NATIONAL HIGHWAYS AUTHORITY OF INDIA
(Ministry of Road, Transport & Highways)
(Government of India)

International Competitive Bidding under Single Stage Bidding Process for

Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana

REQUEST FOR PROPOSAL (RFP)

BID DOCUMENT

VOLUME -I

INSTRUCTIONS TO BIDDERS

October 2021

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National Highways Authority of India,
G-5 & 6, Sector 10, Dwarka, New Delhi-110075
Notice Inviting Bid

Bid/ Package no. NHAI/Tech/MH/BOT/K-S/Pkg-II/2021 Dated 07.10.2021

RFP for Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana.

The Government of India had entrusted to the Authority the development, maintenance and management of Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana, and has decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

Name of the Highway	**Length** (in Km)	**Estimated Project Cost** (In Rs. Cr.)
Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana	67.00	2008.47

The complete Bidding Documents can be viewed / downloaded from official portal of NHAI http://www.nhai.gov.in or e-procurement portal of NHAI http://etenders.gov.in from 07.10.2021 to 22.11.2021 (upto 1100 hours. IST). Bid must be submitted online only at http://etenders.gov.in on or before 22.11.2021 (upto 1100 hours IST). Bids received online shall be opened on 23.11.2021 (at 1130 hours IST).

Bid submitted through any other mode shall not be entertained. However, Bid Securing Declaration, Power of Attorney for signing of Bid, Power of Attorney for lead member of Consortium, if any, Joint Bidding Agreement for Consortium, if any, Integrity Pact, and experience certificates apostile at foreign origin, if any and other documents required as per clause 2.11.2 of RFP shall be submitted physically in original by the Highest Bidder before issuance of Letter of Award (LOA) by the Authority. Please note that the National Highways Authority of India reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,
Yours faithfully,

Mr. Ashish Asati
Chief General Manager (T)-Maharashtra
National Highways Authority of India
G-5 & 6, Sector-10, Dwarka, New Delhi-110075
ashishasati@nhai.org
+91-11-25074100 (Extn. 1102)

DISCLAIMER

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

This RFP is not an Agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their application for qualification and making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Feasibility Report, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the

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

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

GLOSSARY

Authority	As defined in Clause 1.1.1
Associate	As defined in Clause 2.1.19
Bank Guarantee	As defined in Clause 2.20.1
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Securing Declaration	As defined in Clause 1.2.4
Concession	As defined in Clause 1.1.5
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1.(c)
DBFOT	As defined in Clause 1.1.1
Demand Draft	As defined in Clause 2.20.2
Estimated Project Cost	As defined in Clause 1.1.4
Feasibility Report	As defined in Clause 1.2.3
Government	Government of India
Grant	As defined in Clause 1.2.6
Highest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.8.3
Member	Member of a Consortium
PPP	Public Private Partnership
Premium	As defined in Clause 1.2.6
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 1.2.7

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

NATIONAL HIGHWAYS AUTHORITY OF INDIA

SECTION 1

INTRODUCTION

1.1. Background

1.1.1 The National Highways Authority of India (the "Authority") is engaged in the development of National Highways and as part of this endeavour, the Authority has decided to undertake Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana (the "Project") through Public Private Partnership (the "PPP") on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis, and has decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Information Memorandum of the Project at the Authority's website www.nhai.gov.in / http://etenders.gov.in. Brief particulars of the Project are as follows:

Project Name	**Length** (in Km)	**Estimated Project Cost** (In Rs. Cr.)
Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana	67.00	2008.47

1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act,1956/2013 or its substitute thereof or undertakes to incorporate as such prior to execution of the concession agreement (the "**Concessionaire**"), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long-term concession agreement (the "**Concession Agreement**") to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant thereto.

1.1.3 The scope of work will broadly include rehabilitation, upgradation and widening of the existing carriageway to four-lane standards with construction of new pavement, rehabilitation of existing pavement, construction and/ or rehabilitation of major and minor bridges, culverts, road intersections, interchanges, drains, etc. including those prescribed in the Concession Agreement and its Schedules and the operation and maintenance thereof.

1.1.4 The estimated cost of the Project (the **"Estimated Project Cost"**) has been specified in the clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**").

1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

1.1.7 The Authority shall receive Bids pursuant to and in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.1.8 (a) The selected bidder shall use the Link 'Data Lake Portal' available on NHAI Website nhai.gov.in to communicate with Independent Engineer and NHAI for all contractual correspondence.
(b) No physical document shall be accepted unless and until the same is specifically stated so in the RFP or it is a legal requirement.

1.2. Brief description of Bidding Process

1.2.1 The Authority has adopted a single stage two envelop process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. Under this process, the Bid shall be invited under two envelops. Prior to or along with the Bid, the Bidder shall pay to the Authority a sum of Rs. 2,10,000/- (Rupees two lakh and ten thousand only) as the cost of the Bidding Process transmitted online to NHAI. Eligibility and qualification of the Bidder (The "Bidder", which expression shall, unless repugnant to the context, include the members of the Consortium) will be first examined based on the details submitted under first envelop ("**Technical Bid**") with respect to eligibility and qualifications criteria prescribed in this RFP. The Financial bid under the second envelop ("**Financial Bid**") shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as

per this RFP. The details of NHAI Account for deposition of application cost of bid document online is given below:

Beneficiary	National Highways Authority of India
Bank	Canara Bank
Account Number	8598201005819
IFSC Code	CNRB0008598

GOI has issued guidelines (see Annexure VI of Appendix-IA of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-IA

1.2.2 Interested bidders (the "**Bidders**") are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 120 days from the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2.3 The complete Bidding Documents including the draft Concession Agreement for the Project is enclosed for the Bidders. The Feasibility Report / Detailed Project Report prepared by the Authority/ consultants of the Authority (the "Feasibility Report/Detailed Project Report") is also enclosed for guidance purposes only. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Securing Declaration. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.5 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.

1.2.6 Bids are invited for the Project on the basis of the lowest financial grant (the "**Grant**") required by a Bidder for implementing the Project. A Bidder may, instead of seeking a Grant, offer to pay a premium in the form of percentage of revenue, as the case may be, (the "**Premium**") to the Authority for award of the Concession. In case the Bidder offers a percentage of revenue as Premium, the quoted percentage would be applied on the Realizable Fee in the second year post

Project Completion Date of the project. The quoted percentage of revenue would be increased by 1% (one per cent) for each subsequent year of the remaining Concession Period. The Concession Period is predetermined, as indicated in the Concession Agreement. The Grant/ Premium amount shall constitute the sole criteria for evaluation of Bids. Subject to Clause 2.16, the Project will be awarded to the Bidder quoting the highest Premium, and in the event that no Bidder offers a Premium, then to the Bidder seeking the lowest Grant.

In this RFP, the term "**Highest Bidder**" shall mean the Bidder who is offering the highest Premium, and where no Bidder is offering a Premium, the Bidder seeking the lowest Grant.

1.2.7 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason other than the reasons specified in clause 1.2.11 of RFP. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.

1.2.8 The Concessionaire shall be entitled to levy and charge a pre-determined user fee from users of the Project.

1.2.9 Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.

1.2.10 Any queries or request for additional information concerning this RFP shall be submitted by e-mail to the officer designated in Clause 2.11.4 below with identification/ title: "Queries/Request for Additional Information:

RFP for Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana .

1.2.11 In case Highest Bidder fails to submit the originals Bid Securing Declaration, Power of Attorney for signing of Bid, Power of Attorney for lead member of Consortium, if any, Joint Bidding Agreement for Consortium, if any, Integrity Pact, and experience certificates apostille at foreign origin, if any and other documents required as per clause 2.11.2 of RFP, the Bidding Process shall be annulled and Tender shall be re-invited.

1.3. Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

SI. No.	Event Description	Date
1.	Invitation of RFP (NIT)	07.10.2021
2.	Last date for receiving queries	28.10.2021
3.	Pre-Bid meeting at venue mentioned at Clause 2.11.4	29.10.2021 at 1100 Hours IST at NHAI HQ
4.	Authority response to queries latest by	05.11.2021
5.	Last Date of Request for Bid Documents	22.11.2021
6.	Date of submission of Tender/Bid (online) - Bid Due Date	22.11.2021 (Upto 1100 Hrs IST)
7.	Physical submission of originals Bid Securing Declaration, Power of Attorney for signing of Bid, Power of Attorney for lead member of Consortium, if any, Joint Bidding Agreement for Consortium, if any, Integrity Pact, and experience certificates apostile at foreign origin, if any, and other documents required as per clause 2.11.2 of RFP by the Highest Bidder	Before issuance of Letter of Award (LOA) to the Highest Bidder by the Authority.
8.	Opening of Technical Bids at venue provided in Clause 2.11.4	23.11.2021
9.	Declaration eligible / qualified Bidders	shall be intimated by the Authority
10.	Opening of Financial Bid	shall be intimated by the Authority
11.	Date of issue of Letter of Award (LOA) in case where Authority is competent	shall be intimated by the Authority
12.	Date of issue of LOA after obtaining approval from competent authority in MORTH, where Authority is not competent	shall be intimated by the Authority
13.	Validity of Bid	120 days from Bid Due Date
14.	Signing of Concession Agreement	Within 45 days of award of LOA

SECTION-2
INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

2.1.2 An international Bidder bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalised/apostilled by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirements under the Indian Stamp Act, 1899 are duly fulfilled.

I. Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020, which shall form an integral part of RFP and DCA (Copy enclosed)**.**

II **"Bidder"** (including the terms 'tendered', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III **"Bidder from a country which shares a land border with India"** means:

a) An entity incorporated, established or registered in such a country, or
b) A subsidiary of an entity incorporated, established or registered in such a country; or
c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
d) An entity whose beneficial owner is situated in such a country; or
e) An Indian (or other) agent of such an entity; or
f) A natural person who is a citizen of such a country; or
g) A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

IV. **Beneficial owner for the purpose of (III) above means:**

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one

or more judicial person, has a controlling ownership interest or who exercises control through other means.

Explanation:

a) "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.

b) "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or one or more juridical person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. The Selected Bidder/ Concessionaire shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in Clause III above.

Certificate regarding Compliance:

A certificate shall be required to be submitted by the bidders in the format prescribed at Appendix-VII.

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

Validity of Registration:

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

2.1.3 The Feasibility Report / Detailed Project Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report/Detailed Project Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report/Detailed Project Report.

2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have an overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

2.1.5 The Bid shall be furnished in the format prescribed in the RFP. The Technical Bid shall be as per Appendix IA and the Financial Bid shall be as per Appendix IB of the RFP. Bid amount shall be indicated clearly in both figures and words, in Indian Rupees, in prescribed format of Financial Bid and shall be signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.6 The Bid shall consist of a Grant or a Premium, as the case may be, to be quoted by the Bidder. Grant shall be payable by the Authority to the Concessionaire and the Premium shall be payable by the Concessionaire to the Authority, as the case may be, as per the terms and conditions of this RFP and the provisions of the Concession Agreement.

2.1.7 The Bidder shall submit, along with its Bid, a Bid Securing Declaration, as per format at Appendix-II. The Bidders shall also make online payment towards cost of bid documentof Rs. 2,10,000/-(Rupees two lakh and ten thousand only) transmitted online to NHAI.

2.1.8 The Bid shall be summarily rejected if it is not accompanied by the Bid Securing Declaration.

2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the Bid to commit the Bidder.

2.1.10 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of any Member, which Member shall thereafter be identified as the Lead Member, in the format at Appendix – IV[€]. In case the Bidder is a Consortium, Joint Bidding Agreement in the format of Appendix V shall be submitted by the Bidder.

2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.13 The Bidding Documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.12 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.14 This RFP is not transferable.

2.1.15 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.1.16 Where the Bidder is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (the "**SPV**"), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

(a) Number of members in a Consortium shall not exceed 6 (six). However, none of the members in a Consortium should be under any sort of ineligibility under the Bidding Documents but information sought in the

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[€]*In case of a Consortium, the Members should submit a Power of Attorney in favour of the any Member as per the format as Appendix-IV. Such Member shall thereafter be identified as the Lead Member. The Lead Member should submit a power of Attorney as per the format in Appendix-III, authorising the signatory of the Application. Members of the Consortium of need not submit Power of Attorney as per the format at Appendix-III, authorising the signatory of the Application.*

Bid may be restricted to 4 (four) members in the order of their equity contribution;

(b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;

(c) members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;

(d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;

(e) an individual Bidder cannot at the same time be member of a Consortium applying RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for RFP;

(f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;

(g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the "**Joint. Bidding Agreement**"), for the purpose of submitting a Bid. The Joint. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:

(i) convey the intent to form an SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;

(ii) clearly outline the proposed roles and responsibilities, if any, of each member;

(iii) commit the minimum equity stake to be held by each member;

(iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of the Project

completion, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;

(v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the date of the Project completion; and

(vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and

(h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint. Bidding Agreement without the prior written consent of the Authority.

2.1.17 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.1.18 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder, Consortium Member or Associate.

Authority would place sole reliance on the certification provided by the Bidder in this regard in its letter comprising the Technical Bid.

2.1.19 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.4, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For the purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (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.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be.

2.1.20 The following conditions shall be adhered to while submitting a Bid:

(a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

(b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;

(c) in responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and

(d) in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

2.1.21 While Qualification is open to persons from any country, the following provisions shall apply:

(a) Where, on the date of the Bid, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or

(b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the eligibility and/ or opening of Financial Bid and/or award of the Project to such Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.1.22 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.1.23 The Bidder shall provide an undertaking to the Authority that the EPC works of the Project would be executed only by such EPC contractors who have completed at least a single package of more than 20% of the Estimated Project Cost or Rs 500 crores, whichever is less.

2.2 Eligibility and qualification requirements of Bidder

2.2.1 For determining the eligibility of Bidder the following shall apply:

(a) The Bidder may be a single entity or a group of entities (the "**Consortium**"), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.

(b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium.

(c) A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the bidder will be suspended for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored

Schemes, for a period of One Year from the bid due date of this work or the authority shall be entitled to forfeit and appropriate an amount equivalent of 0.05% of the Estimated Project Cost mentioned in the RFP from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder's proposal (the "Damages"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(i) The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the director in direct shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25%(twenty five percent) of the paid up and subscribed capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five percent) 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 fund or a public financial institution referred to in section 4A of the Companies Act, 1956/2013. For the purposes of this Clause 2.2.1(c), 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% of the subscribed and paid up equity shareholding of such intermediary; or

(ii) a constituent of such Bidder is also a constituent of another Bidder; or

(iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

(iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

(v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or

(vi) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

(vii) Such Bidder or any Associate thereof has appointed any official of the Authority, Ministry of Road Transport & Highways, Technical Advisors of Authority for the Project, Legal Advisors of Authority for the Project, Financial Advisors of Authority for the Project, dealing with the Project, within a period of 6 months from the date of award of the Project to that Bidder.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.12, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium Member (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 percent) 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.

(d) A Bidder shall be liable for disqualification and suspension for participation in the tendering process for the works of MoRTH/NHAI/ NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in

any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including suspension of the Bidder for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work or the forfeiture and appropriation of the Performance Security which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Bidder may, within 10 (ten) days after the Application Due Date remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. However his financial bid shall not be opened.

Provided further, in case the Authority seeks information / clarification from a Bidders related to occurrence / non-occurrence of Conflict of Interest and the Bidders fails to provide such information within a reasonable time, the Authority shall disqualify the Bidders and entitled to suspend the bidder for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work.

2.2.2 To be eligible for this RFP a Bidder shall fulfil the following conditions of eligibility:

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the **"Technical Capacity"**), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have:

(i) paid for, or received payments for, construction of Eligible Project(s); and/ or

(ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1; and/ or

(iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1, such that the sum total of the above, as further adjusted in accordance with clause 3.4.6, is more than Rs. 4016.94 Crore (Rupees four thousand sixteen crore and ninety four lakh only) (the **"Threshold Technical Capability"**).

Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.4.1.

(B) **Financial Capacity**: The Bidder shall have a minimum Net Worth (the **"Financial Capacity"**) of Rs. 502.12 Crore (Rupees five hundred and two crore and twelve lakh only) at the close of the preceding financial year[§].

In case of a Consortium, the combined technical capability and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of Project completion, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement[£].

Provided further that each member of the Consortium shall have a minimum Net Worth of 12.5% of Estimated Project Cost in the immediately preceding financial year[§€].

2.2.3 **O&M Experience:** The Bidder shall engage an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the Project in conformity with the provisions of the Concession Agreement.

2.2.4 The Bidders shall enclose with its Technical Bid, to be submitted as per the format at Appendix-IA, complete with its Annexes, the following:

[§] In case a Bidder has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Bidder's Net Worth subject to the Statutory Auditor of the Bidder certifying to this effect.

[£] The Authority may, in its discretion, impose further obligations in the Concession Agreement, but such obligations should provide sufficient mobility for partial divestment of equity without compromising the interests of the Project.

(i) Certificate(s) from its statutory auditors[1$] or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

(ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the **"Net Worth"**) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated loses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

2.3 Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

[$] In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP.

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project with in the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

(a) made a complete and careful examination of the Bidding Documents;
(b) received all relevant information requested from the Authority;
(c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;
(d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
(e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
(f) acknowledged that it does not have a Conflict of Interest; **and**
(g) agreed to be bound by the undertakings provided by it under and in terms hereof**.**

2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, including any error or mistake therein or in any information or data given by the Authority.

2.6 Verification and Disqualification

2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority

shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.6.2 The Authority reserves the right to reject any Bid and to suspend the bidder for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work if:

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member of the Consortium may be disqualified/rejected. If such disqualification/rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.

2.6.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or the SPV has entered into the Concession 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 Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Concessionaire. In such an event, the Authority shall be entitled to suspend the bidder for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work or forfeit and appropriate the Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFP, the Bidding Documents, the Concession Agreement or otherwise.

B. DOCUMENTS

2.7 Contents of the RFP

2.7.1 This RFP comprises the Disclaimer setforth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for Bids
Section 1. Introduction
Section 2. Instructions to Bidders
Section 3. Evaluation of Bids
Section 4. Fraud and Corrupt Practices
Section 5. Pre-Bid Conference
Section 6. Miscellaneous

Appendices
IA Letter comprising the Technical Bid including Annexure I to VI
IB Letter comprising the Financial Bid
II. Bid Securing Declaration
III. Power of Attorney for signing of Bid
IV. Power of Attorney for Lead Member of Consortium
V. Joint Bidding Agreement for Consortium
VI. Integrity Pact

2.7.2 The draft Concession Agreement and a detailed report containing the Asset Condition Survey (Highway, Pavement, Structures and Roadside furniture), Road Safety Report, Detailed Cost estimates, O&M Manuals, Traffic Studies, Soil and material investigations, Design of overlay/rehabilitation strategies provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this

Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.9.2 Any Addendum issued hereunder will be in writing and shall be send to all the Bidders.

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date[$].

[$]While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respects. However, Bid Securing Declaration, Power of Attorney for signing of Bid, Power of Attorney for lead member of Consortium, if any, Joint Bidding Agreement for Consortium, if any, Integrity Pact, and experience certificates apostille at foreign origin, if any and other documents required as per clause 2.11.2 of RFP shall be submitted physically in original by the Highest Bidder (including all of its Consortium Members) before issuance of Letter of Award (LOA) by the Authority. Highest Bidder (including all of its Consortium Members) failing to submit the original documents required as per above shall be unconditionally debarred from bidding in NHAI projects for a period of 5 years.

2.10.2 The Bid shall be typed and signed in indelible blue ink by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.11 Documents comprising Technical and Financial Bid

2.11.1 The Bidder shall submit the Technical Bid & Financial Bid online through e-procurement portal http://etenders.gov.in comprising of the following documents along with supporting documents as appropriate:

Technical Bid

(a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents. However, those Bidders, whose RFAQ eligibility limit assessed by NHAI is not less than the estimated cost of the Project, are not required to submit Annexure II to IV of Appendix-IA. If RFAQ results are not valid on the deadline for submission of the bids, then they have to submit Annexure II to IV of Appendix-IA also;

(b) Power of Attorney for signing the Bid as per the format at Appendix-III;

(c) if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;

(d) if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-V;

(e) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;

(f) Copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 5 years[€]'

(g) if applicable, Certificate/Copy of RFAQ eligibility limit assessed by MoRT&H/NHAI'

(h) Integrity pact as per format given in Appendix VI shall be submitted by the Bidder with the Bid duly signed by authorised signatory & shall be part of the Concession Agreement;

(i) Bid Securing Declaration in the format at Appendix-II

(j) Proof of online payment of Rs. 2,10,000/- (Rupees two lakh and ten thousand only) towards cost of Bidding Documents transmitted online to NHAI;

(k) Deleted

(l) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(b) above that they agree and abide by the Bidding Documents uploaded by NHAI and amendments uploaded, if any.

(m) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder with the RFP Bid duly signed by Authorised signatory & shall be part of the Concession Agreement.

(n) Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India").

Financial Bid

(o) Appendix-IB (Letter comprising the Financial Bid)[β]

2.11.2 The Highest Bidder shall submit the following documents physically before issuance of Letter of Award (LOA) by the Authority:

(a) Original Power of Attorney for signing the Bid as per format at Appendix-III;

(b) if applicable, original Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;

(c) if applicable, original Joint Bidding Agreement for Consortium as per the format at Appendix-V;

[€] The Bidders who have been pre-Qualified by MoRT&H /NHAI at RFAQ stage and submitted their Certificate/Copy of RFAQ eligibility limit assessed by MoRT&H /NHAI, need not submit these details.

[β] Appendix – IB shall be uploaded in a separate folder along with the financial quotation.

(d) if applicable, Certificate/Copy of RFAQ eligibility limit assessed by MoRT&H/NHAI;
(e) Original Bid Securing Declaration in the format at Appendix-II;
(f) Deleted;
(g) Integrity pact on plain paper shall be submitted by the Bidder with the Bid duly signed by authorized signatory & shall be part of the Concession Agreement;
(h) Deleted
(i) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(a) above that they agree and abide by the Bidding Documents uploaded by NHAI and amendments uploaded, if any and
(j) Original Statement of Legal Capacity as per format at Annexure V to Appendix IA.
(k) Original of Experience certificates apostille at foreign origin, if any.
(l) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder with the RFP Bid duly signed by Authorised signatory & shall be part of the Concession Agreement.
(m) Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India").

2.11.3 The documents listed at clause 2.11.2 shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification **"BID for the** Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana**"** and shall clearly indicate the name and address of the Bidder.

2.11.4 The envelope shall be addressed to one of the following officer and shall be submitted at the respective address:

ATTN. OF: Mr. **Ashish Asati**
DESIGNATION Chief General Manager (T**)** – Maharashtra
ADDRESS: National Highways Authority of India
G-5&6, Sector-10, Dwarka, New Delhi-110075
Phone No.: +91-11-25074100 (Extn. 1102)
Fax No.: +91-11-25074100
E-MAIL ADDRESS: ashishasati@nhai.org

2.11.5 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder. Highest Bidder (including all of its Consortium Members) failing to submit

the original documents required as per clause 2.11.2 above shall be unconditionally debarred from bidding in NHAI projects for a period of 5 years.

2.11.6 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.12 Bid Due Date

Technical & Financial Bid comprising of the documents listed at clause 2.11.1 of the RFP shall be submitted online through e-procurement portal http://etenders.gov.in on or before 1100 hrs IST on 22.11.2021. Documents listed at clause 2.11.2 of the RFP shall be physically submitted before issuance of Letter of Award (LOA) by the Authority at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.4. Highest Bidder (including all of its Consortium Members) failing to submit the original documents required as per clause 2.11.2 above shall be unconditionally debarred from bidding in NHAI projects for a period of 5 years.

2.13 Late Bids

E-procurement portal http://etenders.gov.in shall not allow submission of any Bid after the prescribed date and time at Clause 2.12. Physical receipt of documents listed at Clause 2.11.2 of the RFP after the prescribed date and time at Clause 2.12 shall not be considered and the Bid shall be summarily rejected.

2.14 Procedure for e-tendering

2.14.1 **Accessing/ Purchasing of Bidding Documents**

2.14.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or organisation) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering of the Authority.

DSC should be in the name of the authorized signatory as authorized in Appendix III of this RFP. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC.

The authorized signatory holding Power of Attorney or the person executing/delegating such Power of Attorney shall only be the Digital Signatory. In other cases, the Bid shall be considered **non –responsive**.

2.14.1.2 To participate in the bidding, it is mandatory for the Bidders to get registered their firm / Consortium with e-procurement portal of the Authority http://etenders.gov.in to have user ID & password for which has to be obtained free of cost. Following may kindly be noted:

a) Registration with e-procurement portal of the Authority should be valid at least up to the date of submission of Bid.
b) Bids can be submitted only during the validity of registration.

2.14.1.3 If the firm / Consortium is already registered with e-tendering service provider of the Authority, and validity of registration is not expired the firm / Consortium is not required a fresh registration.

2.14.1.4 The complete Bidding Documents can be viewed / downloaded by the Bidder from e-procurement portal of the Authority http://etenders.gov.in from 07.10.2021 to 22.11.2021 (up to 1100 Hrs. IST).

2.14.1.5 Deleted

2.14.2 **Preparation & Submission of Bids:**

2.14.2.1 The Bidder may submit his Bid online following the instruction appearing on the screen. A buyer manual containing the detailed guidelines for e-procurement is also available on e-procurement portal of the Authority.

2.14.2.2 The documents listed at clause 2.11.1 shall be prepared and scanned in different files (in PDF or RAR format such that file size is not more than 30 MB) and uploaded during the on-line submission of Bid.

2.14.2.3 Bid must be submitted online only through e-procurement portal of the Authority http://etenders.gov.in using the digital signature of authorised representative of the Bidder on or before 22.11.2021 (up to 1100 hours IST).

2.14.3 **Modifications/ Substitution/ withdrawal of Bids**

2.14.3.1 The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.

2.14.3.2 For modification of e-Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, a Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.

2.15 Online Opening of Bids.

2.15.1 Opening of Bids will be done through online process.

2.15.2 The Authority shall on-line open Technical Bids on 23.11.2021 at 1130 hours IST, in the presence of the authorized representatives of the Bidders, who choose to attend. The NHAI will subsequently examine and evaluate the Bids in accordance with the provisions of Section 3 of RFP.

2.16 Rejection of Bids

2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 Validity of Bids

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.18 Confidentiality

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

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURING DECLARATION

2.20 Bid Securing Declaration

2.20.1 The bidder has to sign a Bid securing declaration accepting that if the bidder withdraw or modify its bid during the period of validity i.e. not less than 120 (one hundred twenty) days from the bid due date or if the bidder is awarded the contract and fail to sign the contract or to submit a performance security before the deadline defined in the request for bid documents, the bidder will be suspended for participation in the tending process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally sponsored schemes, for a period of one year from the bid due date of this work. The bid securing declaration shall be submitted as per the format at Appendix-II (Format for Bid Securing Declaration).

2.20.2 Deleted.

2.20.3 Any Bid not accompanied by the Bid Securing Declaration shall be summarily rejected by the Authority as non-responsive.

2.20.4 Deleted.

2.20.5 Deleted.

2.20.6 The Authority shall be entitled to suspend the bidder from participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally sponsored schemes, for a period of one year from the bid due date of this work as Damages inter alia in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP.

2.20.7 Bidder will be suspended for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period specified under clause 2.20.1 or clause 4.2 of the RFP, as the case may be, by the Authority as damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or under the Concession Agreement, or otherwise, under the following conditions:

a) Deleted;

b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;

c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;

d) In the case of Selected Bidder, if it fails within the specified time limit –

i) to sign and return the duplicate copy of LOA;
ii) to sign the Concession Agreement; or
iii) to furnish the Performance Security within the period prescribed in the Concession Agreement; or

In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

SECTION-3
EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS

3.1 Opening and Evaluation of Technical Bids

3.1.1 The Authority shall open the Technical Bids received online at 1130 hours IST on 23.11.2021, at the place specified in Clause 2.11.4 and in the presence of the Bidders who choose to attend.

3.1.2 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid within a prescribed time period.

3.1.4 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and qualification of the Bidder.

3.2 Tests of responsiveness

3.2.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:

(a) Technical Bid is received online as per the format at Appendix-IA including Annexure I to V; However, those Bidders, whose RFAQ eligibility limit assessed by NHAI is not less than the estimated cost of the Project, are not required to submit Annexure II to IV of Appendix-IA. If RFAQ results are not valid on the deadline for submission of the bids, then they have to submit Annexure II to IV of Appendix-IA also;
(b) Deleted;
(c) Technical Bid is accompanied by the Bid Securing Declaration as specified in Clause 2.1.7 and 2.1.8;
(d) Technical Bid is accompanied by the Power of Attorney as specified in Clauses 2.1.9;
(e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 2.1.10, if so required;
(f) Technical Bid contain all the information (complete in all respects);
(g) Technical Bid does not contain any condition or qualification;
(h) Integrity pact as per format given in Appendix VI has been submitted by the

Bidder with the Bid duly signed by authorised signatory;

(i) Technical Bid contains proof of online payment of Rs. 2,10,000/- (Rupees two lakh and ten thousand only) towards cost of Bidding Documents transmitted online to NHAI

(j) it is not non-responsive in terms hereof.

3.2.2 The Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3 Evaluation parameters

3.3.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.

3.3.2 A Bidder's competence and capability is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

3.4 Technical Capacity for purposes of evaluation

3.4.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the **"Eligible Experience"**) in relation to eligible projects as stipulated in Clauses 3.4.3 and 3.4.4 (the **"Eligible Projects"**):

Category 1: Project experience on Eligible Projects in highways sector that qualify under Clause 3.4.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.4.3

Category 3: Construction experience on Eligible Projects in highways sector that qualify under Clause 3.4.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.4.4

For the purpose of this RFP:

(a) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and

(b) core sector would be deemed to include civil construction cost of power sector, commercial setups (SEZs etc.), telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation,

water supply, stadium, hospitals, hotel, smart city, warehouses/ Silos, Oil and gas, sewerage and real estate development.[$]

3.4.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.

3.4.3 For a project to qualify as an Eligible Project under Categories 1 and 2:

(a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;

(b) the entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;

(c) the capital cost of the project should be more than Rs. 100.42 Crore (Rupees one hundred crore and forty two lakhs only); and

(d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.4.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Bid Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than Rs. 100.42 Crore (Rupees one hundred crore and forty two lakhs only); shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction

[$] Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Bidder .

works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

3.4.5 The Bidders shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

3.4.6 A Bidder's experience shall be measured and stated in terms of a score (the **"Experience Score"**). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 2.2.2 (A), divided by one crore and then multiplied by the applicable factor in Table 3.4.6 below. In case the Bidder has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.

Table 3.4.6: Factors for Experience across categories

	Factor
Category 1	1.25
Category 2	1.0
Category 3	0.75
Category 4	0.50

3.4.7 The Experience Score determined in accordance with Clause 3.4.6 in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.

3.4.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.4.9 (a) The Experience Score of the Bidder shall be computed as a weighted average of the Experience Score of a member and its proposed equity stake (%) in the Consortium,

(b) Similarly, the Financial Score of the Bidder shall be computed as a weighted average of the Financial Score of a member and its proposed equity stake (%) in the Consortium

Provided that the financial strength or the experience score taken into assessment will be only of those who contribute a minimum 26% share to the Consortium.

Illustration:

For illustration and avoidance of any doubts, the following method is placed in clarification:

If Company A (Net-Worth: Rs 1000 crores) & Company B (Net-Worth: Rs 500 crores) in a Consortium with shareholding of A as 60% and B as 40% then the Weighted Financial Score of the Consortium shall be:

For Weighted Financial Score

1000 X 60% + 500 X 40% = 800 Crores

For Weighted Experience Score

If Company A has been assessed to have an Experience Score of 1000 and Company B has been assessed to have an Experience Score of 500, in a Consortium with shareholding of A as 60% and B as 40%, then the Weighted Experience Score of the Consortium shall be

1000 X 60% + 500 X 40% = 800

3.5 Details of Experience

3.5.1 The Bidders should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.

3.5.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.

3.5.3 The Bidders should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-IA.

3.5.4 The Bidders who have been Pre-qualified at RFAQ stage should enclose the letter of Pre-qualification issued by the Authority and need not furnish the information sought in Clause 3.5.1, 3.5.2 and 3.5.3 above.

3.6 Financial information for purposes of evaluation

3.6.1 The Bids must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.

3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

3.6.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-IA.

3.6.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

3.6.5 The Bidders who have been Pre-qualified at RFAQ stage should enclose the letter of pre-qualification issued by the Authority and need not furnish the information sought in Clause 3.6.1, 3.6.2, 3.6.3 and 3.6.4 above.

(i) In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority may reject / correct such claim for the purpose of qualification requirements.

(ii) Deleted.

(iii) After evaluation of Technical Bids, the Authority will publish a list of technically responsive Bidders whose Financial Bids shall be opened. The Authority shall notify other Bidders that they have not been technically responsive. The Authority will not entertain any query or clarification from Bidders who fail to qualify.

3.7 Opening and Evaluation of Financial Bids

The Authority shall inform the venue and time of online opening of the Financial Bids to the Technically responsive Bidders through e-procurement portal of NHAI and e-mail. The Authority shall online open the Financial Bids on date and time to be informed in this clause in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority shall publically announce the assessed Bid Price for each of the technically responsive Bidder. The Authority shall prepare a record of opening of Financial Bids.

3.8 Selection of Bidder

Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and who quotes highest percentage of revenue offered as Premium to the Authority, and in the event that no Bidder offers a Premium, then the Bidder quoting the lowest grant to be paid by the Authority in accordance with Appendix-IB shall be declared as the selected Bidder (the "**Selected Bidder**"). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bid hereunder.

3.8.1 In the event that two or more Bidders quote the same amount of Premium or Grant, as the case may be (the "**Tie Bidders**"), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.8.2 In the event that the Highest Bidder withdraws or is not selected for any reason, the Authority shall annul the Bidding Process and invite fresh Bids. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

3.8.3 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder 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 Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, suspend the bidder for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

3.8.4 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.9 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

3.10 Correspondence with Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

3.11 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

3.12 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

SECTION-4

4. FRAUD AND CORRUPT PRACTICES

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to suspend the bidder for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work or forfeit and appropriate the Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, 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 Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder, at the sole and absolute discretion of the Authority, shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, 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 practices, as the case may be.

4.3 For the purposes of this Section 4, 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 actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the \ execution thereof, at any time prior to the expiry of one year from the date such official resigns or

retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.1(d) of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority 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;

(c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

4.4 Bidder shall comply with the provisions of NHAI/Policy Guidelines/Vigilance/2020 Policy Circular No. 5. 8 dated 29th December 2020 issued by NHAI i.e. Adoption of Revised Integrity Pact (IP), (format given in Appendix VI) shall be submitted by the Bidder along with the Bid duly signed by the authorised signatory of the Bidder and shall be deemed to be a part of the Concession Agreement.

SECTION-5

5. PRE-BID CONFERENCE

5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.

5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

SECTION-6

6. MISCELLANEOUS

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

6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Bidder in order to receive clarification or further information;

(c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or

(d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

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

APPENDIX IA

LETTER COMPRISING THE TECHNICAL BID

(Refer Clause 2.1.5, 2.11 and 3.2)

The General Manager (T)
National Highways Authority of India
G-5&6, Sector 10, Dwarka,
New Delhi - 110 075

Sub: Bid for Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana

Dear Sir,

1. With reference to your RFP document dated ……..[$], I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

3. This statement is made for the express purpose of our selection as a Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

[$] All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

7. I/ We declare that:

   (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Authority.

   (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) 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 the Authority 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 document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.2 of the RFP document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could 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.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.

14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-VI thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.

    (a) The Statement of Legal Capacity as per format provided at Annex-V in Appendix-IA of the RFP document, and duly signed, is enclosed. The Power Of Attorney For Signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at Appendix III and IV respectively of the RFP, are also enclosed.

    (b) I/We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3.

16. I/We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for the period of 2 (two) years from the date of the Project completion, hold equity share capital not less than: (i) 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire; and (ii) 5% (five percent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

17. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Concessionaire under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.

19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by

the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

20. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

21. I/We have studied all the Bidding Documents carefully and also surveyed the project highway and the traffic. We understand that except to the extent as expressly setforth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.

22. I/We submit a Bid Securing Declaration to the Authority in accordance with the RFP Document.

23. The Bid Securing Declaration is attached.

24. The documents accompanying the Technical Bid, as specified in Clause 2.11.2 of the RFP, shall be submitted in a separate envelope and marked as "Enclosures of the Bid".

25. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.

26. The Premium / Grant has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and traffic and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.

27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}

29. I/ We certify that in terms of the RFP, my/our Networth is Rs. …….. (Rs. in words) and Experience Score is …….. (number in words).

30. I/We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

31. (a) The EPC contractor/s who would be executing EPC works of the Project are ……,……, …….and it is confirmed that these contractors meet the minimum criterion as set out in Clause 2.1.23 of the RFP.

(b) It is irrevocably agreed that the value of any contract for the EPC works awarded shall not be less than 20% of the Estimated Project Cost or 500 crore, whichever is less.

(c) It is also agreed that any change of EPC contractor(s) would with be prior written approval of the Authority. We agree that the Authority shall grant such permission only and only if the substitute proposed is of the required technical capability as applicable.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidders, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

APPENDIX - IB

Letter comprising the Financial Bid
(Refer Clauses 2.1.5, 2.11.1 and 3.2)

(NOT TO BE SUBMITTED IN THE TECHINCAL Bid)

The General Manager (T)
National Highways Authority of India
G-5&6, Sector 10, Dwarka,
New Delhi - 110 075 Dated:

SUB: Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana

Dear Sir,

With reference to your RFP document dated *** **[$], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

3. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement and its Schedules, our own estimates of traffic and costs and after a careful assessment of the site and all own the conditions that may affect the Project traffic and cost and implementation of the Project.

4. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

5. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

6. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

7. I/ We hereby submit our Bid and offer:

[a Premium in the form of revenue share at the rate of …..... % (…… percent [in words]) of the Realizable Fee from the Project in the second year post Project Completion Date to the Authority, which shall be increased by 1% (one percent) of the Realizable Fee for every subsequent year for the remaining Concession Period.] or

[require a Grant of Rs. …… (Rupees …… only)][3]

for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Yours faithfully,

Date: (Signature, name and designation of the
Place: Authorised Signatory)
Name & seal of Bidder/Lead Member:.....
Class III DSC ID of Authorised Signatory :.....

Appendix IA

Annex-I

Details of Bidder

(a) Name:
(b) Country of incorporation:
(c) Address of the corporate headquarters and its branch office(s), if any, in India:
(d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:

   (a) Name:
   (b) Designation:
   (c) Company:
   (d) Address:
   (e) Telephone Number:
   (f) E-Mail Address:
   (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:

   (a) Name:
   (b) Designation:
   (c) Address:
   (d) Phone Number:
   (e) Fax Number:

5. In case of a Consortium:

   (a) The information above (1-4) should be provided for all the Members of the Consortium.
   (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.1.16 (g) should be attached to the Application.
   (c) Information regarding the role of each Member should be provided as per table below:

Appendix IA
Annex-I

Sl. No.	Name of Member	Role* **{Refer Clause 2.1.16(d)}**[$]	Percentage of equity in the Consortium**{Refer Clauses 2.1.16(a), (c) & (g)}**
1.			
2.			
3.			
4.			

***** The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-IV.

(d) The following information shall also be provided for each Member of the Consortium:

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred[£] by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

[$] All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder.

[£]or has been declared by the Authority as non performer/blacklisted.

Appendix IA
Annex-II

ANNEX-II

Technical Capacity of the Bidder@

(*Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP*)

Bidder type #	**Proposed Equity Shareholding in Consortium (%)**	**Member Code***	**Project Code****	**Category$**	**Experience¥** (Equivalent Rs. crore)$$			**Experience Score£**
					Payments made/ received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2	
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**	**(9)**
Single entity Bidder			a					
			b					
			c					
			d					
Consortium Member 1			1a					
			1b					
			1c					
			1d					
Consortium Member 2			2a					
			2b					
			2c					
			2d					
Consortium Member 3			3a					
			3b					
			3c					
			3d					
Consortium Member 4			4a					
			4b					
			4c					
			4d					
Aggregate Experience Score =								

Appendix IA
Annex-II

@ *Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.19 and/ or by a project company eligible under Clause 3.4.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.4.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.4.4. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22.*

A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.19, shall be provided.

* *Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*

** *Refer Annex-IV of this Appendix-IA. Add more rows if necessary.*

$ *Refer Clause 3.4.1.*

¥ *In the case of Eligible Projects in Categories 1 and 2, the figures in columns 7 and 8 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.*

$$ *For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 70 (Seventy) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

£ *Divide the amount in the Experience column by one crore and then multiply the result thereof by the applicable factor set out in Table 3.4.6 and in case of a Consortium, further multiply the result thereof by the proposed equity shareholding of the applicable Member, to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.4.7, and the product thereof shall be the Experience Score for such Eligible Projects. Above all, the sum total of columns 6, 7 and 8, as the case may be, in respect of each Eligible Project shall be restricted to a ceiling equivalent to the Estimated Project Cost, as specified in Clause 3.4.8.*

Appendix IA
Annex-III

ANNEX-III

Financial Capacity of the Bidder

(*Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.6 of the RFP*)

(In Rs. crore[$$])

Bidder type [$]	Member Code[£]	Proposed Equity Shareholding in Consortium (%)	Net Cash Accruals					Net Worth[€]
			Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 1**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**	***9)**
Single entity Bidder								
Consortium Member 1								
Consortium Member 2								
Consortium Member 3								
Consortium Member 4								
TOTAL								

Name & address of Bidder's Bankers:

[$]A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

[£]For Member Code, see instruction 4 at Annex-IV of this Appendix-IA.

[€]The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.19.

[$$] For conversion of other currencies into rupees, see note below Annex-II of Appendix-IA.

Appendix IA
Annex-III

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:

   (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
   (b) be audited by a statutory auditor;
   (c) be complete, including all notes to the financial statements; and
   (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.

3. Net Worth shall mean aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated loses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22.

5. In the case of a Consortium, a copy of the Joint. Bidding Agreement shall be submitted in accordance with Clause 2.1.16 (g) of the RFP document.

6. The Bidder shall also provide the name and address of the Bankers to the Bidder.

7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFP document.

Appendix I

Annex-IV

ANNEX-IV

Details of Eligible Projects

(*Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP*)

Project Code: **Member Code:**

Item (1)	**Refer Instruction** (2)	**Particulars of the Project** (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.4.3 and 3.4.4 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.

2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.

3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
5. Refer to Clause 3.4.1 of the RFP for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-IA. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.22). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.4.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.4.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.4.3 and 3.4.4
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.4.3).
11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

12. Certificate from the Bidder's statutory auditor[$] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

13. If the Bidder is claiming experience under Categories 1 & 2[£], it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects[Φ]

Based on its books of accounts and other published information authenticated by it, this is to certify that …….. *(name of the Bidder/Member/Associate)* is/ was an equity shareholder in …….. *(title of the project company)* and holds/held Rs. …… cr. (Rupees …….. crore) of equity (which constitutes ……..%[€] of the total paid up and subscribed equity capital) of the project company from ……... *(date)* to …….. *(date)*[¥]. The project was/is likely to be commissioned on ……. *(date of commissioning of the project)*.

We further certify that the total estimated capital cost of the project is Rs. …… cr. (Rupees ……crore), of which Rs. …… cr. (Rupees …… crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

……
……

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.4.1 and 3.4.3 (d) of the RFP during the past five financial years were Rs. …… cr. as per year-wise details noted below:

……
……

Name of the audit firm:
Seal of the audit firm: (Signature, name and designation
Date:

[$] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

[£] Refer Clause 3.4.1 of the RFP.

Φ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

[€] Refer instruction no. 10 in this Annex-IV.

[¥] In case the project is owned by the Bidder company, this language may be suitably modified to read: "It is certified that …….. (name of Bidder) constructed and/ or owned the …….. (name of project) from …….. (date) to …… (date)."

of the authorised signatory)

14. If the Bidder is claiming experience under Category 3 & 4♣, it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works$^{\Phi}$

Based on its books of accounts and other published information authenticated by it, {this is to certify that …….. *(name of the Bidder/Member/Associate)* was engaged by …….. *(title of the project company)* to execute …… *(name of project)* for ……. *(nature of project)}*$^{\Psi}$. The construction of the project commenced on …….. *(date)* and the project was/ is likely to be commissioned on …… *(date, if any)*. It is certified that ……. *(name of the Bidder/ Member/ Associate)* received/paid Rs. …….. cr. (Rupees …… crore) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs. …… cr. (Rupees ……crore), of which the Bidder/Member/Associate received/paid Rs. …… cr. (Rupees …… crore), in terms of Clauses 3.4.1 and 3.4.4 of the RFP, during the past five financial years as per year-wise details noted below:

……

……

{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ Consortium.}♠

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the

Date: authorised signatory).

♣ Refer Clauses 3.4.1 and 3.4.4 of the RFP.

$^{\Phi}$ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

$^{\Psi}$In case the Bidder owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: " this is to certify that …… (name of Bidder/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the……. (name of Project company) when it undertook construction of the ……. (name of Project) through…… (name of the contractor).

♠ This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Bidder in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.19, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate[$]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of …… (*name of the Associate*) is held, directly or indirectly[£], by …….. (*name of Bidder / Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.18 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{*Describe the share-holding of the Bidder/ Consortium Member in the Associate*}

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

[$] In the event that the Bidder/ Consortium Member exercises control oven an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken.

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score[Θ].

[Θ] Refer Clause 3.4.6 of the RFP.

Appendix IA
Annex-V

ANNEX-V
Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder / Lead Member of Consortium)

Ref. Date:

To,
General Manager (T)
National Highways Authority of India
G-5&6, Sector-10, Dwarka,
New Delhi-110075

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFP document.

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of……..

**Please strike out whichever is not applicable.*

Annexure VI

Guidelines of the Department of Disinvestment

(Refer Clause1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment
Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-
(A.K. Tewari)
Under Secretary to the Government of India

APPENDIX – II

Bid Securing Declaration

(Refer Clause 2.20)

Name of the Project - Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana

I hereby submit a declaration that the bid submitted by the undersigned, on behalf of the bidder, [Name of the bidder], either sole or in Consortium, shall not be withdrawn or modified during the period of validity i.e. not less than 120 (one hundred twenty) days from the bid due date.

I, on behalf of the bidder, [Name of the bidder], also accept the fact that in case the bid is withdrawn or modified during the period of its validity or; in case Bidder is a Selected Bidder, the Selected Bidder fails to incorporate SPV and/or SPV fails to sign the Concession Agreement before the deadline specified in Clause 1.3 of the Request for Proposal (RFP) or; SPV fails to submit a performance security within the period prescribed in the Concession Agreement, then [Name of the bidder] will be suspended for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes, for a period of 1 (One) Year from the bid due date of this work.

For _____ [Name of the bidder].

(Signature, name and designation of the Authorised Signatory)

(Official Seal)

Date:

Place:

:

Appendix-III

Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.9)

Know all men by these presents, We, …… (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of …….. and presently residing at ……., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ……, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana proposed or being developed by the National Highways Authority of India (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

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

For ……..

(Signature, name, designation and address)
of person authorized by Board Resolution (in
case of Firms/Company)/Partner in case of
Partnership Firms

Witnesses:

1.

2.

Notarised
Notarised
Person identified by me/personally appeared before me
/signed before me/Attested/Authenticated*
(*Notary to specify as applicable)
(Signature, Name and Address of the Notary)
Seal of the Notary
Registration Number of the Notary
Date_____

Accepted

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

Notes:

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

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

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

APPENDIX-IV

Format for Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.10)

Whereas the National Highways Authority of India ("the Authority") has invited bids from interested parties for the Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana (the Project"). Whereas, ……., …….. and …….. (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

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

For …….

(Signature, Name & Title)

For …….

(Signature, Name & Title)

For …….

(Signature, Name & Title)

Witnesses:

1.

2.

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

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure*.
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX V

Format for Joint Bidding Agreement for Consortium

(Refer Clause 2.1.10 & 2.1.16(g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the …… day of …… 20…

AMONGST

1. {…… Limited, and having its registered office at …… } (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {…… Limited, having its registered office at …… } and (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {…… Limited, and having its registered office at ……} (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, {SECOND and THIRD} PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party**"

WHEREAS,

(A) THE NATIONAL HIGHWAYS AUTHORITY OF INDIA, established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the **Bids**") by its Request for Proposal No. …… dated ……(the "**RFP**") for award of contract for Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana (the "**Project**") through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

(C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "**SPV**") under the Indian Companies Act 1956/2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding

Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium ;}

{(c) Party of the Third Part shall be the Financial Member of the Consortium; and}

{(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:
Second Party:
{Third Party:}
{Fourth Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of Project completion, be held by the Parties of the First, {Second and Third} Part whose experience and net worth have been reckoned for the purposes of qualification of the Bidder for the Project in terms of the RFP.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the date of the Project completion and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the date of the Project completion.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

6.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV in terms of the Concession Agreement.}

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;
(ii) violate any Applicable Law presently in effect and having applicability to it;
(iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
(iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified/selected.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of LEAD MEMBER by: (Signature) (Name) (Designation) (Address)	SIGNED, SEALED AND DELIVERED SECOND PART (Signature) (Name) (Designation) (Address)
SIGNED, SEALED AND DELIVERED For and on behalf of THIRD PART (Signature) (Name) (Designation) (Address)	SIGNED, SEALED AND DELIVERED For and on behalf of FOURTH PART (Signature) (Name) (Designation) (Address)
SIGNED, SEALED AND DELIVERED For and on behalf of FIFTH PART (Signature) (Name) (Designation) (Address)	SIGNED, SEALED AND DELIVERED For and on behalf of SIX PART (Signature) (Name) (Designation) (Address)

In the presence of:

1. 2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement 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.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX VI
Integrity pact

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

(---- ----------Division)
Tender No.... . . . . .

This integrity Pact is made at …….. on this_____day of_____2021.

BETWEEN

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

AND

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

Preamble

Whereas, the Principal intends to award, under laid down organizational procedure, contract/s for Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana. The Principal values full compliance with all relevant laws of the land, rules of land, regulations, economic* use of resources and of fairness/ transparency in its relations with its Bidder(s) and for Contractor(s)/ Concessionaire(s)/ Consultant(s).

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

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

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

Article-1: Commitments of the Principal

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

(a) No employee of the Principal, personally or through family members, will in connection with the Tender for, or the execution of a Contract, demand, take a promise for or accept, for self, or third person, any material or immaterial benefit which the person is not legally entitled to.

(b) The Principal will, during the Tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the Tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

(c) The Principal will exclude all known prejudiced persons from the process.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act or any other Statutory Acts or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions as per its internal laid down Rules/Regulations.

Article — 2: Commitments of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s).

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

(a) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

(b) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications,

subsidiary contract, submission or non-submission or bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

(c) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not commit any offence under the relevant IPC/PC Act and other Statutory Acts; further the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will not use improperly, for purposes of completion or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

(d) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of foreign origin shall disclose the name and address of the Agents/ Representatives in India, if any. Similarly, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further, details as mentioned in the 'Guidelines on Indian Agents of Foreign Suppliers' shall be disclosed by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s). Further, all the payments made to the Indian Agent / Representative have to be Indian Rupees only.

(e) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract. He shall also disclose the details of services agreed upon for such payments.

(f) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

(g) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not bring any outside influence through any Govt. bodies/quarters directly or indirectly on the bidding process in furtherance of his bid.

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

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

(1) If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s), before award or during execution has committed a transgression through a violation of any provision of Article 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) from the tender process.

(2) If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) for any future tenders/ contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the Principal taking into consideration the full facts and circumstances of each case particularly taking into account the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) and the amount of the damage. The exclusion will be imposed for a maximum of 1 years.

(3) A transgression is considered to have occurred if the Principal after due consideration of the available evidence concludes that "On the basis of facts available there are no material doubts".

(4) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) with its free consent and without any influence agrees and undertakes to respect and uphold the Principal's absolute rights to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.

(5) The decision of the Principal to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) shall be final and binding on the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s), however, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) can approach IEM(s) appointed for the purpose of this Pact.

(6) On occurrence of any sanctions/ disqualification etc arising out from violation of integrity pact, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) shall not be entitled for any compensation on this account.

(7) Subject to full satisfaction of the Principal, the exclusion of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) could be revoked by the Principal if the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) can prove that he has restored/ recouped the damage caused by him and has installed a suitable corruption prevention system in his organization.

Article — 4: Compensation for Damages.

(1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Article-3, the Principal shall be entitled to suspend the bidder

for participation in the tendering process for the works of MoRTH/NHAI/NHIDCL and works under other Centrally Sponsored Schemes for a period of One Year from the bid due date of this work apart from any other legal right that may have accrued to the Principal.

(2) In addition to 1 above, the Principal shall be entitled to take recourse to the relevant provisions of the contract related to Termination of Contract due to Contractor/ Concessionaire/Consultant's Default. In such case, the Principal shall be entitled to forfeit the Performance Bank Guarantee of the Contractor/ Concessionaire/ Consultant and/ or demand and recover liquidated and all damages as per the provisions of the contract/concession agreement against Termination.

Article — 5: Previous Transgressions

(1) The Bidder declares that no previous transgressions occurred in the last 3 years immediately before signing of this Integrity Pact with any other Company in any country conforming to the anti Corruption/ Transparency International (TI) approach or with any other Public Sector Enterprise/ Undertaking in India or any Government Department in India that could justify his exclusion from the tender process.

(2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action for his exclusion can be taken as mentioned under Article-3 above for transgressions of Article-2 and shall be liable for compensation for damages as per Article-4 above.

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

(1) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) undertake(s) to demand from all sub-contractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.

(2) The Principal will enter into agreements with identical conditions as this one with all Bidders/ Contractors/ Concessionaires/ Consultants and subcontractors.

(3) The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

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

If the Principal obtains knowledge of conduct of a Bidder/ Contractor/ Concessionaire/ Consultant or subcontractor, or of an employee or a representative or an associate of a Bidder/ Contractor/ Concessionaire/ Consultant or Subcontractor,

which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Article- 8: Independent External Monitor (IEM)

(1) The Principal has appointed Smt. Gauri Kumar, IAS (Retd.) and Sh. Ashish Bhauguna, IAS (Retd.) as Independent External Monitor for this Pact.The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

(2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, NHAI.

(3) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s). The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors.

(4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality. The Monitor has also signed on 'Non-disclosure of Confidential Information' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform Chairman, NHAI and recuse himself/ herself from that case.

(5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/ Concessionaire/ Consultant. The parties offer to the Monitor the option to participate in such meetings.

(6) As soon as the Monitor notices, or believes, to notice any transgression as given in Article-2, he may request the Management of the Principal to take corrective action, or to take relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

(7) The Monitor will submit a written report to the Chairman, NHAI within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

(8) If the Monitor has reported to the Chairman, NHAI, a substantiated suspicion of an offence under relevant IPC/PC Act or any other Statutory Acts, and the Chairman, NHAI has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

(9) The word 'Monitor' would include both singular and plural.

Article — 9 Pact Duration

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

If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by Chairman of NHA1.

Article - 10 Other Provisions.

(1) This pact is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.

(2) Changes and supplements as well as termination notices need to be made in writing.

(3) If the Bidder/Contractor/Concessionaire/Consultant is in a partnership or a Joint Venture partner, this pact must be signed by all partners or members

(4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(5) Issue like warranty / Guarantee etc. shall be outside the purview of IEMs.

(6) In the event of any contradiction between the Integrity Pact and its Annexure, the clause in integrity pact shall prevail.

(7) Any disputes/ differences arising between the parties with regard to term of this pact, any action taken by the Principal in accordance with this Pact or interpretation thereof shall not be subject to any Arbitration.

(8) The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provision of the extent law in force relating to any civil or criminal proceedings.

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

For & on behalf of the Principal	For & on behalf of Bidder/ Contractor/ Concessionaire/ Consulting

(Office seal)

Appendix-VII

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

The General Manager (T)
National Highways Authority of India
G-5&6, Sector 10, Dwarka,
New Delhi - 110 075

Sub: Six laning of Kagal–Satara section of NH-48 (old NH-4) (Package – II) from Km 658.000 to Km 725.000 in the state of Maharashtra to be executed on BOT (Toll) mode under Bharatmala Pariyojana

Dear Sir,

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

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

I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.

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

Yours faithfully,

Date:
(Signature of the Authorised signatory)
Place:
(Name and designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

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

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