitment, MOR reserves the right to invite the next ranked Applicant as the Selected Applicant for negotiations.

2.24.2 MOR will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of MOR.

2.24.3 MOR will examine the credentials of all Sub-Consultants proposed for this Consultancy and those not found suitable shall be replaced by the Applicant to the satisfaction of MOR.

2.25 Substitution of Key Personnel

2.25.1 MOR will not normally consider request of the selected Applicant for substitution of Key Personnel as the ranking of the Applicant is based on the evaluation of the Key Personnel and any change therein may upset the ranking. Substitution, will, however be permitted if the Key Personnel is not available for reasons of any incapacity due to health subject to equally or better qualified and experienced personnel being provided to the satisfaction of the MOR.

2.25.2 MOR expects all the proposed Key Personnel to be available during implementation of the Agreement. MOR will not consider substitution of Members except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the MOR. As a condition to such substitution, a sum equal to 20% (twenty per cent) of the remuneration specified for the

original Key Personnel shall be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be 50% (fifty per cent) of the remuneration specified for the original Key Personnel. Any further substitution may lead to disqualification of the Applicant or termination of the Agreement.

2.25.3 Substitution of the Team Leader will not normally be considered and may lead to disqualification of the Applicant or termination of the Agreement.

2.26 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify MOR for an amount not exceeding 3 (three) times the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services.

2.27 Award of Consultancy

After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the MOR to the Selected Applicant and the selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not receipt by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Applicant to acknowledge the LOA, and the next highest ranking Applicant may be considered.

2.28 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

2.29 Commencement of Assignment

The Consultant shall commence the Services at the project site within seven days of the date of the Agreement, or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.28 or commence the assignment as specified herein, MOR may invite the second ranked Applicant for negotiations. In such event, the Bid Security of the first ranked Applicant shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

2.30 Proprietary data

Subject to the provision of Clause 2.22, all documents and other information provided by the MOR or submitted by an Applicant to the MOR shall remain or become the property of the MOR. Applicants and the Consultant, as the case may be are to treat all information as strictly confidential. MOR will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to the MOR in relation to the Consultancy shall be the property of the MOR.

3. CRITERIA FOR EVALUATION

3.1 Evaluation of Proposals

- 3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, its understanding of TOR, proposed methodology and Work Plan, and the experience of Key Personnel. Only those Applicants whose Technical Proposals get a score of 70 marks or more out of 100 shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score.
- 3.1.2 Each Key Personnel must score a minimum of 70% marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 70% marks or any two of the remaining Key Personnel score less than 70% marks. In case the Selected Applicant has one Key Personnel, other than the Team Leader, who scores less than 70% marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the MOR, would score 70% or above.
- 3.1.3 The scoring criteria to be used for evaluation shall be as follows

Item Code	Parameter	Maximum Marks	Criteria
1.	Relevant Experience of the Applicant	25	10 marks will be given for the number of eligible Assignments undertaken by the Applicant Firm. The remaining 15 marks will be awarded for (i) comparative size and quality of Eligible Assignments; (ii) other similar work in similar projects; and (iii) overall turnover, experience and capacity of the firm.

2.	Proposed Methodology and Work Plan	5	Evaluation will be based on the quality of submission.
3.	Relevant Experience of the Key Personnel	70	30% of the maximum marks for each Key Personnel shall be awarded for the number of Eligible Assignment the respective key personnel has worked on. The remaining shall be awarded for (i) comparative size and quality of Eligible Assignments; and (ii) other similar work in medical sector.
3(a)	Team Leader cum Finance Expert	25	
3(b)	Legal Expert	15	
3(c)	Medical Expert	15	
3(d)	Construction Expert	15	

While awarding marks for the number of Eligible Projects, the Applicant or Key Personnel, as the case may be, that has undertaken the highest number of Eligible Assignments shall be entitled to the maximum score for the respective category and all other competing Applicants or respective Key Personnel, as the case may be, shall be entitled to a proportionate score. No score will be awarded to an Applicant/Key Personnel for fulfilling the eligibility criteria of a minimum number of Eligible Assignments and only projects exceeding the eligibility criteria shall qualify for scoring. For the avoidance of doubt and by way of illustration, if the minimum number of Eligible Projects for meeting the eligibility criteria is 3 (three), then an equivalent number will be ignored for each Applicant/Key Personnel and only the balance remaining will be considered for awarding scores relating to the number of Eligible Assignments; all eligible assignments on a proportionate basis. However, for assigning scores in respect of the size and quality of Eligible

Assignments, all the Eligible Assignments of the Applicant/Key Personnel shall be considered.

3.1.4 For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/consultancy assignments in respect of preparation of feasibility report and/or detailed project report including site surveys and business environment & prospects of the projects for the following projects shall be deemed as eligible assignments (the “Eligible Assignments”):

- (i) Medical College having an estimated capital cost (excluding land) of at least ₹ 150 crore in case of a project in India, and (US \$ 75 million for projects elsewhere); or
- (ii) Any Nursing College or other project involving health sector and having an estimated cost (excluding land) of at least ₹30 crore in case of a project in India, and US \$15 million for projects elsewhere.

Provided that the Applicant firm claiming credit for an Eligible Assignment shall have, prior to PDD, received a professional fee of at least ₹ 25 lakh for such assignment and where credit is being claimed by a key personnel, she/he should have completed the relevant assignment prior to PDD.

Provided further that if the Applicant firm is taking credit for an eligible assignment which was undertaken for a private sector entity, such assignment shall have been completed prior to PDD and the Applicant shall have received professional fee of at least ₹25 lakh.

3.1.5 For the purpose of services, an Eligible Assignments under clause 3.1.4 will be reckoned as two Eligible Assignments, if the estimated capital cost exceeds ₹.200 cr.

3.2 Short-listing of Applicants

Of the Applicants ranked as aforesaid, not more than five shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such pre-qualified Applicants is less than two, MOR may, in its sole discretion, pre-qualify the Applicant(s) whose technical score is less than 70 points even if such Applicant(s) do(es) not qualify in terms of Clause 3.1.2; provided that in such an event, the total number of pre-qualified and short-listed Applicants shall not exceed two.

3.3 Evaluation of Financial Proposal

- 3.3.1 In the second step, the financial evaluation will be carried out as per this Clause 3.3. Each Financial Proposal will be assigned a financial score (S_F).
- 3.3.2 For financial evaluation, the total cost indicated in the Financial Proposal, excluding Additional Costs, will be considered. Additional Costs shall include items specified as such in Form-2 of Appendix-II.
- 3.3.3 MOR will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfill its obligations as per the TOR within the total quoted price shall be that of the Consultant. The lowest Financial Proposal (F_M) will be given a financial score (S_F) of 100 points. The financial scores of other proposals will be computed as follows:

$$(S_F) = 100 \times F_M / F$$

(F = amount of Financial Proposal)

3.4 Combined and final evaluation

- 3.4.1 Proposals will finally be ranked according to their combined technical (S_T) and financial (S_F) scores as follows:

$$S = S_T \times T_w + S_F \times F_w$$

Where S is the combined score, and T_w and F_w are weights assigned to Technical Proposal and Financial Proposal that shall be 0.70 and 0.30 respectively.

- 3.4.2 The Selected Applicant shall be the first ranked Applicant (having the highest combined score). The second ranked Applicant shall be kept in reserve and may be invited for negotiations in case the first ranked Applicant withdraws, or fails to comply with the requirements specified in clauses 2.24, 2.28 and 2.29, as the case may be.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, MOR shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt, fraudulent, coercive, undesirable practice or restrictive practices (collectively the “Prohibited Practices”) in the Selection Process. In such an event, MOR shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the MOR for, inter alia, time, cost and effort of the MOR, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 4.2 Without prejudice to the rights of the MOR under Clause 4.1 hereinabove and the right and remedies which the MOR may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the Authority 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 Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by the MOR during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by the Authority to have directly 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.
- 4.3 For the purposes of this Selection, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or

indirectly, any official of the MOR who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement 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 MOR, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/adviser of the MOR in relation to any matter concerning the Project;

- (b) “fraudulent practice” means a misrepresentation or omission of facts in order to influence the Selection Process;
- (c) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the Selection Process;
- (d) “undesirable practice” means establishing contact with any person connected with or employed with MOR with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

5. PRE-PROPOSAL CONFERENCE

- 5.1 Pre-Proposal Conference of the Applicants shall be convened at the designated date, time and place. Only those Applicants, who have purchased the RFP document or downloaded the same from the Official Website for the MOR, shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.
- 5.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the MOR. MOR shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Delhi shall have jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 MOR, in its sole discretion and without incurring any obligation or liability, reserves the right to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to MOR by, on behalf of and/or in relation to any Applicant; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases MOR, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 All documents and other information supplied by MOR or submitted by an Applicant shall remain or become the property of MOR. Applicants are to treat all information, as strictly confidential. MOR will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.

6.5 MOR reserves the right to make inquiries with any of the Clients listed by the Applicants in their previous experience record.

SCHEDULES

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SCHEDULE - 1

TERMS OF REFERENCE

1. General

- 1.1 During the course of presentation of Railway Budget for the year 2009-10, Hon'ble MR had announced to open 18 Medical Colleges and 6 Nursing Colleges attached to existing Railway Hospitals through PPP to give higher education facilities to wards of Railway employees and state of the art medical treatment in the specialized fields to the railway employees with modern medical infrastructure;
- 1.2 The places selected for Medical Colleges are Chennai, Hyderabad, Bilaspur, Lucknow, Barasat, Bhubaneswar, Mysore, Kharagpur, Guwahati, Dibrugarh, Jodhpur, Gardenreach, Nagpur, Ahmedabad, Kolkata, Bhopal, Jammu & Trivendrum Secunderabad and Lucknow and Nursing Colleges are Delhi, Mumbai, Chennai, Secunderabad, Lucknow and Jabalpur.
- 1.3 This project concerns setting up of Medical College at Kharagpur.
- 1.4 The Medical College proposed at Kharagpur will have at least 100 seats and shall be built and managed by the private partner on railway land. However, the management of the Railway Hospital (with 340 beds at present) will continue to remain with the Railways. MoR expects that at least half of the management quota seats would be reserved for the wards of Railway employees subject to their fulfilling the basic eligibility criteria.

2. Objective

The objective of this consultancy (the "Objective") is to prepare a workable scheme and assist in implementation thereof for operation and maintenance of the proposed Medical College through a partnership with private sector in a manner that ensures:

- i. higher education facilities to wards of Railway employees and state of the art medical treatment in the specialized fields to the railway employees with modern medical infrastructure;
- ii. most effective management structure utilizing the relative strengths of both the private sector and the Indian Railways;
- iii. a Revenue Model that offers best value for money to the Indian Railways while offering adequate incentive to the private sector in order to attract the best specialists in the field;
- iv. bid documentation that allocates the risks most efficiently between private sector and MOR while safeguarding the long term interest of the MOR;
- v. a bidding process that completes the selection and award of concession to the concessionaire in reasonable time from the award of this Consultancy.

3. Scope of Services

- 3.1 The Consultant will be required to undertake the following activities:
 - a) To undertake assessment of existing Railway Hospitals and nearby facilities which impact on the proposed projects. The study would include existing bed capacity, occupancy level, facilities offered, tariff structure, skilled manpower availability i.e. doctors. Nurses, paramedical staff etc.
 - b) Based on the above assessment, to provide a detailed report for public private participation in proposed Medical College. It is expected that the final document would detail:
 - 1) The broad standards of infrastructure (physical, human, equipment, etc.) of the proposed Medical College and the services in accordance with Govt. of India norms.
 - 2) Assessment of the financial viability of the project based on detailed cash flow projections, include scope for cross

subsidization, scope for economies of scale, detailed cost analysis, scope of services in current infrastructure available and scope for expansion.

- 3) Detailed analysis of various project related risk parameters and risk mitigation/management plan, including risk allocation matrix.
 - 4) Any other issue that is incidental to achieve the objectives of the Project's Development under PPP.
- c) To develop a detailed action plan, including the financial impact, the timeline and preferred bidding options in each case.
- d) To assist the MOR in marketing of incentive package and selection of private partners up to the signing of the contract with the private partners.
- e) Financial assessment and PPP structuring, to develop a detailed business plan and revenue model for the preferred PPP models including
- 1) Detailed cash flow projections for the project term with break-even point analysis.
 - 2) Proposed duration of the concession agreement.
 - 3) Bidding strategy involving PPP agreement between Private partner and MOR.
 - 4) Verifiable and quantifiable indicators of performance.
- f) Bid Process Management (Support the pre-bid and bid process for the projects.)
1. Preparation of Feasibility Reports for each location separately.
 2. Preparation of Business Plans and Financial Viability reports for each location separately.
 3. Preparation of Bid documents which shall include adaptation of Model RFQ/RFP documents of Govt. of India and preparation of a draft Concession Agreement.

4. Identification of statutory approvals required and assistance in obtaining the same, if any.
 5. Transaction Advisory Services for the bidding/Award of the projects for each location separately.
- g) The Consultant will also study the model where Railway Hospital and Railway land is to be provided by the MOR and the Building, connected infrastructure, equipment, manpower to be provided by the Private Partner. The shortfalls regarding beds in the existing Railway Hospital shall also be provided by the Private Partner.

4. Preparation of Reports and Deliverables

Reports and deliverables shall be submitted by the Consultant in compliance of this TOR as specified in this Clause 4. The list specified is not exhaustive but only indicative. The Consultant shall augment the list further in the Inception Report in order to include the output of all the Services carried out in terms of this TOR.

4.1 Feasibility Report

The objective of the Feasibility Report is to provide basic details of the sites, the business environment and prospects of the projects, statutory approvals and requirements for the projects and a preliminary financial appraisal of the project. This would include a rough assessment of the cost and revenue streams. The document must be able to serve as a base document for the purpose of carrying out due diligence by prospective applicants. The Report must also bring out in detail the minimum scale of the College and associated facilities that to be developed and technical standards to be followed. The Report must contain broad technical details of the project and assessment of the cost of the project.

4.2 Business Plan and Viability Report

While the Feasibility Report would contain a brief overview of the financial aspects of the project this Report would develop the analysis in greater detail so as to provide the Govt. with the following: -

- a) The underlying asset value and opportunity cost of the facilities being provided by the Govt.
- b) The division of roles and responsibilities of Govt. & private partner and management of overlapping activities, if any.
- c) The minimum investment that the private partner could need to make or commit.
- d) Cost of the project, scale of investment and phasing thereof.
- e) Market potential and estimation of different revenue streams and cash flows
- f) Arrangement for leasing and use of Railway land.
- g) A discounted cash flow and NPV/IRR of the project clearly justifying the discount rate used.
- h) The monetary value of (a) reservations for Railway wards, (b) improved medical treatment facilities for Railway patients; and (c) on sharpening of skills of Railway doctors.
- i) Guidelines for carrying out a value-for-money analysis for the project which would facilitate in assessing the viability of the project from the Govt.'s prospective.
- j) Issues that could have commercial and financial implications.
- k) To establish revenue forecasts during the period of the project award.
- l) Financial Modeling & Analysis of the various structures.
- m) Examining the overall viability of the various structures and selection of optimum structures.
- n) Develop the business plan under the selected project structure.
- o) Conduct risk assessment by (i) identifying the allocation of risks; (ii) proposing changes in the risk allocation that will make the project more

attractive to the private sector without significantly increasing the liabilities on the Indian Railways.

- 4.2.1 While finalizing the Feasibility Report and the viability of the Project, the Consultant shall seek the advice of MoR. In the event that a viable project does not seem feasible, the Consultant shall not proceed with the Consultancy and the same shall stand terminated. Upon such termination, the Consultant shall be entitled to a payment of 10% of the Agreement Value in addition to the payment duly received towards work done so far.

4.3 Preparation of Bid documents

This would entail preparation of Request for Qualification (RFQ) and Request for Proposal (RFP) documents. Model documents notified by Ministry of Finance which are available on the website of Ministry of Finance (or could be provided by the Government) would be used and adapted for the purpose of these projects. However, given the very special nature of the project several changes may need to be made in the evaluation criteria. The Consultant should make very well-analysed and well-considered recommendations in these respects for the project. Experience of similar projects having been awarded by Govt. authorities (Central Govt./Central PSUs) may be relied upon to the extent appropriate for the purpose.

This would also involve drafting of Model Concession Agreement clearly bringing out the risks and rewards for the Govt. and private partners, their respective rights, responsibilities and obligations. The generic provisions of Model Concession Agreements followed by different Central Government Departments in different sectors may be relied upon and adopted to the extent appropriate for the purpose. Drafting of Model Concession Agreement would also include the schedules to the document describing the site, the standards, the specifications and the performance indicators etc. The document will also include Land Lease Agreement.

4.4 Identification of statutory approvals required and assistance in obtaining the same

The Consultant would identify and list various statutory approvals required for execution of the project. The approval that need to be taken by the government before the bidding process is initiated e.g. the environmental clearance or the clearance from various utilities/urban bodies, etc. must be clearly brought out. The Consultant would as a part of assignment assist the Govt. in obtaining these clearances. Other approvals such as approval of Medical Council of India/Indian Nursing Council for which the Concessionaire would be responsible must be clearly spelled out.

4.5 Transaction Advisory Services for the bidding/Award of the projects

The Consultant would assist the Govt. in invitation of RFQ and evaluation thereof and invitation of RFP and evaluation thereof. This would include assistance in the pre-bid Conferences and clarifications to the queries of the prospective bidders, and also assist in preparation of various documents for appraisal and approval at various levels of Government as laid down by Ministry of Finance. Scope of the Consultancy would also extend to assistance in negotiations and signing of Concession Agreement with the successful bidders.

5. Not used

6. Time and payment schedule

- 6.1 The total duration for preparation of the Feasibility Report and Schedules to the Concession Agreement shall be 18 (eighteen) weeks, excluding the time taken by the MOR in providing the requisite documents or in conveying its comments on the Draft Feasibility Report. The Consultant shall deploy its Key Personnel as per the Deployment of Personnel proposed. Intermittent services will be required beyond the 18th (eighteenth) week and until the end of 52 (fifty two) weeks or two months after the signing of the Concession Agreement, whichever is earlier. The man-days required for the intermitted services shall be provided by the Consultant as per the Agreement.

6.2 Time schedule for important deliverables(the “**Key Dates**”), of the Consultancy and the payment schedule linked to the specified Deliverables is given below:

Key Date No.	Description of deliverables	Week No.	Payment
KD1	Inception Report	2	--
KD2	Preliminary Report & Infrastructure Development Report	6	10%
KD3	Draft Feasibility Report (including Business Plan & Viability Analysis)	10	15%
KD4	Draft Concession Agreement (C.A.)	12	15%
KD5	Final Feasibility Report	14	10%
KD6	Final Draft CA	16	20%
KD7	RFQ/RFP (adapted from Model document)	18	15%
KD8	Award of Concession/ Completion of Services	52	15%

Notes:

- 1. Final payment (15%) against KD8 shall be released after completion of the services in the entirety including signing of Concession.*
- 2. The Consultant shall get one week for submission of the Final Report after comments of the MOR are provided.*

6.3 ToR for the Consultant envisages assistance in the process of public hearing etc. in respect of Environment Impact Assessment of the project specified in para 4.4.

6.4 No mobilization advance shall be admissible.

6.5 15% (fifteen per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon execution of the Concession Agreement. In the event the Concession Agreement does not get executed within one year of the Effective Date, the Final Payment shall not become due to the Consultant, save and except the costs incurred for meeting its reimbursable expenses during the period

after expiry of 18 (eighteen) weeks from the Effective Date, including travel costs and personnel costs, at the agreed rates.

- 6.6 While finalizing the Feasibility Report and the viability of the Project, the Consultant shall seek the advice of MoR. In the event that a viable project does not seem feasible, the Consultant shall not proceed with the Consultancy and the same shall stand terminated. Upon such termination, the Consultant shall be entitled to a payment of 10% of the Agreement Value in addition to the payment duly received towards work done so far.

7. Meetings

MOR may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held in New Delhi at the MOR's office. Further, the Consultant may be required to attend meetings and conferences with pre-qualified Bidders or the Selected Bidder. The expense towards attending such meetings during the period of Consultancy, including travel costs and *per diem*, shall be reimbursed in accordance with the Financial Proposal contained in Form-2 of Appendix-II of the RFP. The days required to be spent in New Delhi shall be computed at the rate of 8 man hours a day in case of an outstation Consultant. For a Consultant having its office with the National Capital Region, the time spent during meetings shall be calculated as per actuals. No travel time shall be payable except in case of an expatriate Consultant who will be entitled to claim actual travel time, subject to a maximum of 10(ten) man hours for a return journey.

8. Consultancy Team and Project Office

- 8.1 The Consultant shall form a multi-disciplinary team (the “**Consultancy Team**”) for undertaking this assignment. The following Key Personnel whose experience and responsibilities are briefly described herein would be considered for evaluation of the Technical Proposal. Other such expertise as required for financial analysis, legal expert, Medical Expert, etc for the Project shall be included in the Team, if not already included through the Key Personnel specified below, through other Professional Personnel, as necessary.

(a) Team Leader-cum-Finance Expert

Educational Qualification	Chartered Accountant or equivalent
Essential Experience	10 years in planning and project preparation of healthcare sector.
Job responsibilities	<p>He will lead, coordinate and supervise the multi-disciplinary team. It will be his responsibility to guide the team in arriving at solutions within the constraints specified in the TOR.</p> <p>He will be responsible for financial analysis and modeling of the Project. He will prepare the Revenue Model, Bid Documents.</p>
Minimum time required on site	20 days

b) Legal Expert

Educational Qualification	Post Graduate/Graduate in Law or equivalent
Essential Experience	5 years in development of concession agreement.
Job responsibilities	He will be responsible for preparation of Concession Agreement and legal review of bid documents.
Minimum time required on site	7 days

c) Medical Expert

Educational Qualification	MBBS doctor with experience in Hospital Administration
Essential Experience	5 years in health sector specifically for the setting up and operation of Medical/Nursing College.
Job responsibilities	He will prepare the Maintenance and Operation Plan
Minimum time required on site	20 days

d) Construction Expert

Educational Qualification	Master/Bachelor in Civil Engineering
Essential Experience	5 years in health sector specifically for the setting up and operation of Medical/Nursing College.
Job responsibilities	He will define the scope & size of the construction required and also provide a preliminary design & layout of the complex.
Minimum time required on site	15 days

8.2 The Consultant shall establish a Project Office at a suitable location in Kharagpur for efficient and co-ordinated performance of its Services. All the

Key Personnel shall be deployed at this office during the first 10(ten) weeks as specified in the Manning Schedule forming part of the Agreement. The authorized officials of the MOR may visit the Consultant's Project Office any time during office hours for inspection and interaction with the Consultant's Personnel. It is not expected of the Consultant to carry out the operations from the Head/Home Office. However, he may do so for the remaining consultancy services beyond the first 10 (ten) weeks.

8.3 The Consultant shall mobilize and demobilize its Professional Personnel and Support Personnel with the concurrence of MOR and shall maintain the time sheet/ attendance sheet of the working of all Personnel in the Project Office. These time sheets/ attendance sheets shall be made available to MOR as and when asked for and a copy of such record shall be submitted to MOR at the end of each calendar month.

9. Reporting

9.1 The Consultant will work closely with the MOR. A designated Project Director of the MOR will be responsible for the overall coordination and project development. He will play a coordinating role in dissemination of the Consultant's outputs, facilitating discussions, and ensuring required reactions and response to the Consultant.

9.2 The Consultant may prepare Issue papers highlighting issues that could become critical for the timely completion of the Project and that require attention from MOR.

9.3 The Consultant will make a presentation on the inception report for discussion with the WG at a meeting. This will be a working document. The Consultant is required to prepare and submit a monthly report that includes and describes, *inter alia*, general progress to date; data and reports obtained and reviewed, conclusions to date, if any; concerns about availability of, or access to, data, analyses, reports; questions regarding the TOR or any other matters regarding work scope and related issues; and so on. The Consultants' work on the TOR tasks should continue while the report is under consideration and is being discussed.

9.4 Regular communication with the Nodal Officer and the Project Director is required in addition to all key communications. This may take the form of telephone/teleconferencing, emails, faxes and occasional meetings.

9.5 The Deliverables will be submitted as per schedule provided in this RFP.

10. Data and software to be made available by MOR

MOR shall provide to the Consultant available information regarding the site and the hospital.

The Nodal Officer designated by the MOR shall facilitate handing over of such information to the Consultant.

11. Completion of Services

- 11.1 All the study outputs including primary data shall be compiled, classified and submitted by the Consultant to MOR in soft form apart from the reports indicated in the Deliverables (para 4). The study outputs shall remain the property of MOR and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of MOR. The Consultancy services shall stand completed on acceptance of all the required deliverables of the Consultant and execution of the Concession Agreement or 52 (Fifty Two weeks). MOR shall issue a certificate to that effect. The Consultancy shall in any case be deemed to be completed upon expiry of 1(one) year from the Effective Date, unless extended by mutual consent of the Authority and the Consultant.
- 11.2 15% (fifteen per cent) of the Agreement Value has been earmarked as lump sum payment to be made to the Consultant upon execution of the Concession Agreement (the “Lump Sum Payment”). In consideration of the Lump Sum Payment, the Consultant shall provide such services as may be required by the MOR for concluding the Bid Process and execution of the Concession Agreement. In the event the Concession Agreement does not get executed within one year of the Effective Date, the Consultancy shall stand completed as specified in Clause 11.1 above, but no Lump Sum Payment shall be due to the Consultant, save and except the costs incurred for meeting its expenses during the period after expiry of 18(eighteen) weeks from the Effective Date, including travel costs and personnel costs, at the agreed rates specified in Annex-3 of the Agreement, which shall be reimbursed to the Consultant as per actual. For the avoidance of doubt, it is agreed that reimbursement of such costs on travel and personnel shall be due to the

Consultant as aforesaid, even if the Concession Agreement is not executed.

SCHEDULE – 2

AGREEMENT

FOR

**PREPARATION OF FEASIBILITY REPORT AND BID
DOCUMENTS**

	Page no.
CONTENTS	
1. General	
1.1 Definitions and Interpretation	
1.2 Relation between the Parties	
1.3 Rights and Obligations	
1.4 Governing law and jurisdiction	
1.5 Language	
1.6 Table of contents and headings	
1.7 Notices	
1.8 Location	
1.9 Authority of Member-in-Charge	
1.10 Authorized representatives	
1.11 Taxes and duties	
 2. Commencement, Completion and Termination of Agreement	
2.1 Effectiveness of Agreement	
2.2 Commencement of Services	
2.3 Termination of Agreement for failure to become Effective	
2.4 Expiration of Agreement	
2.5 Entire Agreement	
2.6 Modification of Agreement	
2.7 Force Majeure	
2.8 Suspension of Agreement	
2.9 Termination of Agreement	
 3. Obligations of the Consultant	
3.1 General	
3.2 Conflict of Interest	
3.3 Confidentiality	
3.4 Liability of the Consultant	
3.5 Insurance to be taken out by the Consultant	
3.6 Accounting, inspection and auditing	
3.7 Consultant's Actions requiring MOR's prior Approval	
3.8 Reporting obligations	
3.9 Documents prepared by the Consultant to be the property of MOR	
3.10 Equipment and materials furnished by MOR	
3.11 Providing access to the Project Office and Personnel	
3.12 Accuracy of Documents	
 4. Consultant's Personnel and Sub-Consultant	
4.1 General	
4.2 Deployment of Personnel	
4.3 Approval of Personnel	

- 4.4 Substitution of Key Personnel
- 4.5 Working hours, overtime, leave etc.
- 4.6 Resident Team Leader and Project Manager
- 4.7 Sub-Consultant

5. Obligations of MOR

- 5.1 Assistance in clearances etc.
- 5.2 Access to land
- 5.3 Change in Applicable Law
- 5.4 Payment

6. Payment to the Consultant

- 6.1 Cost estimates and Agreement Value
- 6.2 Currency of payment
- 6.3 Mode of billing and payment

7. Liquidated damages and penalty

- 7.1 Performance Security
- 7.2 Liquidated Damages
- 7.3 Penalty for deficiency in services

8. Fairness and Good Faith

- 8.1 Good Faith
- 8.2 Operation of the Agreement

9. Settlement of Disputes

- 9.1 Amicable settlement
- 9.2 Dispute resolution
- 9.3 Conciliation
- 9.4 Arbitration

ANNEXES

- Annex 1: Terms of Reference
- Annex 2: Deployment of Personnel
- Annex 3: Estimate of Personnel Costs
- Annex 4: Approved Sub-Consultant
- Annex 5: Cost of Services
- Annex 6: Payment Schedule
- Annex 7: Bank Guarantee for Performance Security

AGREEMENT

Preparation and Assistance in setting up of Medical College

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the _____ day of the month of _____ 20**, between, on the one hand, the President of India acting through Executive Director, Health Planning, Ministry of Railways (Railway Board), Government of India, Rail Bhavan, New Delhi-110001 (hereinafter called the “**MOR**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) MOR vide their Request for Proposals for Preparation of Feasibility Report and Bid Documents (hereinafter called the “**Consultancy**”) invited technical and financial proposals to undertake the work of Consultancy for setting up of Kharagpur Medical College (hereinafter called the “**Project**”);
- (B) The Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to MOR that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to MOR on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) MOR, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy work to the Consultant vide the Letter of Award for the Consultancy dated _____ (the “**LOA**”); and
- (D) In pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- (a) “Additional Costs” shall have the meaning set forth in Clause 6.1(b);
- (b) “Agreement” means this Agreement, together with all the Annexes;
- (c) “Agreement Value” shall have the meaning set forth in Clause 6.1(b)
- (d) “Applicable Laws” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (e) “Confidential Information” shall have the meaning set forth in Clause 3.3;
- (f) “Conflict of Interest” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (g) “Dispute” shall have the meaning set forth in Clause 9.2.1;
- (h) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (i) “Expatriate Personnel” means such persons who at the time of being so hired had their domicile outside India;
- (j) “Government” means the Government of India;
- (k) “ INR, ₹, Re. or Rs.” means Indian Rupees;
- (l) “Member”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “Members” means all of these entities;
- (m) “Party” means MOR or the Consultant, as the case may be, and Parties means both of them;

- (n) “Personnel” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (o) “Resident Personnel” means such persons who at the time of being so hired had their domicile inside India;
- (p) “RFP” means the Request for Proposal document in response to which the Consultant’s Proposal for providing Services was accepted;
- (q) “Services” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (r) “Sub-Consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and
- (s) “Third Party” means any person or entity other than the Government, MOR, the Consultant or a Sub-Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over other would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Award

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between MOR and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of MOR and the Consultant shall be as set forth in the Agreement; in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) MOR shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Delhi shall have jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

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

1.6 Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7 Notices

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

- (a) in the case of the Consultant, be given by facsimile or email and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in clause 1.11 or to such other person as the Consultant may from time to time designate by notice to the MOR; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement

due, air mail or by courier, be sent by facsimile to the number as the Consultant may from time to time designate by notice to the MOR;

- (b) in the case of MOR, be given by facsimile or email and by letter delivered by hand and be addressed to the MOR with a copy delivered to the MOR Representative set out below in Clause 1.11 or to such other person as MOR may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Delhi it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights and obligations towards MOR under this Agreement, including without limitation the receiving of instructions and payments from MOR.

1.10 Authorised representatives

1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by MOR or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.11.

1.10.2 MOR may, from time to time, designate one of its officials as MOR Representative. Unless otherwise notified, the MOR Representative shall be:

Executive Director/Health Planning
Room No.351
Ministry of Railways
(Govt. of India)
Rail Bhawan, Rafi Marg,
New Delhi 110 001
Fax No.: 011 23389623

- 1.10.3 The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

Tel: _____

Fax: _____

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and MOR shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect on the date of this Agreement.

2.2 Commencement of Services

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, MOR may, by not less than 2 (two) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the Consultant shall stand forfeited.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clause 2.9 hereof, this Agreement shall expire when the Services have been completed and a period of 90 (ninety) days after the delivery of the final deliverable to the Authority; and (ii) the expiry of [1(one) year] from the Effective Date. Upon Termination, MOR shall make payment of all amounts due to the Consultant hereunder.

2.5 Entire Agreement

2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause 4.2.3 and 6.1(c) hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

(a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse

weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3 Measures to be taken

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

2.7.4 Extension of time

Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.7.5 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.7.6 Consultation

Not later than thirty (30) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8 Suspension of Agreement

MOR may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By MOR

MOR may, by not less than thirty (30) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within thirty (30) days

of receipt of such notice of suspension or within such further period as MOR may have subsequently granted in writing;

- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to MOR a statement which has a material effect on the rights, obligations or interests of MOR and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (g) MOR, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

The Consultant may, by not less than thirty (30) day's written notice to MOR, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- (a) MOR fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue;
- (b) MOR is in material breach of its obligations pursuant to this Agreement and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently granted in

writing) following the receipt by MOR of the Consultant's notice specifying such breach;

- (c) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) MOR fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Consultant's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 3.6 (ii) hereof, and any right which a Party may have under the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by MOR, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, MOR shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to MOR):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;

- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

- 2.10 If MoR, for the receipt of the Draft Feasibility Report or the Final Feasibility Report, considers that the project is technically/financially infeasible/unviable, it may foreclose the Consultancy. In such an event of termination of the Agreement, it is agreed that total final payment, in addition to any previous payment already made by MoR, shall be limited to 10% of the Agreement Value.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to MOR, and shall at all times support and safeguard MOR's legitimate interests in any dealings with Sub-Consultant or Third Parties.

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant are specified in the Terms of Reference (the “**TOR**”) at Annex-I of this Agreement. The Consultant shall provide the deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel and agents of the Consultant and any Sub-Consultant, comply with the Applicable Laws.

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Sub-Consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities in India which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or

- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices"). Notwithstanding anything to the contrary contained in this Agreement, MOR shall be entitled to terminate the Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, MOR shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages, payable to MOR towards, inter alia, the time, cost and effort of MOR , without prejudice to MOR's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the MOR under Clause 3.2.5 above and the other rights and remedies which MOR may have under this Agreement, if the Consultant is found by MOR to have directly or indirectly or through an agent, engaged or indulged in any Prohibited practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by MOR to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.7 For the purposes of Clause 3.2.5 and 3.2.6, 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 Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any officials of MOR who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement 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 MOR, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser MOR in relation to any matter concerning the Project;
- (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection 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 Selection Process or the exercise of its rights or performance of its obligations by MOR under this Agreement;
- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by MOR with the objective or canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant, its Sub-Consultant and the Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, designs software or other

material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by MOR to the Consultant, its Sub-Consultant and the Personnel; any information provided by or relating to MOR, its technology, technical processes, business affairs or finances or any information relating to MOR's employees, directors, officers or other professionals or suppliers, customers, or contractors of MOR, and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement ("**Confidential Information**") without the prior written consent of MOR.

Notwithstanding the aforesaid, the Consultant, its Sub-Consultant and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, its Sub-Consultant and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultant and the Personnel of either of them;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Law or judicial or administrative or arbitral process or by any Governmental Instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultant and the Personnel of either of them shall give MOR, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment ;
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultant or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultant or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4 Liability of the Consultant

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to MOR for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to MOR's property, shall not be liable to MOR:
- (i) for any indirect or consequential loss or damage; and
 - (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1(b) of this Agreement, or (B) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5 Insurance to be taken out by the Consultant

- 3.5.1 (a) The Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost, but on terms and conditions approved by MOR, insurance against the risks, and for the coverages, as shall be specified in the Agreement and in accordance with good industry practice.
- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to MOR, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premium have been paid in respect of such insurance. No

insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.

- (c) If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, MOR shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premium and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by MOR.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention MOR as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect; provided that in the event the Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) time the cover required hereunder, such insurance policy may not mention MOR as the sole beneficiary of the Consultant or require an undertaking to that effect.

3.5.2 The Parties agree that the risks and coverage shall include but not be limited to the following:

- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of [₹.1 (one) crore].
- (b) employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with Applicable Laws;
- (c) professional liability insurance for an amount no less than the Agreement Value.

The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in Clause 6.1(b) of the Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

3.6 Accounting, inspection and auditing

The Consultant shall,

- (i) keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges), and
- (ii) permit MOR or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by MOR.

3.7 Consultant's actions requiring MOR's prior approval

The Consultant shall obtain MOR's prior approval in writing before taking any of the following actions:

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by MOR prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement;
- (c) any other action that may be specified in this Agreement.

3.8 Reporting obligations

The Consultant shall submit to MOR the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.9 Documents prepared by the Consultant to be property of MOR

- 3.9.1 All plans, drawings, specifications, designs, reports and other documents prepared by the Consultant in performing the Services shall become and

remain the property of MOR, and all intellectual property rights in such Consultancy Documents shall vest with MOR. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with MOR under law, shall automatically stand assigned to MOR as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as MOR may deem necessary to secure its right herein assigned by the Consultant.

3.9.2 The Consultant shall not use these documents for purposes unrelated to this Agreement deliver all Consultancy Documents to MOR, together with a detailed inventory thereof. The consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Part shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of MOR.

3.9.3 The Consultant shall hold the MOR harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned right of MOR.

3.10 Equipment and materials furnished by MOR

Equipment and materials made available to the Consultant by MOR shall be the property of MOR and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to MOR, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of MOR. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by MOR in writing, insure them in an amount equal to their full replacement value.

3.11 Providing access to Project Office and Personnel

The Consultant shall ensure that MOR, and officials of MOR having authority from MOR, are provided unrestricted access to the Project Office and to all Personnel during office hours. MOR's any such official shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records for his satisfaction.

3.12. Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. It shall indemnify MOR against any inaccuracy in its work which might surface during implementation of the project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practices. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4 CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2 Deployment of Personnel

4.2.1 The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in Annex-2 of this Agreement. The estimate of Personnel costs and manday rates are specified in Annex-3 of this Agreement.

4.2.2 Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-3 may be made by the Consultant by written notice to MOR, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 20% (twenty percent) or one week, whichever is greater, and (ii) that the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement Value set forth in Clause 6.1.(b) of this Agreement. Any other adjustments shall only be made with the written approval of MOR.

4.2.3 If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between MOR and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1(b).

4.3 Approval of Personnel

4.3.1 The Professional Personnel listed in Annex-2 of the Agreement are hereby approved by MOR. No other Professional Personnel shall be engaged without prior approval of MOR.

4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to MOR its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. MOR may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person

for MOR's consideration. In the event MOR does not reject a proposal within fourteen (14) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by MOR.

4.4 Substitution of Key Personnel

MOR expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. MOR will not consider any substitution of Key Personnel except under exceptional circumstances. Such substitution shall be limited to not more than one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of MOR. Substitution of a Key Personnel shall be permitted subject to reduction of remuneration equal to 20% (twenty percent) of the total remuneration specified for the original Key Personnel who is proposed to be substituted. In case of a second substitution, such reduction shall be equal to 50% (fifty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the mandays of service set forth in Annex-2. Any taking of leave by any Personnel for a period exceeding 7 days shall be subject to the prior approval of MOR, and the Consultant shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

4.6 Resident Team Leader and Project Manager

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Consultant shall designate a suitable person as Project Manager who shall be responsible for day to day performance of the Services.

4.7 Sub-Consultant

Sub-Consultant listed in Annex-4 of this Agreement are hereby approved by MOR. The Consultant may, with prior written approval of MOR, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The

hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the Consultant under this Clause 4.

5. OBLIGATIONS OF MOR

5.1 Assistance in clearances etc.

Unless otherwise specified in the Agreement, MOR shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, its Sub-Consultant and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultant or Personnel to perform the Services;
- (b) facilitate prompt clearance through customs of any property required for the Services; and
- (c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;

5.2 Access to land and property

MOR warrants that the Consultant shall have, free of charge, unimpeded access to all land and property at the Station in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1(c).

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1(b), then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

5.4 Payment

In consideration of the Services performed by the Consultant under this Agreement, MOR shall make to the Consultant such payments and in such manner as is provided by Clause 6 of this Agreement.

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

- (a) An abstract of the cost of the Services payable to the Consultant is set forth in Annex-5 of the Agreement.
- (b) Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is ₹. _____ (₹_____), which does not include the Additional Costs specified in Annex-5 (the “**Additional Costs**”).
- (c) Notwithstanding anything to the contrary contained in Clause 6.1(b), if pursuant to the provisions of Clauses 2.6 & 2.7, the Parties shall agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1(a) above, the Agreement Value set forth in Clause 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:-

- (a) FA& CAO, S.E. Rly., Garden Reach shall be paying Authority. CMS, SE Rly., Kharagpur shall be the certifying authority. The certificates will be countersigned by CMD/SE Railway.

- (b) The Consultant shall be paid for its services as per the Payment Schedule at Annex-6 of this Agreement, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes to the satisfaction of MOR the work pertaining to the preceding stage.
 - (ii) MOR shall pay to the Consultant, only the undisputed amount.
- (c) MOR shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by MOR of duly completed bills with necessary particulars (the “Due Date”). Interest at the rate of 10% (ten per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (d) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by MOR. The Services shall be deemed completed and finally accepted by MOR and the final report and final deliverable shall be deemed approved by MOR as satisfactory upon expiry of 90 (ninety) days after receipt of the final report and final deliverable by MOR unless MOR, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections, and/or additions, and upon completion of such corrections, the foregoing process shall be repeated. MOR shall make the final payment upon acceptance or deemed acceptance of the final deliverable by MOR.
- (e) Any amount which MOR has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to MOR within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by MOR for reimbursement must be made within 1 (one) year after receipt by MOR of a final report and a final statement in accordance with this Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.

- (f) 15% (fifteen per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon execution of the Concession Agreement. In the even the Concession Agreement does not get executed within one year of the Effective Date the Final Payment shall not executed within one year of the Effective Date the Final Payment shall not become due to the Consultant, save and except the costs incurred for meeting its reimbursable expenses during the period after expiry of 18 (eighteen) weeks from the Effective Date, including travel costs and personnel costs, at the agreed rates.
- (g) All payments under this Agreement shall be made to the account of the Consultant as may be notified to MOR by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

7.1.1 MOR shall retain by way of performance security (the “**Performance Security**”), 5% (five percent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2 herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of six months after the expiration of this Agreement pursuant to Clause 2.4 hereof.

7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-7 of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by MOR in a reasonable manner and recovered from the Consultant by way of liquidated damages, subject to a maximum of 50% (fifty percent) of the Agreement Value.

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two percent) of the Agreement Value per day, subject to a maximum of 10% (ten percent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

7.2.3 Encashment and appropriation of Performance Security

MOR shall have the right to encash and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of MOR, other penal action including debarring for certain period may also be initiated as per policy of MOR.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realisation of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognise that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

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

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon Chairman, Railway Board and the Chairman of the Board of Directors of the Consultant for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other

rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

- 9.4.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Government agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and MOR agree that an Award may be enforced against the Consultant and/or the Government, as the case may be, and their respective assets wherever situated.
- 9.4.5 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.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
Consultant:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of
Government of India
(Ministry of Railways)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of:

1.

2.....

Annex -1

Terms of Reference

(Refer Clause 3.1.2)

Reproduce Schedule-1 of RFP

Annex - 2

Deployment of Personnel

(Refer Clause 4.2)

Reproduce as per Form - 8 of Appendix-I

Annex-3

Estimate of Personnel Costs

(Refer Clause 4.2)

Reproduce as per Form-3 of Appendix-II

Annex-4

Approved Sub-Consultant

(Refer Clause 4.7.1)

Reproduce as per Form-15 of Appendix-I

Annex-5

Cost of Services

(Refer Clause 6.1)

Reproduce as per Form-2 of Appendix-II

Annex-6

Payment Schedule*(Refer Clause 6.3)*

Key Date No.	Description of deliverables	Week No.	Payment
KD1	Inception Report	2	--
KD2	Preliminary Report of Infrastructure Development Report	6	10%
KD3	Draft Feasibility Report (including Business Plan & Viability Analysis)	10	15%
KD4	Draft C.A.	12	15%
KD5	Final Feasibility Report	14	10%
KD6	Final Draft CA	16	20%
KD7	RFQ/RFP (Adopted from Model document)	18	15%
KD8	Award of Concession/ Completion of Services	52	15%

Notes:

- 1. The above payments shall be made to the Consultant provided that the payments to be made at any time shall not exceed the amount certified by the Consultant in its Statement of Expenses.*
- 2. All Reports shall first be submitted as draft reports for comments MOR. MOR shall provide its comments no later than 2 (two) weeks from the date of receiving a draft report and in case no comments are provided within such 2 (two) weeks, the Consultant shall finalize its report. Provided, however, that MOR may take upto 3 (three) weeks in providing its comments on the Draft Feasibility Report.*
- 3. Feasibility Report shall be completed in 14(fourteen) weeks excluding the time taken by MOR in providing its comments on the Draft Feasibility Report. The Consultant may take 1 (one) week for submitting its Final Feasibility Report after receipt of comments from MOR.*
- 4. Final payment (15%) against KD8 shall be released after completion of the services in the entirety including signing of Concession.*

Annex- 7

Bank Guarantee for Performance Security*(Refer Clause 7.1.2)*

To

The President of India
 (acting through
 Executive Director/Health Planning
 Room No.351
 Ministry of Railways)
 Rail Bhawan, Rafi Marg,
 New Delhi 110 001

In consideration of Ministry of Railways acting on behalf of the President of India (hereinafter referred as the “MOR”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s _____, having its office at _____ (hereinafter referred as the “Consultant” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a consultancy by issue of MOR’s Agreement no. _____ dated _____ valued at Rs. _____ (Rupees _____) for providing Consultancy Services for setting up of Medical College at Kharagpur (hereinafter referred to as the “Agreement”), and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. _____ (Rupees _____) to MOR for performance of the said Agreement.

We, _____ (hereinafter referred to as the “Bank”) at the request of the Consultant do hereby undertake to pay to MOR an amount not exceeding Rs. _____ (Rupees _____) against any loss or damage caused to or suffered or would be caused to or suffered by MOR by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2. We, _____ (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from MOR stating that the amount/claimed is due byway of loss or damage caused to or would be caused to or suffered by MoR by reasons of

breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant's failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____ (Rupees _____).

3. We undertake to pay to MOR any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, _____ (indicate the name of Bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of MOR under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till MOR certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, _____ (indicate the name of Bank) further agree with MOR that MOR shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by MOR against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of MOR or any indulgence by MOR to the said Consultant or any such matter or thing

whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us .

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7. We, _____ (indicate the name of Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of MOR in writing.

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs.****crore (Rupees *** crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the MoR services a written claim on the Bank in accordance with paragraph 2 hereof, on or before [*** indicate date falling 180 days after the date of this Guarantee)].

Dated the _____ day of _____ 200*

For _____

(Name of Bank)

(Signature, Name and Designation of the Authorised Signatory)

Seal of the Bank:

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE-3

(See Clause 2.3.3)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between MOR and a consultant or between consultants and present or future concessionaries/contractors. Some of the situations that would involve conflict of interest are identified below:
 - (a) MOR and consultant
 - (i) Potential consultant should not be privy to information from MOR which is not available to others; or
 - (ii) Potential consultant should not have defined the project when earlier working for MOR
 - (iii) Potential consultant should not have recently worked for MOR overseeing the project.
 - (b) Consultants and concessionaries/contractors:
 - (i) No consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire contractor save and except relationships restricted to project-specific and short-term assignments; or
 - (ii) No consultant should be involved in owning or operating entities resulting from the project; or
 - (iii) No consultant should bid for works from the project. The participation of companies that may be involved as investors or consumers and officials of MOR who have current or recent connections to the companies involved, therefore, needs to be avoided.
4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing

companies are likely to bring this to the notice of MOR. All conflicts must be declared as and when the Consultants become aware of them.

5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited number of experts for the project. However, in reality effective operation of “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of MOR.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope-creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interest of MOR but which will generate further work for the Consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
8. Every project contains potential conflict of interest. Consultants should report any present/potential conflict of interest to MOR at the earliest. Officials of MOR involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

APPENDICES

APPENDIX-I

PROPOSAL

Form-1

Letter of Proposal

(On Applicant's letter head)

(Date and Reference)

To,

Executive Director/Health Planning
Ministry of Railways,
Railway Board,
Room No.347 A
Rail Bhawan, Rafi Marg,
New Delhi 110 001

Sub: - Appointment of Consultant for preparation of Feasibility Report
and Bid Documents

Dear Sir,

With reference to your RFP Document dated *****, I/We, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Consultant for development of Medical College at Kharagpur and state that:

2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/We shall make available to MOR any additional information it may deem necessary or require to supplementing or authenticating the Proposal.
5. I/We acknowledge the right of MOR to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

6. I/We certify that in the last three years, we or any of the consortium members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Documents, including the Addendum issued by MOR;
 - (b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with MOR or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with Clause 2.8 of the RFP document.
9. I/We declare that we/any member of the consortium, is not a member of a/any other consortium applying for Selection.
10. I/We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates..
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our sister concerns or against our CEO or any of our Directors/Managers/employees.
13. I/We hereby irrevocably waives any right it has at any stage at law or howsoever otherwise arising to challenge or question any decision taken by MOR and / or the Government of India in connection with the selection of Applicants or in connection with the Selection Process itself in respect of the above mentioned Project .
14. The Bid Security of ₹ (Rupees) in the form of a Demand Draft is attached in accordance with the RFP document.
15. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
16. I/We agree that this offer shall remain valid for a period of 120 (one hundred twenty) days from the Proposal Due Date specified in the RFP.
17. A Power of attorney in favour of the authorised signatory to sign and submit this Proposal and documents is also attached herewith in Form 4.
18. In the event of my/our firm/consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule-2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
19. I/We have studied all the relevant documents carefully and also surveyed the project site. We understand that except to the extent as expressly setforth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by MOR or in respect of any matter arising out of or concerning or relating to the Agreement including the award of Consultancy.

20. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
21. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Thanking you,

Yours faithfully,

(Signature of the Authorised Representative)

(Name and designation of the Authorised Representative)

(Name of the Applicant / Lead Member)

Note:

The cost of RFP document ₹.5000/- has been remitted through demand draft no _____ dated _____ drawn on _____ (Name of Bank) in favour of FA&CAO Northern Railway payable at Delhi.

APPENDIX-I

Form-2

Particulars of the Applicant

1.1	<p>Title of Consultancy:</p> <p>PREPARATION OF FEASIBILITY REPORT & BID DOCUMENTS</p>
1.2	<p>Title of Project:</p> <p>Setting up of Medical college</p>
1.3	<p>State whether applying as a Sole Firm or Consortium:</p> <p>Sole Firm</p> <p>or</p> <p>Consortium</p>
1.4	<p>State the following for the Sole Firm or the Lead Member of Consortium:</p> <p>Name of Company or Firm:</p> <p>Legal status (e.g. incorporated private company, unincorporated business, partnership etc.):</p> <p>Country of incorporation:</p> <p>Registered address:</p> <p>Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>Brief description of the Company including details of its main lines of business</p> <p>Particulars of individual(s) who will serve as the point of contact/ communication with MOR:</p> <p>(a) Name:</p> <p>(b) Designation:</p> <p>(c) Company:</p> <p>(d) Address:</p> <p>(e) Telephone Number:</p>

	<p>(f) E-Mail Address :</p> <p>(g) Fax Number:</p> <p>Name, Designation, Address and Phone Numbers of Authorised Signatory of the Applicant:</p> <p>Name:</p> <p>Designation:</p> <p>Company:</p> <p>Address:</p> <p>Phone No.:</p> <p>Fax No.:</p>
1.5	<p>If the Applicant is Lead Member of a consortium, state the following for each of the other Member Firms:</p> <p>(i) Name of Firm:</p> <p>(ii) Legal Status and country of incorporation</p> <p>(iii) Registered address and principal place of business.</p>
1.6	<p>For the Applicant, (in case of a Consortium, for each Member), state the following information:</p> <p>i) In case of non Indian company, does the company have business presence in India?</p> <p style="text-align: right;">Yes/No</p> <p>If so, provide the office address(es) in India.</p> <p>ii) Has the Applicant or any of the Members in case of a Consortium been penalized by any organization for the poor quality of work in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p>iii) Has the Applicant/ member ever failed, in last five years, to complete any work awarded to it by any public authority/ entity in last five years?</p> <p style="text-align: right;">Yes/No</p> <p>iv) Has the Applicant or any member of the Consortium been blacklisted by any Govt. department/Public Sector Undertaking in the last five years?</p>

	<p style="text-align: right;">Yes/No</p> <p>v) Has the Applicant or any of the members, in case of a Consortium, suffered bankruptcy/insolvency in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p>Note: If answer to any of the questions at ii) to v) is yes, the Applicant is not eligible for this consultancy assignment.</p>
1.7	<p>Does the Applicant's firm/company (or any member of the Consortium) combine functions as a consultant or designer along with the functions as a contractor and/or a manufacturer?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, then for this work does the Applicant (and other member of the Applicant's Consortium) agree to limit the Applicant's role only to that of a consultant/ designer and to disqualify themselves, their associates/ affiliates and/or parent organization subsequently from work on this project in any other capacity (including tendering relating to any goods or services for any part of this project) other than that of consultant and/or designer for MOR?</p> <p style="text-align: right;">Yes/No</p>
1.8	<p>Does the Applicant intend to borrow or hire temporarily, personnel from contractors, manufacturers or suppliers for performance of the Consulting Services?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, does the Applicant agree that it will only be acceptable as Consultant, if those contractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this project (including tendering relating to any goods or services for any other part of the project) other than that of the Consultant?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this project and they agree to limit their role to that of consultant/ designer for MOR only?</p> <p style="text-align: right;">Yes/No</p>

Signature

**(Name & designation of authorized Signatory)
For & on behalf of**

APPENDIX-I

Form-3

Statement of Legal Capacity

(To be forwarded on the letter head of the Applicant)

Ref. Date:

To,

Executive Director/Health Planning
Ministry of Railways,
Railway Board,
Room No.347 A
Rail Bhawan, Rafi Marg,
New Delhi 110 001

Dear Sir,

We hereby confirm that we, the Applicant (along with other members in case of Consortium, constitution of which has been described in the Proposal*), satisfy the terms and conditions laid out in the RFP process.

We have agreed that _____ (insert Applicant's name) will act as the Lead Member of our Consortium.

We have agreed that _____ (insert individual's name) will act as our Authorised Representative/ will act as the Authorised Representative of the consortium on our behalf and has/have been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Yours faithfully,

Authorised Signatory

For and on behalf of _____

**Please strike out whichever is not applicable*

APPENDIX-I

Form-4

Power of Attorney

Know all men by these presents, We, _____ (name of firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms _____ son/daughter/wife and presently residing at _____, who is presently employed with us and holding the position of ***** as our true and lawful attorney (hereinafter referred to as the “Authorised Representative”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Consultant for Preparation of Feasibility Report and Bid Documents for Medical College proposed to be developed by the Ministry of Railways (MOR) at Kharagpur including but not limited to signing and submission of all applications, proposals and other documents and writings, participate in pre-bid and other conferences and providing information/ responses to MOR, representing us in all matters before MOR, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with MOR in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with MOR.

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

IN WITNESS WHEREOF WE, _____ THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____, 200*For _____

(Signature)

(Name, Title and Address)

Witnesses:

1.

Notarised

2.

Accepted

(Signature)

(Name, Title and Address of the Attorney)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

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

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

APPENDIX-I

Form-5

Financial Capacity of the Applicant

(Refer Clause 2.2.2(b))

S. No.	Financial Year	Annual Revenue (`/US \$ in million)
1.		
2.		
3.		

Certificate from the Statutory Auditor^{\$}

This is to certify that.....(name of the Applicant) has received the payments shown above against the respective years on account of professional fees.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

^{\$} In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

Note: Please do not attach any printed Annual Financial Statement.

APPENDIX-I

Form-6

Particulars of Key Personnel

Designation of Members	Name	Educational Qualification	Length of Professional Experience	Present Employment	
				Name of Firm	Employed Since
Team Leader cum Finance Expert					
Legal Expert					
Medical Expert					
Construction Expert					

#Refer Form 9 of Appendix I
Experience of Members

APPENDIX-I

Form-7

Proposed Methodology and Work Plan

The descriptive part of submission under this will be detailed precisely under the following topics.

1) Understanding of TOR not more than two pages

The Applicant will submit his understanding of the TOR specified in the RFP in a brief manner underlying the crucial and important aspects of it. The Applicant may supplement various requirements of the TOR if he considers this would bring more clarity and improvements over the existing requirements and assist in achieving the Objectives laid down in the TOR.

2) Methodology and Work Plan not more than three pages

The Applicant will submit his methodology for carrying out this assignment, outlining his approach toward achieving the Objectives laid down in the TOR. The Applicant will submit a brief write up on their proposed team and organization of personnel explaining how various areas of expertise needed for this assignment have been fully covered by their proposal. In case the Applicant is a consortium, it should specify how expertise of each firm is proposed to be utilized for this assignment. The Applicant should specify the sequence and locations of important activities, and quality assurance plan for carrying out the Consultancy Services.

Note: Marks will be deducted for writing lengthy and out of context responses.

APPENDIX-I

Form-8

Abstract of Eligible Assignments of the Applicant[#]

(Refer Clause 3.1)

S. No.	Name of Project	Name of Client	Estimated capital cost of the Project (in ₹ crore/ US\$ million)	Payment [#] of professional fees received by the Applicant (in ₹ crore)
(1)	(2)	(3)	(4)	(5)
1				
2				
3				

[#] The Applicant should provide details of only those projects that have been undertaken by it under its own name.

^{##} Exchange rate should be taken as ₹ [47] per US \$ for conversion to Rupees.

^{*} The names and chronology of Eligible Projects included here should conform to the project-wise details submitted in Form-10 of Appendix-I.

Certificate from the Statutory Auditor[§]

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/or the clients.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

[§] In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

Note: The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.

APPENDIX-I

Form-9

Abstract of Eligible Assignments of Key Personnel[@]

(Refer Clause 3.1)

Name of Key Personnel:

Designation:

S.No.	Name of Project*	Name of Client	Estimated capital cost of project (in ₹ crore/ US\$ million)	Name of firm for which the Key Personnel worked	Designation of the key personnel on the assignment	Date of completion of the assignment	Mandays spent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

[@] Use separate Form for each Key Personnel.

* The names and chronology of projects included here should conform to the project-wise details submitted in For-11 of Appendix-I.

Note: The Applicant may attach separate sheets to provide brief particulars of other relecant expereicne of Key Perssonel.

APPENDIX-I

Form-10

Eligible Assignments of Applicant

(Refer Clause 3.1.4)

Name of Applicant:	
Name of the Project:	
Other particulars	
Description of services performed by the Applicant firm:	
Name of client and Address: (Indicate whether public or private entity)	
Name, telephone no. And fax no. Of client's representative:	
Estimated capital cost of Project (in ₹ crore/ US\$ million):	
Payment received by the Applicant (in ₹ crore)	
Brief description of the Project:	

Notes:

1. Use separate sheet for each Eligible Project.
2. The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.
3. Exchange rate should be taken as ₹ [47] per US \$ for conversion to Rupees.

APPENDIX-I

Form-11

Eligible Assignments of Key Personnel

(Refer Clause 3.1.4)

Name of Applicant:	
Name of the Project:	
Other particulars	
Description of services performed by the Applicant firm:	
Name of client and Address: (Indicate whether public or private entity)	
Name, telephone no. And fax no. Of client's representative:	
Estimated capital cost of Project (in ₹ crore/ US\$ million):	
Payment received by the Applicant (in ₹ crore)	
Brief description of the Project:	

Signature & name of key personnel

Notes:

4. Use separate sheet for each Eligible Project.
5. The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.
6. Exchange rate should be taken as ₹ [47] per US \$ for conversion to Rupees.

APPENDIX-I

Form -12

Curriculum Vitae (CV) of Professional Personnel

- 1. Proposed Position:**

2. Name of Personnel:

- 3.** Date of Birth:

- 4. Nationality:**

- 5. Educational Qualification:**

- 6. Employment Record:**

(Starting with present position, list in reverse order, every employment held.)

- 7.** List of projects on which the Personnel has worked

Project Name	Description of assignment performed
--------------	-------------------------------------

8. Details of the current assignment and the time duration for which services are required for the current assignment.

Certification:

- 1 I am willing to work on the project and I will be available for entire duration of the project assignment as required.

- 2 I, the undersigned, certify that to the best of my knowledge and belief, this CV
correctly describes myself, my qualifications and my experience.

Signature of the Professional _____

Place _____

Date _____

Counter signature of the Authorised Representative

of the firm_____

Place _____

Date _____

Notes:

Use separate form for each Professional Personnel

Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised Representative of the Applicant firm. Photocopies will not be considered for evaluation.

APPENDIX-I

Form - 13

Deployment of Personnel

S No.	Designation	Name	Man-Days (MD)		Week Numbers																			
			At project site	Away from project site (specify)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

APPENDIX-I

Form - 14**Survey and Field Investigations**

Item of Work/ Activity	To be carried out/ prepared by		Week																		
	Name	Designation.																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

APPENDIX-I

Form - 15

Proposal for Sub-Consultant

1. Details of the Firm				
Firm's Name, Address and Telephone				
Name and Telephone No. of the Contact Person				
Fields of Expertise				
No. of Years in the Business in the above Fields				
2. Services that are proposed to be sub contracted:				
3. Person who will lead the Sub consultancy		Name: Designation: Telephone No: Fax No: Email:		
4. Details of Firm's previous experience				
Name of Work	Name, address and telephone no. of Client	Total Value of Services Performed	Duration of Services	Date of Completion of Services
1.				
2.				
3.				

Signature of the Applicant

Note:

The Proposal for Sub-Consultant shall be accompanied by the details specified in Forms 12, 13 and 14 of Appendix –I.

APPENDIX-II

FINANCIAL PROPOSAL

Form - 1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

Executive Director Health (Plg.)
Railway Board,
Room No. 351, Rail Bhavan,
Raisina Road, New Delhi-110001

Dear Sir,

Subject: Appointment of Consultant for Preparation of Feasibility Report/Bid Documents and assistance in implementation of Bid process for Medical College at Kharagpur, S.E. Rly.

I/We, ***** (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for above.

I/We agree that this offer shall remain valid for a period of 120 (one hundred and twenty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Authorised Representative)

Name:
Designation:
Address:

Note: The Financial Proposal is to be filled strictly as per the forms given in RFP.

APPENDIX-II

Form - 2**Financial Proposal**

Item No.	Description	Amount (₹)
A.	RESIDENT PERSONNEL AND LOCAL COSTS	
I	Remuneration for Professional Personnel (inclusive of all personnel allowances)	
II	Remuneration of Support Personnel (inclusive of all personal allowances)	
III	Office Rent	
IV	Office Consumables like Utilities and Communication etc.	
V	Office Furniture and Equipment (Rental)	
VI	Reports and Document Printing	
VII	Market Surveys	
VIII	Miscellaneous Expenses	
	Subtotal Personnel & Local Costs:	
B.	POST REPORT CONSULTATIONS WITH KEY PERSONNEL	
	3 man days each of:	
I	Team Leader cum Finance Expert	
II	Legal Expert	
III	Medical Expert	
IV	Construction Expert	
	Subtotal Post Report Consultations (B):	
C	SUBTOTAL OF A+B	
D	OVERHEAD EXPENSES AS % OF (C)	
E	TOTAL COST (C+D) (in ₹.)	

F	ADDITIONAL COSTS	
I	Domestic Travel from Firm's Office to the Project Office (restricted to three return economy class air fares for each Personnel)	
II	Return journeys from project office to MoR's Office to attend meeting held by MoR (provide indicative amount for three return journeys)	
II	Service Tax	
	Total of Additional Costs (F)	
G	TOTAL COST OF THE CONSULTANCY (E+F) In Indian Rupees in Figures In Words _____	

Note:

1. Estimate of Costs for Item A I, A II and B I shall be as per Form- 3.
2. Miscellaneous Expenses in Item A VIII shall not exceed 15% (fifteen percent) of the total amount in Item D.
3. Domestic Air Fare in Item F I shall not be payable to the Consultant's Personnel who are normally stationed at Kharagpur.
4. The financial evaluation shall be based on the above Financial Proposal, excluding Additional Costs. The total in Item E shall, therefore, be the amount for purposes of evaluation. Additional Costs in Item F shall not be reckoned for purposes of financial evaluation.
5. All costs shall be reimbursed on production of a Statement of Expenses, duly certified by the Authorized Representative. However, no details of expenditures would be sought for overhead expenses, which will be reimbursed in proportion to the total expenses under Item C.
6. The reimbursement of expenses shall be limited to the amounts indicated above.
7. Savings of upto 20% (twenty percent) under any head of expenditure specified in the summary of Financial Proposal may be reappropriated by the Consultant and added to any other head of expenditure, subject to a ceiling of 10% (ten percent) in respect of the recipient head of expenditure. Upon Notification of such reappropriation to MOR, the Financial Proposal shall be deemed to be amended, and payment shall be made accordingly.
8. No escalation on any account will be payable on the above amounts.

9. Insurance and any other charges not shown here are considered included in the man day rate/ overhead/ miscellaneous expenses.
10. MOR may require the Key Personnel to visit the Project/ MOR's offices for further consultations after their Report has been accepted. The cost of 3 man days of each Key Personnel is included in the Financial Proposal. MOR may require upto 7 extra days of consultation with any or all Key Personnel on payment of additional charges. For any increase as compared to the aforesaid 3 days, payment shall be computed solely on the basis of relevant man day rates specified in the financial proposal. In all cases, return full fare economy class airfare shall be reimbursed in addition, as per actuals.
11. MOR may require Professional Personnel to visit the Project/ MOR's offices for further consultations or undertake desk work after the report has been accepted. The costs as per agreed man day rates and economy return airfare as per actuals shall be reimbursed to the Consultant. However, the total number of additional mandays requisitioned hereunder shall not exceed 120. These costs shall be deemed as Additional Costs.
12. All payments shall be made in Indian Rupees and shall be subject to applicable Indian withholding taxes if any.
13. For the purposes hereof "**Statement of Expenses**" means a statement of the expenses incurred on each of the heads indicated in the Financial Proposal; provided that in relation to expenses on Personnel, the Statement of Expenses shall be accompanied by the particulars of Personnel and the man-days spent on the Consultancy.

APPENDIX-II

Form - 3**Estimate of Personnel Costs**

ID No.	Position	Name	Manday Rate (₹.)	Total Man Days	Amount (₹.)
A I. Remuneration for Professional Personnel (including all personal allowances)					
Total					
A II. Remuneration for Support Personnel (including all personal allowances)					

Total					

