

REQUEST FOR PROPOSAL

ENGAGEMENT OF CONSULTANTS TO ASSIST THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA (AERA)

**IN REVIEW OF REGULATORY PHILOSOPHY AND APPROACH IN ECONOMIC
REGULATION: REVISION OF THE GUIDELINES FOR DETERMINATION OF TARIFF(S)
FOR AERONAUTICAL SERVICES PROVIDED BY AIRPORT OPERATORS AND
INDEPENDENT SERVICE PROVIDERS AT MAJOR AIRPORTS**

AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA

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RFP No.	05/2019-20
RFP issue date	18.02.2020 (Tuesday)
Deadline for Submission	17.03.2020 (Tuesday), upto 1100 Hrs (IST),

NOTE: Those Applicants who have submitted their bids (Technical and Financial) for these assignments against RFP No.02/2019-20 dated 28.11.2019, will have option either to retain their old bids already submitted or submit fresh bids against RFP No 05/2019-20 dated 18.02.2020. In case the applicants who had applied against RFP No. 02/2019-20 dated 28.11.2019, opt to retain their old bids i.e. technical and financial or anyone of them, they will have to exercise their option in writing (by the Authorized Signatory) before the proposal due date/time of RFP No. 05/2019-20 dated 18.02.2020 and in such case also extend the validity of their old proposals to coterminate with the validity of the current RFP (RFP No. 05/2019-20).However EMD has to be resubmitted as per terms and conditions of this RFP.

Disclaimer

The information contained in this Request for Proposal document (this “**RFP**”) or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of the Airports Economic Regulatory Authority of India (hereinafter referred to as “**AERA**”) or any of its employees or advisers, is provided to Applicants on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

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

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

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

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

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

The issue of this RFP does not imply that AERA is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Consultancy. AERA reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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

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INVITATION FOR PROPOSALS

GLOSSARY

Act	As defined in Clause 1.1.1 and 1.1.2
AERA	As defined in Clause 1.1.1
AO	Airport Operator(s)
Applicant	The interested parties who, in response to this RFP, apply for the bid for either of two Assignments or both Assignments.
Associate	As defined in Clause 2.9.4
Authorised Representatives	As defined in Appendix I, Form-4
Aviation expert	As defined in Clause 2.6.1
Conflict of Interest	As defined in Clause 2.9
Consultant	As defined in Clause 1.2
Consultancy	As defined in Clause 1.2
Deliverables	As defined in Clause 4
Documents	As defined in Clause 2.10
Key Personnel	As defined in Clause 2.6.1
LOA	Letter of Award
Major Airport	As defined in Clause 1.1.3
Prohibited Practices	As defined in Clause 6.1
Proposal Due Date	As defined in Clause 2.16
Proposals	As defined in Clause 1.2
RFP	As defined in the disclaimer
Shortlisted Applicants	All Applicants who are selected after Technical Bid evaluation.
Selected Applicant	Each of the Applicants, selected for either of the Assignments.
Selection Process	As defined in Clause 1.5
Subject person	As defined in Clause 2.9.3
Technical Bid	As defined in Clause 2.13.1
TOR	Terms of Reference

1. INTRODUCTION

1.1 BACKGROUND

1.1.1 The Parliament of India enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the “Act”). The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the “AERA”) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came into force w.e.f. 1st September, 2009. Further, vide “**The Airports Economic Regulatory Authority of India (Amendment) Act, 2019**”, some amendments in the original Act have been made which are extracted below:

“ 1. 1) *This Act may be called the Airports Economic Regulatory of India (Amendment) Act, 2019.*

2) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (appointed date by Central Government is 26.09.2019).*

2. *In Section 2 of the Airports Economic Regulatory Authority of India Act, 2008 (hereinafter referred to as the principal Act.) in clause (i), for the words “one and a half million’ the words “three and half million’ shall be substituted.*

3. *In section 13 of the principal Act, after sub-section (i), the following sub-section shall be inserted, namely:-*

“(1A) Notwithstanding anything contained in sub-sections (1) and (2), the Authority shall not determine the tariff or tariff structures or the amount of development fees in respect of an airport or part thereof, if such tariff or tariff structures or the amount of development fees has been incorporated in the bidding document, which is the basis for award of operatorship of that airport:

Provided that the Authority shall be consulted in advance regarding the tariff, tariff structures or the amount of development fees which is proposed to be incorporated in the said bidding document and such tariff, tariff structures or the amount of development fees shall be notified in the Official Gazette.”

1.1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in section 13 of the Act, which are as below:-

- I. to determine the tariff for aeronautical services taking into consideration –
 - a) the capital expenditure incurred and timely investment in the improvement of airport facilities;
 - b) the service provided, its quality and other relevant factors;
 - c) the cost for improving efficiency;
 - d) economic and viable operation of major airports;
 - e) revenue received from services other than the aeronautical services;
 - f) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; and
 - g) any other factor which may be relevant for the purpose of the Act.
- II. determine the amount of the development fees;
- III. determine the amount of the passengers’ service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;
- IV. monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf;

- V. call for any such information as may be necessary to determine the tariff for aeronautical services; and
 - VI. Perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act.
- 1.1.3 The terms ‘aeronautical services’ and ‘major airports’ are defined in Sections 2(a) and 2 (i) of the Act, respectively and the same shall be read herein.
- 1.1.4 While discharging its functions, AERA is required to ensure transparency by, inter alia, holding due consultations with stake-holders, which includes a licensee of an airport, airlines operating there at and/or a person who provides aeronautical services and any association of individuals, which in the opinion of AERA, represents the passengers or cargo facility users, by permitting such stake-holders to make submissions in writing and by documenting all its decisions and explanations thereof.
- 1.1.5 Airport Economic Regulatory Authority (AERA) issued its Guidelines for determination of tariff for Aeronautical services for Airport Operators and Independent Service Providers (Cargo facility, Ground Handling and Supply of Fuel to the aircraft) during January/February, 2011. Considerable time has passed since then leading to not only a change in the context of economic regulation for airports but also an accumulation of experiences with the Authority of tariffs determined by it. Further in terms of change of context, the AERA is in the process of revisiting the proposed threshold for classification of airports in India as Major Airports from 1.5 million to 3.5 million, which brings down the number of airports under the purview of AERA. Still the airports under the purview of AERA handle passengers in the range of 3.5 million per annum to 65 million per annum. These airports are also in varied stage of development with some planning their expansions and others with recently expanded terminals. Such variation presents a wider range of business issues expected to be facing these airports and accordingly the nature of issues to be handled while determining tariff for aeronautical services for these airports.
- 1.1.6 With the above background, the Authority intends to conduct a study with an objective to issue its revised Guidelines for determination of tariff for Aeronautical services for Airport Operators and Independent Service Providers (Cargo facility, Ground Handling and Supply of Fuel to the Aircraft).
- 1.1.7 The Authority wishes to receive Proposals from reputed and experienced Consultants for the below mentioned two specified Assignments of the AERA with clearly defined roles and responsibilities and then enter into agreement to complete the assignments in accordance with the Terms of Reference specified at **Schedule-I** hereto (the “**TOR**”) as listed below:

Assignment No.	Description of the Assignments
A	Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators at major airports.
B	Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Independent Service Providers

	at major airports.
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1.2 REQUEST FOR PROPOSALS:

AERA invites proposals (the “**Proposals**”) for selection of Consultants for performing the Scope of Services, deliverables and other requirements, as specified in this RFP for each of the assignment(s) listed above. The applicant applying in response to this invitation can be a sole proprietorship firm or partnership firm or LLP or company. This RFP is for the selection of a consultant(s) (“**Consultant**”) for the assignments as mentioned in Clause 1.1.7 hereinabove, to, *inter alia*, advise AERA, and, render services in the areas, as detailed in the TOR (collectively the “**Consultancy**”) in **Schedule I**. AERA intends to select the Consultant(s) through an open competitive bidding process in accordance with the procedure set out herein.

1.3 DETAILED AND CRITICAL REVIEW BY APPLICANTS

Applicants are encouraged to inform themselves fully about the assignment before submitting the Proposal by paying a visit to AERA, sending written queries to AERA, and attending a Pre-Bid Conference on the date and time specified in Clause 1.7.

1.4 VALIDITY OF THE PROPOSAL

The Proposal shall be valid for a period of 90 (ninety) days from the Proposal Due Date. AERA may at its sole discretion extend the validity of the Proposal. In case of such extension, the Applicant shall not be allowed to modify the Proposal and will be required to extend the EMD so submitted for such extended period.

1.5 SELECTION PROCESS:

AERA would adopt a two stage selection process i.e. technical and financial (collectively the “**Selection Process**”) in evaluating the Proposals for each Assignment(s). Accordingly, the Applicant would submit separate sealed envelopes for each Assignment(s) for which the Applicant intends to bid and each of such envelopes shall comprise two envelopes i.e. for technical bid and financial bid, for each Assignment(s). In the first stage, a technical evaluation shall be carried out as specified in Clause 3.1. In the second stage, based on the technical evaluation, a list of short-listed applicants shall be prepared whose financials bids shall be opened for final selection of the Applicant for each Assignment(s). The applicant for each Assignment(s) based on the criterion stipulated under Clause 3.3 shall be considered to be selected.

AERA would endeavor to adhere to the following schedule:

S. No.	Event Description	Date
a.	Last date for receiving queries/ clarifications	27.02.2020
b.	Pre-Bid Conference	04.03.2020
c.	AERA’s response to queries	11.03.2020
d.	Proposal Submission Due Date/Time	17.03.2020, upto 1100 Hrs
e.	Presentation by Applicants	23/24.03.2020
f.	Opening of Financial Proposals	30.03.2020 at 1100 Hrs
g.	Letter of Award (LOA)	09.04.2020
h.	Signing of Agreement	Within 15 days from issue of

		LOA
i.	Validity of Proposal	90 days from Proposal Due Date

1.6 DELIVERY SCHEDULE

The Selected Consultant shall be given a period of **04 (four) Months + 01 year (one year assistance period for dealing related issues/queries arisen thereof)** to accomplish the allocated assignment from the date of signing of the agreement as referred in clause 3.7. AERA may, however, on its discretion, extend the delivery period on case to case basis.

1.7 PRE BID CONFERENCE

- 1.7.1 A Pre-Bid conference shall be convened in Conference Hall, 1st Floor, AERA Building, Administrative Complex, Safdarjung Airport, New Delhi- 110003, on **04.03.2020 at 11.00 Hrs.** A maximum of two representatives (**from company only and no outsider will be allowed**) for each Applicant shall be allowed to participate in the Pre-Bid Conference. The Applicants shall send their queries, if any, to the designated office by fax/email as per above schedule along with the details of the representatives who shall attend the Pre Bid conference at least 03(three) clear days before the day on which the Pre-Bid Conference is scheduled i.e. 04.03.2020.

The queries shall be sent in the format below:

Query No.	RFP Clause			Bidders Query
	No.	Name	Text requiring clarification	

- 1.7.2 The queries must reach the designated office of AERA by the scheduled date. AERA may decide not to have the Pre-Bid conference if it is able to resolve the queries otherwise. In such a case the clarifications shall be sent to the Applicants electronically or posted on the AERA website <http://aera.gov.in> under the link “**Tenders**”. During the course of the Pre-Bid conference, the Applicants will be free to seek clarifications and make suggestions. AERA shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive bidding process.

1.8 COMMUNICATIONS

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

Director (P & S),
Airports Economic Regulatory Authority of India,
AERA Building, New Administrative Block,
Safdarjung Airport
New Delhi - 110003.

- 1.8.2 The Official Website of AERA is: www.aera.gov.in

Note: All future communications related to the RFP document can be accessed through the link provided on the homepage. Applicants are advised to visit AERA’s website regularly for all the updates/notifications.

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

RFP Notice No. 05/2019-20 dated 18.02.2020 “For Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation : Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at Major Airports.”.

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 SCOPE OF WORK

Detailed description of the objectives, scope of services, deliverables and other requirements to be undertaken by the Selected Applicant are given herein after at **schedule-I**, however, the same is merely illustrative and not exhaustive. The Selected Applicant shall thus have to consider the required output and include all further incidental activities that may be necessary for efficient and successful implementation and for achieving the ultimate purpose of the assignment awarded pursuant to this RFP. The Selected Applicant shall also assist AERA in 'Appeals' and 'Legal Cases' against the Orders of the Authority to the extent of the scope of work under this RFP.

2.2 EARNEST MONEY DEPOSIT (EMD)

2.2.1 The Applicants shall submit, along with their Proposal, an EMD of **Rs.3,00,000/- (Rupees three Lakh only)** for each of the Assignment in the following form:

- a) The EMD shall be in the form of a Demand Draft / Bank Guarantee issued by a Nationalized/Scheduled Bank in India in favour of the **“Airports Economic Regulatory Authority of India”** payable at New Delhi;
- b) EMD in any other form shall not be entertained; and
- c) The EMD shall be returnable as per Clause 2.2.5 herein below, except under the circumstances stipulated under Clause 2.2.4.
- d) Exemption will be considered as per Govt. Notification in respect of MSME registered entities, if requisite documentary evidence is provided in advance;

2.2.2 Any proposal not accompanied by EMD shall be considered as non-responsive and will be summarily rejected.

2.2.3 AERA shall not be liable to pay any interest on the EMD and the same shall be interest free.

2.2.4 FORFEITURE OF EARNEST MONEY DEPOSIT (EMD)

The Applicant, by submitting its proposal pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to AERA's other rights or remedy hereunder or in law or otherwise, the EMD shall be forfeited and appropriated either in full or part by AERA as genuine pre-estimated compensation and damage payable to AERA for, *inter alia*, the time, cost and effort of AERA in regard to the RFP, including the consideration and evaluation of the Proposal, without any notice and proof of damages, under the following conditions:

- (a) If an Applicant submits a non-responsive Proposal;
- (b) If an Applicant withdraws its Proposal during the period of validity of RFP, including extension thereof, if any, by AERA from time to time;
- (c) If the Applicant is found to engage / indulge the fraudulent / corrupt/ coercive / undesirable or restrictive practice.
- (d) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clause 3.7;
- (e) If the Selected Applicant is found to have a 'Conflict of Interest' as specified in Clause 2.9; and
- (f) If the Selected Applicant, fails to furnish the required **Performance Guarantee** within the time limit as specified in Clause 3.5.

(g) If the selected applicant having signed the agreement, commits any breach thereof.

2.2.5 RELEASE OF EARNEST MONEY DEPOSIT (EMD) / VALIDITY OF PERFORMANCE GUARANTEE

Without prejudice to Clause 2.2.4 above, the EMD shall be released in the following manner:

- (a) The EMD of all the unsuccessful Applicants shall be returned as promptly as possible, but, not later than 1 (one) month after expiration of Bid Validity i.e. 90 days.
- (b) The EMD of the Successful Applicant, to whom the contract is awarded, will be returned after receipt of Performance Guarantee.
- (c) The Performance Guarantee shall be refunded to the party after completion of 01 (one) year support period from the date of issuance of the final Orders/Directions on Revised Guidelines against this RFP after obtaining a written Undertaking (to be furnished on Rs.100/- non-judicial stamp paper) from the selected Consultant that they shall assist AERA in any litigation arising thereof to the extent of the scope of work of the assignment. Accordingly validity of the Performance Guarantee will be 16 (sixteen) months (4 months for completion of assignment + 01 year support period after notification of the Revised Guidelines). It may be further extended as may be mutually agreed by the Authority and the selected Consultant.

2.3 NUMBER OF PROPOSALS

Each applicant may apply for either one or both the Assignments but shall submit only 01 (one) proposal for each Assignment as mentioned in Clause 1.1.7 in response to this RFP. An applicant, who submits more than one proposal for a particular Assignment shall be disqualified and such subsequent submission shall be rejected. **The participating Applicant can submit one Technical Bid for both the Assignments and separate Financial Bids if they wish to apply for both the Assignments.**

2.4 TRANSFER OF PROPOSAL DOCUMENTS

Transfer of Proposal documents by one prospective Applicant to another is not permissible.

2.5 COMPOSITION OF THE TEAM

An Applicant shall propose and submit a team of minimum 04 (four) persons having requisite skills. The team shall consist of the following key personnel for discharge of responsibilities as specified below:

Key Personnel	Responsibilities
Team Leader	Will lead, co-ordinate and supervise the team for the Consultancy and shall be responsible for the timely, efficient and satisfactory delivery of services as mentioned in the scope of work
Sector Experts (Minimum three experts)	The sector experts will bring in aviation sector experience including Aviation Economics, Finance, and Legal, to the team and be responsible individually for work relating to their respective field of expertise.

The teams may consist of more than 4 (four) Members as per the discretion of the agency. Team Leader/Aviation Expert/Sector Experts will be separate and will work on their respective field.

2.6 ELIGIBILITY CRITERIA

2.6.1 Conditions of Eligibility

- (a) JVs. / Consortiums are not permitted.
- (b) The applicant must be in the business of consultancy services for the last 10 (ten) years. During the last 10 years, the applicant should have assisted as a consultant at least 1 (One) Regulatory Authority or Government Authority in any infrastructure/essential services sector such as aviation, power, gas, telecommunication, shipping, etc. in any one of the following projects/assignments (the details are to be provided in Form-8):
- i. assisted a Regulatory Authority/Government Authority as mentioned above, in Regulatory philosophy - policy formulations for tariff(s), review of the Guidelines for regulation and preparing multi-year tariff regulations, tariff reviews or tariff fixation;
 - ii. assisted a Regulatory Authority/Government Authority as mentioned above, pertaining to evaluation of multi-year tariff proposals, annual tariff proposals and fixation of tariffs.
- (c) The fact that the Applicant who has participated as a Consultant in any of the above projects or assignments specifically relating to the airport infrastructure and for other aeronautical services shall be provided appropriate weightage as per the scheme of technical evaluation (refer to Clause 3.1).
- (d) The Applicant should have a minimum turnover of Rs.50,00,00,000/- (Rupees fifty crores) per annum under the head of professional fees during each of the last three accounting years. For avoidance of doubt, professional fees hereunder refer to fees earned by the Applicant for providing advisory or consultancy services to its clients.
- (e) **Eligibility of Key Personnel:** The proposed Team Leader and Sector Experts except Aviation Expert and Legal Expert must be employees/ partner of the Applicant firm at least for the last one year. The Applicant shall offer the services of only those Key Personnel who fulfill the eligibility requirements specified at 2.6.1 (f) & (g) below.
- (f) **Aviation Expert:** An individual, who has expertise in the Aviation Sector with at least 7 years experience in Airports (“**Aviation Expert**”) having worked at an Airport in a ‘Managerial’ position or attached with an Organization operating at the Airport. The Aviation Expert may be on the pay rolls of the Applicant or act as a Consultant to the Applicant provided his/her appointment as a Consultant to the Project shall be for the entire duration of the Assignment. The Applicant shall submit the terms of the engagement of appointment, including period of engagement, of the Aviation Expert (except the financial terms) along with the Technical Bid.
The Team Members viz. Team Leader, Sector Experts including Aviation and Legal Experts should be below the age of 70 years as on the proposal due date.
- (g) **Eligibility criteria for Key Personnel:** Each of the Key Personnel must fulfill the eligibility criteria specified herein below:

Key Personnel	Educational Qualifications	Length of Professional Experience	Experience in Eligible Assignments
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1. Team Leader	CA/ICWA / MBA/PGDBM from a reputed Institute / PG degree in Economics from a reputed institute.	7 years	<p>The Team Leader should have led teams or participated in assignments of a nature similar or related to that detailed in the TOR (schedule-1) of this RFP. The Team Leader should have sound understanding and experience (which may include operational experience) of the legal, economic and regulatory framework governing the airport and air navigation service sector in India or abroad or other infrastructure sectors as specified at para 2.6.1 (b).</p> <p>He should have participated in the process of assisting or advising in policy formulations for tariff, regulatory philosophy - framing/review of the Guidelines for regulation and preparing multi-year tariff regulations, tariff reviews or tariff fixation or evaluation of multi-year tariff proposals, annual tariff proposals and fixation of tariffs</p> <p>Preference shall be given to those who have participated in any of the above assignments specifically relating to airport infrastructure/aviation/airport industry.</p>
Sector Experts			
2. Aviation Expert	Graduate /Post Graduate/MBA	7 years	<p>The aviation expert should have relevant experience in the Airport sector which should include sound knowledge/understanding of all the operational aspects of airports. He should have experience of working at an Airport in a ' Managerial' position or attached with an Organization operating at any Airport. (Audit will not be counted as experience)</p>

3. Financial Expert	CA/ICWA/MBA (Finance) from a reputed Institute	7 years	The financial expert should have experience in financial analysis of public, private and PPP Projects in the airport infrastructure and/or other infrastructure sectors as mentioned at para 2.6.1 (b). Preference shall be given to experts who have assisted regulatory / regulated entities in evaluating/reviewing tariff applications/making tariff submissions.
4. Legal Expert	LLB or Equivalent	7 years	The Legal Expert should have experience in legal due diligence and drafting of various legally binding documents such as rules, regulations and guidelines. Preference shall be given to experts who have participated in similar assignments specifically relating to regulatory authorities in India.

- (h) The Aviation Expert should continue to be associated with the applicant during the entire tenure of the project and should fulfill the eligibility criterion as specified at para 2.6.1 (f) & (g) above.
- (i) The Applicant shall enclose with the Technical proposal, a Certificate issued by its Statutory Auditors stating its year wise income against the professional fees from Consultancy Services during the last three years in the format prescribed at Form 5, Appendix I.
- (j) A person/entity barred from participating in any project/assignment by the Central Government or any State Government or by any other authority under the direct or indirect control of the Central Government or any State Government, shall not be eligible to submit a proposal provided such bar is still subsisting.
- (k) An Applicant, in the last three years, must not have failed to perform on any agreement and/or contract by way of an imposition of penalty/damages by an arbitral award or any other judicial pronouncement. The Applicant must not have either been expelled from any project or faced any termination of the agreement/contract for being held responsible for its breach by the awarding authority.
- (l) The Aviation Expert shall normally be associated in all the meetings of AERA with the Consultant.

2.7 COST OF PROPOSAL

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

2.8. ACKNOWLEDGEMENT BY APPLICANT

- 2.8.1 It shall be deemed that by submitting the Proposal, the Applicant has:
- (a) made a complete and careful examination of the RFP;
 - (b) received all relevant information requested from the AERA;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of AERA or relating to any of the matters referred to in Clause 2.6 above;
 - (d) satisfied itself about all matters, things and information in this RFP, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
 - (e) acknowledged that it does not have a Conflict of Interest; and
 - (f) agreed to be bound by the undertaking provided by it under and in terms hereof.
- 2.8.2 AERA 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 or the Selection Process, including any error or mistake therein or in any information or data given by AERA.

2.9 CONFLICT OF INTEREST

- 2.9.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (“**Conflict of Interest**”). AERA requires the Consultant to provide professional, objective and impartial advice and at all times hold AERA’s interests paramount and avoid Conflict of Interest with any other assignment. Without limitation on the generality of the foregoing, the Consultant or any of its Associates shall not take up any assignment that by its nature will result in conflict with the present assignment (tariff related) i.e., during the period of this assignment (till submission of the final report/notification of Guidelines) and for a period of 3 (three) months thereafter. Whereas, a similar engagement for any other regulator / Central Government Public Sector Entities / Government Entities (viz. Central government in the case of airports other than major airports) may not be so construed as conflict of interest. In case the bidder is currently dealing with the advisory services on tariff matter of the major airport(s), or Independent Service Provider(s), as applicable, it shall be treated as direct conflict of interest. If an applicant is currently providing any consulting services to AERA in determining the aeronautical tariff of major airports for AERA, this will not be treated as conflict of interest. Consulting Companies of Government of India and Public Sector Banks are exempted from this clause.
- 2.9.2 Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, AERA shall forfeit and appropriate the EMD as per the mutually agreed, genuine, pre-estimated compensation and damages payable to the AERA for, *inter alia*, the time, cost and effort of AERA including consideration of such Applicant’s Proposal, without prejudice to any other right or remedy that may be available to the AERA hereunder or otherwise. The amount worked out by AERA shall be final and binding.
- 2.9.3 Some guiding principles for identifying and addressing ‘Conflicts of Interest’ have been illustrated in the Guidance Note at **Schedule-II**. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Applicant or any of its Associates (or any constituent thereof) and any other Applicant or any of its Associate, have common controlling shareholders or other ownership interest; provided that, this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, or Associate

(or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant or Associate, as the case may be) in the other Applicant or its Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause 2.9.3, indirect shareholding held through one or more intermediate persons shall be computed as follows:

- (i) 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 (“**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
- (ii) subject always to Sub-clause (a) 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 (ii) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
- (b) a constituent of such Applicant is also a constituent of another Applicant; or
- (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
- (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other’s information about, or to influence the Application of either or each of the other Applicant; or
- (f) a firm which has been engaged by AERA to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
- (g) such Applicants (including their experts and other personnel) that have a close business or family relationship with a professional staff of AERA who are directly or indirectly involved in any part of i) the preparation of the TOR for the assignment, ii) the selection process for the contract, or iii) the supervision of such contract, may not be awarded the Consultancy, unless the conflict stemming from this relationship has been resolved in a manner acceptable to AERA throughout the selection process and the execution of the contract; or
- (h) Fairness and transparency in the selection process require that Applicants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, AERA shall make available to all the Shortlisted Applicants, together with the request for proposals, all information that would in that respect give an Applicant a competitive advantage.
- (i) Govt. Shareholding shall be exempted from ‘Conflict of Interest’

2.9.4 For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant, or is deemed or published as an “Associate Office”; or has a formal arrangement such as tie up for client referral or technology sharing, joint venture with the Applicant (the “**Associate**”); provided, however, that if the Applicant has any formal arrangement such as consortium membership in a consortium of advisers/ consultants for a particular assignment/ project, not being this

project, with any other person, then such other person shall not be treated to be an Associate of the Applicant solely due to the reason of forming such consortium. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

B. DOCUMENTS

2.10 AMENDMENT OF RFP

- 2.10.1 At any time prior to the deadline for submission of the Proposal, AERA may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify this RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website.
- 2.10.2 All such amendments posted on the Official Website along with the revised RFP containing the amendments, will be binding on all Applicants.
- 2.10.3 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, AERA may, at its sole discretion, extend the Proposal due date as per Clause 2.16.

C. PREPARATION AND SUBMISSION OF THE PROPOSAL

The Applicant shall submit separate proposal for the respective assignment in the manner stated below. The proposal for each of the assignment(s) shall comprise of Technical Proposal and Financial Proposal. **The participating Applicant can submit one Technical Bid for both the Assignments and separate Financial Bids if they wish to apply for both the Assignments.**

2.11 LANGUAGE

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

2.12 FORMAT AND SIGNING OF PROPOSAL

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

clarified that the Technical Proposal marked “ORIGINAL” only shall be considered for the purpose of scrutiny and evaluation.

- 2.12.3 The Proposal marked “ORIGINAL” shall be typed or written in indelible ink and signed by the Authorized Signatory of the Applicant who shall initial each page, in **blue ink**. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed in **blue ink** by the person(s) signing the Proposal. The Proposals must be properly signed in **blue ink** by the authorized representative (the “Authorized Representative”) as detailed below:
- (a) by the proprietor, in case of a proprietary firm; or
 - (b) by a partner who is duly authorized vide Power of Attorney, in case of a partnership firm and/or a limited liability partnership; or
 - (c) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a Corporation.
- 2.12.4 A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarized by a notary public in the form specified in Appendix - I (Form-4) shall accompany the Proposal.
- 2.12.5 Applicants should note the Proposal Due Date, as specified in Clause 2.16 for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by AERA, and evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in this RFP.
- 2.12.6 Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For avoidance of doubts, AERA reserves the right to seek clarifications and seek additional material under and in accordance with the provisions of Clause 2.19.

2.13 TECHNICAL PROPOSAL

- 2.13.1 Applicants shall submit the technical proposal in the formats at Appendix-I (Form No. 1 to Form No. 10) (the “**Technical Bid**”).
- 2.13.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:
- (a) All forms are submitted in the prescribed formats and are signed by the prescribed signatories;
 - (b) The EMD is provided as per Clause 2.2;
 - (c) Power of Attorney as specified in Form-4, Appendix - I, is executed as per Applicable Laws and submitted;
 - (d) CVs of all Aviation Experts and Key Personnel have been included;
 - (e) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.6.1 of this RFP;
 - (f) No alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
 - (g) **The CVs have been signed and dated in blue ink by the respective Key Personnel and countersigned by the Applicant. Photocopy or un-signed/non-countersigned CVs shall be rejected;**
 - (h) **The CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP and counter signed by the applicant;**
 - (i) **Key Personnel proposed have good working knowledge of English language;**

- (j) **Key Personnel would be available for the entire period indicated in the TOR (Schedule –I).**
 - (k) **The Team Members viz. Team Leader, Sector Experts and Aviation Expert should be below the age of 70 years as on the proposal due date.**
 - (l) The proposal is responsive in terms of Clause 2.20.3.
- 2.13.3 Failure to comply with the requirements spelt out in Clause 2.13.2 shall make the Proposal liable to be rejected.
- 2.13.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any further assignment of AERA for a period of 5 (five) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event along with the forfeiture of EMD/ Performance Guarantee as available with Authority.
- 2.13.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.
- 2.13.6 AERA reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification, or in case of non-verification by applicant shall not be relieved of its obligations or liabilities hereunder nor will it affect any rights of the AERA there under.
- 2.13.7 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or if the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith, if he has not yet been appointed as the Consultant either by issue of the Letter of Award (LOA) or by entering into the Agreement. If the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by AERA along with forfeiture of EMD/Performance Guarantee without AERA being liable in any manner whatsoever to the Applicant or Consultant, as the case may be.
- 2.13.8 In such an event, AERA shall forfeit and appropriate the entire EMD/Performance Guarantee as the case may be as mutually agreed pre-estimated compensation and damages payable to the AERA for, *inter alia*, time, cost and effort of AERA, without prejudice to any other right or remedy that may be available to AERA.

2.14 FINANCIAL PROPOSAL

- 2.14.1 The Applicants shall submit the Financial Proposal for the respective assignment(s) in the formats at **Appendix-II, Form-I** clearly indicating the cost of the Consultancy assignment, for the respective assignment(s) in both figures and words, in Indian Rupees, and signed by the Applicant's Authorized Signatory. In the event of a difference between the amounts indicated in figures and words, the lower of the two shall be considered and taken into account. While submitting the Financial Bid, the Applicant shall ensure the following:
- a) The professional fee quoted for the respective assignment(s) in the Financial Bid shall be inclusive of all costs associated with the assignment and shall cover remuneration for all the Personnel, accommodation, air fare, equipment, printing of documents, surveys etc. No additional costs on any of the aforementioned

expenditure heads over and above the financial quote shall be reimbursed by AERA. The Financial Bid shall be unconditional, unqualified and shall be final and binding. It is clarified that the selected Applicant (at least one of the team members) may be required by AERA to be present in meetings to assist it during the same as and when organized by AERA. Such meetings are generally held in Delhi. However, in case AERA organizes such a meeting outside Delhi, the actual fare paid (including the fare paid for rail and road travel) or Economy Class return airfare, whichever is lower for the shorter route from Delhi to the station where such meeting is held (whichever is less) will be reimbursed by the Authority in respect of maximum of two representatives of the selected applicant firm.

- b) The professional fee quoted in the financial bid shall be exclusive of all statutory tax liabilities which should be indicated separately. The statutory Tax liability shall be paid by AERA as per actuals.

2.14.2 Financial bids of the firms who do not qualify in technical evaluation shall be returned, unopened.

2.15 SUBMISSION OF PROPOSAL

2.15.1 The Applicants shall submit the Proposal in **hard bound** form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialed by the Authorized Representative of the Applicant as per the terms of Clause 2.12 of the RFP and conditions therein.

2.15.2 In case the proposal is submitted on the document downloaded from AERA's Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by AERA and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by AERA, the latter shall prevail. Further, in case of any modification/substitution/withdrawal of proposals by the Applicant, Clause 2.18 may be referred to.

2.15.3 The Proposal shall be sealed in an outer envelope which should bear the address of the AERA, RFP Number, Consultancy Name, Name and address of the Applicant. If the envelope is not sealed and marked as instructed herein, AERA assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Applicant.

2.15.4 The aforesaid outer envelope should contain two separate sealed envelopes, one clearly marked 'Technical Proposal' and the other clearly marked 'Financial Proposal'.

- a) The envelope marked "Technical Proposal" shall contain:
 - (i) Application in the prescribed format (Form-1 of Appendix-I) along with all Forms 2 to 10 of Appendix- I and supporting documents; and
 - (ii) EMD as specified in Clause 2.2.
- b) The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorized Representative of the Applicant. All pages of the Technical Proposal (marked 'ORIGINAL') and Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.

2.15.5 The complete Proposal must be delivered on or before the specified time on Proposal Due Date at designated office address given at Clause 1.8 of the RFP. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained. The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.

2.15.6 **Note: Those Applicants who have submitted their bids (Technical and Financial) for these assignments against RFP No.02/2019-20 dated 28.11.2019, will have option either to retain their old bids already submitted or submit fresh bids against RFP No 05/2019-20 dated 18.02.2020. In case the applicants who had applied against RFP No. 02/2019-20 dated 28.11.2019, opt to retain their old bids i.e. technical and financial or anyone of them, they will have to exercise their option in writing (by the Authorized Signatory) before the proposal due date/time of RFP No. 05/2019-20 dated 18.02.2020 and in such case also extend the validity of their old proposals to coterminate with the validity of the current RFP (RFP No. 05/2019-20).However EMD has to be resubmitted as per terms and conditions of this RFP.**

2.16 PROPOSAL DUE DATE

The Proposal should be submitted on or before 17.03.2020 upto 1100 Hrs. at the designated address in the manner and form as detailed in Clause 2.15.5 of this RFP. AERA may, at its sole discretion, extend the Proposal due date by issuing an Addendum.

2.17 LATE PROPOSALS

Proposals received by AERA after the specified time on Proposal due date shall not be eligible for consideration and shall be summarily rejected.

2.18 MODIFICATION/ SUBSTITUTION/ WITHDRAWAL OF PROPOSALS

2.18.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by AERA prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.

2.18.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.15, with the envelopes being additionally marked “**MODIFICATION**”, “**SUBSTITUTION**” or “**WITHDRAWAL**”, as appropriate.

2.18.3 Any alteration/modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by AERA, shall be disregarded.

2.19 CLARIFICATIONS

2.19.1 To facilitate evaluation of Proposals, AERA may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) or additional material as sought shall be provided within the time specified by AERA for this purpose. Any request for clarification(s) or additional information document, and, all clarification(s) in response thereto, shall be in writing.

2.19.2 If an Applicant does not provide clarifications as sought under Clause 2.19.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, AERA may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation(s) of the AERA.

D. EVALUATION PROCESS

2.20 EVALUATION OF PROPOSALS

2.20.1 The Proposals shall be opened on **17.03.2020 at 1200 Hrs** in Conference Hall, 1stFloor, AERA Building, Administrative Complex, Safdarjung Airport, New Delhi - 110003, in the presence of the Applicants who choose to attend. The envelopes marked “**Technical Proposal**” shall be opened first. The envelopes marked “**Financial Proposal**” shall be kept sealed for opening at a later date which shall be subsequently communicated to the applicant firms.

2.20.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.18 shall not be opened.

2.20.3 Prior to evaluation of Proposals, AERA shall determine whether each Proposal is responsive to the requirements of the RFP. AERA may, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:

- a) the Technical Proposal is received in the forms (Form No. 1 to Form No. 10) specified at **Appendix-I**, with three Copies, one marked “ORIGINAL” and two marked as “COPY”). Financial Proposal is received in separate envelope along with Technical Proposal as per Form-I of **Appendix – II**;
- b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.16;
- c) it is accompanied by the EMD as specified in Clause 2.2;
- d) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.12 & 2.15;
- e) it is accompanied by the Power of Attorney as specified in Form-4, Appendix-I;
- f) it contains all the information (complete in all respects) as requested in the RFP;
- g) it does not contain any condition or qualification; and
- h) it is not non-responsive in terms hereof.

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

2.20.5 PRESENTATION

AERA shall subsequently examine and evaluate each of the Proposals. The technical evaluation of the Proposals shall be done after the presentation to be made by the Applicant(s) on the Approach and Methodology. The presentation shall be held in the Conference Hall, 1stFloor, AERA Building, Administrative Complex, Safdarjung Airport, New Delhi- 110003 on the date intimated by AERA to the applicant firms. The Applicants shall ensure that the presentation is held on the date intimated by AERA. Presence of Team leader, Aviation Expert, and Sector Experts as proposed in the bid in terms of the RFP, shall be compulsory for evaluation. Any personnel other than the proposed team in the bid shall not be allowed in the presentation.

2.20.6 TEAM COMPOSITION AND EXPERIENCE OF KEY PROFESSIONALS/EXPERTS

- (a) The Applicant shall provide details of the experts proposed to be deployed for the proposed assignment. The Applicants, who offer to provide more than one expert for one or more sectors, shall clearly specify the sector expert who should be evaluated for the purpose of Technical Evaluation. Such Applicant, if successful, shall be bound to provide the services of the additional sector expert(s) to AERA as necessitated for successful completion of the consultancy assignment at no additional cost or liability whatsoever. However, in no case, more than one person should be proposed as the Team Leader;
- (b) The team of experts proposed to be deployed shall be available to AERA in continuity until **successful completion of the consultancy assignment**. The Curriculum Vitae (CV) of each expert proposed to be deployed for the assignment shall be given along with the proposal;
- (c) AERA would evaluate each member proposed to be deployed based on their qualifications, experience etc., and assign score for every applicant based on its evaluation as detailed in Clause 3.1 herein; and
- (d) The presentation shall be made by the Authorized Signatory and/or the Team leader, when all the Sector Experts (Financial Expert/ Aviation Expert & other expert) would be required to be available. The presentation should clearly bring out the understanding of the Applicant with regard to the requirements of AERA and concisely present the approach and methodology intended to be followed for the successful completion of the assignment. The presentation should, normally, not exceed a time limit of twenty minutes. The Team Leader and / or Sector Experts shall appear for a personal interview at the time of Presentation or as communicated by AERA. (at least one week before presentation date).

2.21 CONFIDENTIALITY

Information relating to the examination, clarification, evaluation and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the AERA in relation to matters arising out of, or concerning the Selection Process. AERA will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. AERA 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 AERA or as may be required by law or in connection with any legal process.

3. CRITERIA FOR EVALUATION

3.1 TECHNICAL PROPOSAL EVALUATION

3.1.1 The Technical Proposals submitted by Bidders shall be evaluated on the basis of their responsiveness to the RFP, Applicant's experience, their understanding of TOR by proposed methodology and work plan, and the experience of Key Personnel by applying the evaluation criteria as specified below and also interview with the team leader and experts:

Table 1		
Technical Evaluation – Total marks out of 100		
	Criteria	Marks
A	Firm's Experience for the Assignment	Maximum marks 50
1	The firm's experience for consultancy assignments: 10 years to 12 years : 05 marks More than 12 to 15 years : 06 marks More than 15 years : 07 marks	7 marks
2	The firm must have an annual turnover from Professional consulting services in each of the last three years [refer clause 2.6.1 (d)] <ul style="list-style-type: none"> • Rs.50 crores to Rs.<=100 crores : 6 marks • More than 100 crores upto 150 crores : 8 marks • More than 150 crores : 10 marks 	10 marks
3(a)	During the last 10 years, assisted a Regulatory Authorities/Government Authorities (refer clause 2.6.1) in Regulatory philosophy - policy formulations for tariff(s), review of the Guidelines for regulation and preparing multi-year tariff regulations, tariff reviews or tariff fixation: 1-2 assignments : 06 3-4 assignments : 09 5 or more assignments: 15 N.B. Evaluating MYTP, ATP and fixation of tariff for one airport will be considered as one assignment.	15 marks
3(b)	During the last 10 years, assisted a Regulatory Authority/Government Authority as mentioned above, pertaining to evaluation of multi-year tariff proposals, annual tariff proposals and fixation of tariffs. 1-2 assignments : 6 marks 3-4 assignments : 7 marks 5 or more assignments : 8 marks	08 marks
5	Firm's relevant Experience in Airport sector; 1-2 assignments : 06 3-4 assignments : 08 5 or more assignments: 10	10 marks

B	Approaches and Methodology and Presentation				Maximum marks 15
	The presentation shall be made by the Team Leader. The presentation should clearly bring out the understanding of the Applicant with regard to the requirements of AERA and concisely present the approach and methodology proposed to be followed for the successful completion of the assignment. The presentation should, normally, not exceed a time limit of 20 (twenty) minutes.				15
C	Qualification and Experience of the Key Personnel / Personal Interaction.				Maximum marks 35
	Key Personnel	Qualification	Experience	Personal Interaction	
	1. Team Leader	3.5	Total marks: 4.5 07-10 years: 2.5 10-15 years: 3.5 15 yrs plus: 4.5	3	11
	2. Aviation Expert	3	Total marks: 3 07-10 years: 1 10-15 years: 2 15 yrs plus: 3	2	8
	3. Financial Expert	3	Total marks: 3 07-10 years: 1 10-15 years: 2 15 yrs plus: 3	2	8
	4. Legal Expert	3	Total marks: 3 07-10 years: 1 10-15 years: 2 15 yrs plus: 3	2	8

In case the any of the above Key Personnel is not present at the time of Presentation, then no mark will be awarded for personal interaction in this case.

3.1.2 The proposed Key Personnel except Aviation Expert and Legal Expert must be on the pay rolls of the Applicant and will be duly supported with professional staff of the Applicant. The Aviation Expert/Legal Expert may be on the pay rolls of the Applicant or be associated as a Consultant to the Applicant provided his/her appointment as a Consultant to the Assignment shall be remained for the entire duration of the Assignment. Legal Expert may be hired as an individual or from a Law firm.

3.1.3 In case all other parameters are same, preference shall be given to bidders who have worked on the assignments of similar nature in infrastructure sector/ aviation / airports industry/ other projects run on PPP mode (refer clause 2.6.1).

3.1.4 The total technical score(**St**) would be an arithmetic sum of scores obtained by the Applicant

for each of the parameters indicated above viz. relevant experience of the Applicant, approach and methodology and presentation, qualification and relevant experience of the team leader, sector experts, financial analyst and financial strength, etc. The maximum achievable total technical score for any applicant would be 100 marks.

- 3.1.5 **A minimum of 70 marks is necessary for qualifying in the Technical Bid. The Applicants would be ranked based on the technical score obtained.**
- 3.1.6 **Financial bids of firms who do not qualify the Technical Bid shall be returned unopened.**
- 3.1.7 The financial bids of all Applicants who secure the minimum score of 70 in technical bid shall be opened. In case no Applicant secures the minimum qualifying score of 70 marks for any particular assignment, the AERA may, at its sole discretion, pre-qualify the first three ranked Applicant(s), even though their technical score is less than 70 marks.
- 3.1.8 After the technical evaluation, AERA shall prepare a list of the Shortlisted Applicants for opening of their Financial Bid; a date, time and venue will be notified to the Shortlisted Applicants for announcing the result of evaluation and opening of financial proposals. Before opening of the financial proposals, the technical score of the Shortlisted Applicants shall be read out. The opening of financial bids/proposals shall be done in the presence of representatives of the qualified Shortlisted Applicants who choose to be present on the date of opening of financial bid. AERA will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process.
- 3.1.9 Applicants are advised that selection of the successful Applicant will be entirely at the discretion of the AERA. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given. Any information contained in the Proposal shall not in any way be construed as binding on the AERA, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

3.2 FINANCIAL PROPOSAL EVALUATION

- 3.2.1 In the second stage, the financial evaluation will be carried out as per the provisions of this Clause. Each Financial Proposal will be assigned a financial score as specified in Clause 3.2.2 herein below.
- 3.2.2 AERA will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the Consultant to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Consultant.

The lowest Financial Proposal (Fm) will be given a financial score (**Sf**) of 100 points. The financial scores (**Sf**) of the other Financial Proposals will be determined using the following formula: **Sf = 100 x Fm / F**,

[in which Sf is the financial score, Fm is the lowest price, and F is the price of the Proposal (in INR) under consideration]

3.3 OVERALL EVALUATION AND OFFER OF CONTRACT

- 3.3.1 The weightage given to the technical and financial proposals are: Technical = 70% and Financial = 30% respectively;

- 3.3.2 The Proposals will be ranked according to their combined technical and financial scores in accordance with the weightage assigned to the two and will be calculated as per the following formula:

$$S = St \times Tw + Sf \times Fw;$$

Where **S** is the combined score, and **Tw** and **Fw** are weights assigned to technical proposal and financial proposal that will be 0.70 and 0.30, respectively.

- 3.3.3 (a) The Applicant achieving the highest combined score for an Assignment shall be invited for discussions and given the offer for the respective Assignment. However, no Applicant shall be given an offer of contract for more than one Assignment. The decision with respect to the Assignment to be allotted to the Applicant shall vest solely with the AERA. The Applicant may in its Proposal submit its preference of choice for the allotment of Assignment to AERA but in case the Applicant is the Selected Applicant for more than one Assignment, then the final discretion shall vest solely with AERA.

(b) **If a bidder applies / quotes for both the Assignment(s) and that bidder becomes the highest scorer (H-1) for both the assignments, the work will be awarded only for one assignment as per the option given by the applicant at para 20 of the Technical Bid (Appendix – I, Form-1) which will be treated as final option. Further in this case second highest scorer (H-2) will be required to match the quote of H-1 for award of the second assignment in case the financial quote of H-2 is higher than that of H-1.**

- 3.3.4 Each of the Applicants, selected for either of the Assignment shall be the Selected Applicant for the respective Assignment.

3.4 **Substitution of Key Personnel**

AERA will not normally consider any request of the Selected Applicant Firm for substitution of Key Personnel as the ranking of the Applicant is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to ill health or death, subject to equally or better qualified and experienced personnel being provided to the satisfaction of AERA. Such substitution shall be limited to only two Key Personnel. AERA expects all the Key Personnel to be available during implementation of the Agreement.

Substitution of the Team Leader will normally not be considered, except in case of death or incapacitation due to accident, illness etc. and may lead to disqualification of the Applicant or termination of the Agreement.

3.5 **AWARD OF CONSULTANCY/ SUBMISSION OF PERFORMANCE GUARANTEE**

After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the AERA to the Selected Applicant and the Selected Applicant shall, within 7 (seven) working days of receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof and submit **Performance Guarantee** equivalent to 10% of the value of the award for Consultancy, in the form of a Bank Guarantee issued by a Nationalized/Scheduled Bank in India in favour of the “**Airports Economic Regulatory Authority of India**”. In the event, the duplicate copy of the LOA duly signed by the Selected Applicant, and Performance Guarantee, is not received by the stipulated date, AERA may, unless it consents to extension of time for submission thereof, forfeit the EMD of such Applicant on account of failure of the Selected Applicant to acknowledge the LOA.

3.6 EXECUTION OF AGREEMENT

After acknowledgement of the LOA as aforesaid, the Selected Applicant shall sign the Agreement within 15 (fifteen) days from the issue of the LOA. The Selected applicant shall not be entitled to seek any deviation in the terms and conditions of the Agreement.

In case the selected Applicant withdraws or fails to comply with the aforesaid requirements, the AERA reserves the right to consider the next best applicant(s) or take any other measure as may be deemed fit at the sole discretion of the AERA, including annulment of the selection process

3.7 COMMENCEMENT OF ASSIGNMENT

The Selected Applicant shall commence the Consultancy services within 7 (seven) days of the date of signing of the Agreement or such other date as may be mutually agreed. If the Selected Applicant fails to either sign the Agreement as specified in Clause 3.6 or fails to commence the assignment as specified herein, the Performance Guarantee of the Selected Applicant shall be invoked and appropriated in accordance with the provisions of Clause 5.2.

3.8 PROPRIETARY DATA

Subject to the provisions of Clause 2.2, all documents/information provided by the AERA or submitted by an Applicant are to be treated as strictly confidential information. AERA will not return any Proposal or any information related thereto except as stated in Clause 3.1.5 herein. All information collected, analyzed, processed or in whatever manner provided by the Applicants/Selected Applicant to the AERA in relation to the Consultancy shall be the property of AERA.

4. DELIVERABLES AND PAYMENT SCHEDULE

4.1 The selected applicants shall be paid professional fees for the services rendered as per following schedule:

4.1.1 ASSIGNMENT A

SNO.	Milestones	Time Frame for completion of Assignment	Payment Schedule.
1.	Submission of initial reports and framework preparation on Revision of the Guidelines.	01 (one) month	20%
2.	Preparation, Finalisation and issue of Consultation Paper on Revision of the Guidelines for Airport Operators	01 (one) month	20%
3.	Assisting AERA in Stakeholder consultation and analysing/evaluating Stakeholders' responses	01 (one) month	15%
4.	Preparation, Finalisation and issue of Final Order/Direction for tariff determination for Airport Operators and notification of the Order/Direction.	01 (one) month	35%

5.	Assisting AERA in dealing with the issues/queries received after notification of the revised Guidelines for a period of one year (from the date of notification of the Guidelines). 10% balance payment to be released after satisfactory completion of the post notification assistance period of one year.	01 (One) year from the date of notification of the Revised Guidelines	10%
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Note: If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm with make them liable for action(s) given in Para 5 “Liquidated Damages and Penalties” (para 5.4). Decision of AERA in this regard shall be final and binding on the consultant firm.

4.1.2 **ASSIGNMENT B**

SNO.	Milestones	Time Frame for completion of Assignment	Payment Schedule.
1.	Submission of initial reports and framework preparation on revision of the Order/Guidelines.	01 (one) months	20%
2.	Preparation, Finalisation and issue of Consultation Paper on Revision of the Order/Guidelines for Cargo, Ground Handling and Fuel Service Providers.	01 (one) month	20%
3.	Assisting AERA in Stakeholder consultation and analysing/evaluating Stakeholders’ responses.	01 (one) month	15%
4.	Preparation, Finalisation and issue of Final Order/Directions for tariff determination for ISPs and notification of the Order/Direction.	01 (one) month	35%
5.	Assisting AERA in dealing with the issues/queries received after notification of the revised Order/Guidelines for a period of one year (from the date of notification of the Guidelines). 10% balance payment to be released after satisfactory completion of the post notification assistance period of one year.	01 (One) year from the date of notification of the Revised Guidelines	10%

Note: If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm with make them liable for action(s) given in Para 5 “Liquidated Damages and Penalties” (para 5.4). Decision of AERA in this regard shall be final and binding on the consultant firm.

5. LIQUIDATED DAMAGES AND PENALTIES

5.1 PERFORMANCE GUARANTEE

The Selected Applicant shall furnish a **Performance Guarantee** (see para 3.5) in the form of Bank Guarantee equal to 10% of the value of the Agreement.

5.2 APPROPRIATION OF PERFORMANCE GUARANTEE

- (a) AERA shall invoke the Performance Guarantee, to be appropriated against breach of terms and conditions of the contract or on account of delay in completing the task or towards any amounts as may be payable by the Consultant to AERA. The balance remaining out of the Performance Security, if any or the entire Performance Security, as the case may be, shall be returned to the Consultant within a period of 30 (thirty) days after the completion of the assignment and after issuance completion certificate by AERA to the Consultant. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts over and above the Performance Security, AERA may make deductions from any subsequent payments due and payable to the Consultant hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.
- (b) The Consultant may, in lieu of retention of the amounts as referred above, furnish a Bank Guarantee. This will be in addition to the Performance Security as referred to in Clause 5.1 above.

5.3 LIQUIDATED DAMAGES FOR ERROR/VARIATION

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by AERA in a reasonable manner and recovered from the Consultant by way of liquidated damages. This is without prejudice to the other remedies as may be available as per applicable law. Overall LD, whether on account of delay and error / variation, shall be limited to 10% (Ten percent) of the Agreement/ Award Value.

5.4 LIQUIDATED DAMAGES FOR DELAY/ COMPENSATION FOR DELAY.

In case of delay in completion of the work as specified in the delivery schedule, the Consultant shall be liable to pay Liquidated Damages/ Compensation for Delay not exceeding an amount equal to 1% (one percent) of the total value of the Agreement per week, subject to a maximum of 10% (ten percent) of the total value of the Agreement. AERA will take into consideration the reasons for delay, if any, while imposing Liquidated Damages on the selected Applicant. However, in the event of delay caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of Liquidity Damages/Compensation for Delay.

5.5 PENALTY FOR DEFICIENCY IN SERVICES

In addition to the Liquidated Damages listed hereinabove, as specified in Clauses 5.3 and 5.4 above, the Consultant may be censured and/ or debarred for deficiencies on its part in completion of the consultancy assignment.

5.6 Force Majeure

5.6.1 Definition

- (a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Without prejudice to the generality of clause (a) above, it is specifically clarified that Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

5.6.2 No breach of Agreement

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

5.6.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 7 (seven) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

5.6.4 Extension of time/Termination of Services

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

Not later than fifteen (15) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Authority will be at liberty to terminate the Agreement and award the same to another party.

5.6.5 Payments

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

5.6.6 Consultation

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

6. FRAUD AND CORRUPT PRACTICES

- 6.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, AERA shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”) in the Selection Process. In such an event, AERA shall, without prejudice to its other rights or remedies, forfeit and appropriate the EMD, as genuine, pre-estimated compensation and damages payable to AERA for, *inter alia*, time, cost and effort of AERA, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 6.2 Without prejudice to the rights of AERA under Clause 7.3 hereinafter and the rights and remedies which AERA may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by AERA to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by AERA during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be.. Further, in such an event, AERA shall, without prejudice to its other rights or remedies, forfeit and appropriate the Performance Guarantee, as genuine, pre-estimated compensation and damages payable to AERA for, *inter alia*, time, cost and effort of AERA, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 6.3 For the purposes of this Clause 6.3, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of AERA who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising 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 AERA, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of AERA in relation to any matter concerning the Project;
 - (b) “**fraudulent practice**” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
 - (c) “**coercive practice**” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;

- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by AERA with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

7. MISCELLANEOUS

7.1 RIGHT TO REJECT ANY OR ALL DOCUMENTS

- 7.1.1 Notwithstanding anything contained in this RFP, AERA reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. Further, AERA reserves the right to accept the proposal for any Assignment(s) and shall be under no obligation to provide an offer for both the Assignments under this RFP. In an event of non-responsive bid for any of the Assignment or under any circumstance as AERA may consider appropriate, AERA reserves the right to float another RFP for that particular Assignment without in any manner affecting the Consultancy for the remaining Assignment(s) as may be awarded pursuant to this RFP.
- 7.1.2 Without prejudice to any other provision hereto, AERA reserves the right to reject any Proposal if:
- (a) at any time, a material misrepresentation is made or discovered, or
 - (b) the Applicant does not provide, within the time specified by AERA, the supplemental information sought by AERA for evaluation of the Proposal.

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification / rejection occurs after the Proposals have been **opened and the highest ranking Applicant gets disqualified / rejected, then AERA reserves the right to consider the next best Applicant, or take any other measure as may** be deemed fit at the sole discretion of AERA, including annulment of the Selection Process.

- 7.2 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which AERA has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 7.3 AERA, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to AERA by, on behalf of and/or in relation to any Applicant; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.

SCHEDULE-1

SCHEDULE-1

TERMS OF REFERENCE

Name of the Assignments:

A. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators at major airports.

B. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Independent Service Providers at major airports.

TERMS OF REFERENCE FOR ASSIGNMENT - A:

A. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators at major airports.

1. General

1.1 The Parliament of India, enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the ‘Act’).The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the ‘AERA’) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came in to force w.e.f. 1stSeptember 2009.

1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in Section 13 of the Act, which are as below:-

- I. determine the tariff for aeronautical services taking into consideration –
 - a) the capital expenditure incurred and timely investment in the improvement of airport facilities;
 - b) the service provided, its quality and other relevant factors;
 - c) the cost for improving efficiency;
 - d) economic and viable operation of major airports;
 - e) revenue received from services other than the aeronautical services;
 - f) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
 - g) any other factor which may be relevant for the purpose of the Act.

- II. determine the amount of the development fees;
- III. determine the amount of the passengers' service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;
- IV. monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf;
- V. call for any such information as may be necessary to determine the tariff for aeronautical services; and perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act.

1.3 Vide "**The Airports Economic Regulatory Authority of India (Amendment) Act, 2019**", some amendments in the original Act have been made which are extracted below:

" 1. 1) This Act may be called the Airports Economic Regulatory of India (Amendment) Act, 2019.

2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.(appointed date by Central Government is 26.09.2019).

2. In Section 2 of the Airports Economic Regulatory Authority of India Act.2008 (hereinafter referred to as the principal Act.) in clause (i), for the words "one and a half million' the words "three and half million' shall be substituted.

3. In section 13 of the principal Act, after sub-section (i), the following sub-section shall be inserted, namely:-

"(1A) Notwithstanding anything contained in sub-sections (1) and (2), the Authority shall not determine the tariff or tariff structures or the amount of development fees in respect of an airport or part thereof, if such tariff or tariff structures or the amount of development fees has been incorporated in the bidding document, which is the basis for award of operatorship of that airport:

Provided that the Authority shall be consulted in advance regarding the tariff, tariff structures or the amount of development fees which is proposed to be incorporated in the said bidding document and such tariff, tariff structures or the amount of development fees shall be notified in the Official Gazette."

2. Background

2.1 Airport Economic Regulatory Authority (AERA) issued its Guidelines for determination of tariff for aeronautical services for Airport Operators i.e. "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011" vide Direction No. 05/2010-11 dated 28.02.2011. Considerable time has passed since then leading to not only a change in the context of economic regulation for airports but also an accumulation of experiences with the Authority of tariffs determined by it.

2.2 In terms of change of context, the AERA is in the process of revisiting the threshold for classification of airports in India as Major Airports from 1.5 million to 3.5 million, which brings down the number of airports under the purview of AERA. Still the airports under the purview of AERA handle passengers in the range of 3.5 million per annum to 65 million per annum. These airports are also in varied stage of development with some planning their expansions and others with recently expanded terminals. Such variation presents a wider range of business issues expected to be facing these airports and accordingly the nature of issues to be handled while determining tariff for aeronautical services for these airports.

2.3 Government has also prescribed adoption of shared till for the purpose of determination of tariff by AERA mandating a change from the single till adopted by the Authority in its Guidelines.

2.4 Context would also change with new airports likely to be bid out on the basis of pre-determined tariff, where the role of the Authority will get restricted to possibly an advisory role. The Authority would like to explore the nature of such advisory or any other role in detail.

2.5 In terms of experiences accumulated with the Authority, the Authority has issued its Tariff Orders for different sets of airports – DIAL and MIAL responding to the context of OMDA / SSA, HIAL and BIAL with a different context, and a set of AAI airports under Government's control. Such varied contexts have led to slightly varied nature of treatment accorded to similar business segments (such as cargo and ground handling).

2.6 Some of the Tariff Orders from the Authority have also been appealed against. Judgments from courts/ tribunals on such appeals will need to be considered in future while determining tariff for Major Airports. Some of these judgments necessitate a revision in the positions of the Authority in concerned Tariff Orders.

2.7 The Authority also observed scenarios of likely low cash flows for airport operators as an outcome of tariff determination process on account of multiple factors including over-recovery during earlier period and delayed determination of tariff leaving a few years for implementation of revised tariffs. The Authority would like to complete the process of determination of tariff before the period for levy of such tariff begins.

2.8 The Authority has issued certain additional guidelines / Orders to provide for a consistent mechanism of handling specific regulatory issues. For instance, the Order from the Authority on Normative Costs to be considered for capital expenditure incurred by airports provides a reference to all airport operators on the range of capital expenditure likely to be considered by the Authority while determining permissible Regulatory Asset Base for expansions / modernizations or related capital expenditure. Similarly the Authority issued consistent rates of depreciation for typical airport assets to be considered for determination of tariff for aeronautical services.

2.9 With the above background, the Authority is keen to conduct a study with an objective to issue its revised Guidelines for determination of tariff for Aeronautical services for Airport Operators.

3. Scope of Work:

The study is proposed to be structured in three parts:

3.1 Analysis of existing context:

3.1.1 Analysis of existing Economic Regulatory Guidelines /Orders.

3.1.1.1 Study the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 issued vide Direction No. 05/2010-11 dated 28.02.2011.

3.1.1.2 Study the Tariff Orders issued by the Authority in respect of select airports including DIAL, MIAL, HIAL, BIAL, CIAL and a few AAI airports. The Authority encountered a range of issues while undertaking these determinations and it is keen to take these up for deliberation under this exercise. These are presented in **Annexure to TOR**.

3.1.1.3 Study the additional Orders issued by the Authority (Normative, Depreciation etc.)

3.1.1.4 Based on the above, the Consultant will compile positions adopted by the Authority against various elements of the Building Blocks for determination of tariff. The Consultant will also identify potential improvement in the process of application in terms of modifications/ simplification of forms, data requirements/ templates, standardization of elements of tariff model, and requirement of additional information such as business plan for the concerned Control Period.

3.1.1.5 Developing a standardized simplified tariff model based on the framed revised regulations/guidelines and studying the impact of revision on the various tariff components and Airport services

3.1.2 Analysis of extant legal context

3.1.2.1 Study the Orders by Courts/ Tribunals against the Tariff orders of the Authority

3.1.2.2 Study the amendment in AERA Act as approved by the cabinet/Parliament.

3.1.2.3 Identify aspects of the tariff determination getting impacted by these Orders/ Amendments.

3.1.3 In the above background and the output from the above exercise, the selected Consultant will and prepare a Draft Consultation Paper with all elements of determination of tariff for aeronautical services in respect of airport operators as well as various options on the positions to be considered by the Authority. There will be iterative discussions/consultations with Authority in preparing the Draft Consultation Paper. Based on the discussions/consultations with the Authority, the selected Consultant will submit the Final Consultation Paper highlighting preferred position of the Authority on various elements. This final Consultation Paper will be uploaded on the AERA's website for consultation and seeking comments/views from the stakeholders.

3.2 Stakeholder consultations

3.2.1 The selected Consultant will assist the Authority in conducting stakeholder consultation and analyse the various suggestions/comments made by the stakeholders. The Authority will organize the consultation meeting under its auspices and at its expense.

3.2.2 The selected Consultant will assist the Authority in analyzing/examining the inputs/comments received from the stakeholders on the Consultation Paper. Through a process of iterative consultations with the Authority, the selected Consultant will compile all the comments/inputs received from stakeholders and assist the Authority in finalizing its positions on the comments.

3.3 Finalization of the Revised Guidelines:

3.3.1 Having finalized the positions of the Authority, the selected Consultant will assist it in drafting them in the form of legally binding Revised Order/Guidelines for implementation and enforcement. The selected Consultant shall ensure that these provisions of the Guidelines are in line with the legal framework as well as international best practices.

3.3.2 Drafting of these Guidelines should help the Authority to address the issues highlighted in the **Annexure** to this TOR in terms of tariff application/determination process.

4. Post finalization of the Guidelines Assistance:

4.1 Post finalization and notification of the Revised Regulations / Guidelines, the Selected Applicant shall assist AERA in resolving queries/issues received from various sources, interpretations

of the modifications, clarifications required related to processing of the tariff proposals wherever required by AERA and other related support services as per requirement of the AERA for a period of **one year** from the date of notification of the Revised Guidelines.

4.2 The Selected Applicant shall assist AERA in all the matters relating to ‘Appeals’ and ‘Legal Cases’ filed against the AERA to the extent of the scope of work under this RFP. The selected Applicant shall submit a written undertaking (to be furnished on Rs.100/- Non-Judicial stamp paper) to AERA that they shall assist AERA in any litigation arising thereof with respect to this assignment in future.

5. Deliverables and Payment Schedule:

In pursuance of this TOR, the selected Consultant shall undertake/deliver the deliverables (the “**Deliverables**”) during the course of this Consultancy as per Clause 4 of this RFP for both the Assignments. The Selected consultant shall be paid professional fees for the services rendered as per the same schedule mentioned at Clause 4.

6. Completion of Services

6.1 All the Deliverables shall be compiled, classified and submitted by the selected Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the selected Consultant is required to submit two hard copies of the reports of each Deliverables.

6.2 The documents comprising the Deliverables shall remain the property of AERA and shall not be used by the selected Consultant for any purpose other than that intended under these Terms of Reference without the permission of AERA.

6.3 Each Deliverable of the Consultancy shall stand completed on acceptance communicated to the selected Consultant in writing by AERA. The selected Consultant is not entitled to any payment of the milestones of Deliverables unless the Deliverable is accepted by AERA in writing. Further, AERA may seek clarifications/queries with respect to the Deliverables, which shall be addressed by the selected Consultant within the timelines stipulated by AERA.

6.4 The period of consultancy services shall not be more than **04 (four) months** from the date of LOA for the finalization/ issue of the Revised Guidelines which shall be completed within the stipulated period plus a period of 01 (one) year for ‘Post finalization of the Guidelines Assistance’ from the date of notification of the Revised Guidelines.

6.5 AERA reserves the right to extend the period of Consultancy beyond the period of **04 (four) months** for finalization/issue of the Revised Guidelines at its own discretion in case assignment is not completed without any financial implication to AERA.

Annexure

List of issues encountered by the Authority while determining tariff for Major Airports

1. UDF issue considering the definition of DF as per Aircraft Rules, AAI Act, 1994 and AERA Act, 2008.
2. Service Quality Intervention linked to Performance Standards.

3. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service providers/Aeronautical stakeholder.
4. Treatment to subsidiary companies (100% owned) of the Airport Operator for determination of tariff in the respective field. Arrangements between Airport Operators and Subsidiary/Joint Venture companies and treatment of revenues from such contracts thereof.
5. Return on equity to Airport Operator during construction period/development stage.
6. Setting norms for debt rates for varied Airport Operators.
7. Clarity on Tax implication on 30% Non-Aeronautical revenue cross subsidy.
8. Concept of Base Airports Charges for airports other than Delhi and Mumbai.
9. Defined clarity on 'Pass Through' of expenditure and rationale such as high rentals, revenue sharing etc.
10. Treatment of expenditure on fees paid towards Consultancy, Legal etc.
11. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service Providers/other agencies at airports.
12. Treatment of Revenue share Assets, Late stage capex and equity lock in.
13. Manner of evaluating the efficiency of expenditure incurred by Airport Operator considering the results of the study conducted by AERA.
14. Funding requirements for Airport Projects and Operator responsibilities.
15. Clarity on manner of treatment of certain items of income such as Interest Income, Income earned from Non-Airport related Operations.
16. Treatment of Refundable Security Deposits (RSD) received by Airport Operators from ISPs, Commercial contracts etc. Similarly treatment of RSD given by ISPs to Airport Operator and any return arising thereof to them.
17. Examining the principles of allocating the Annual Revenue Requirement to various chargeable components including the proportion of recovery from passengers through UDF and other chargeable components of tariff from airlines/other stakeholder.
18. Addressing the requirement of differential tariff for non-peak hours and other tariff related flexibilities that are required for the Airport Operators for increasing the utilization and efficiency in the use of Airport infrastructure.
19. Consider the tariff related matters dealt with in the Model concessionaire agreement for the recent round of Airport privatization.
20. Treatment of Non-Airport related revenues, assets and investments in the tariff determination process.
21. Concession agreement between Airport Operator and the ISP, the rates agreed, and manner of treatment of such costs. AERA to determine tariff as per its own regulatory philosophy irrespective of the rates agreed between Airport Operators in the concession agreement between them.
22. Review of the existing provisions in Guidelines regarding time line for submission of proposal and penal provisions for Airport Operators/ISPs.
23. Suggest measures to incentivize on account of Efficiency of operations towards O & M cost, Utility expenses, R & M expenses, Employees cost, cost of debt etc.
24. Devising standard templates for airports tariff.
25. Apart from above, any other issue as communicated/discussed with the selected applicant in future.

TERMS OF REFERENCE FOR ASSIGNMENT - B:

B. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Independent Service Providers at major airports

1. General

1.1 The Parliament of India, enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the ‘Act’). The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the ‘AERA’) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came in to force w.e.f. 1st September 2009.

1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in Section 13 of the Act, which are as below:-

VI. determine the tariff for aeronautical services taking into consideration –

- h) the capital expenditure incurred and timely investment in the improvement of airport facilities;
- i) the service provided, its quality and other relevant factors;
- j) the cost for improving efficiency;
- k) economic and viable operation of major airports;
- l) revenue received from services other than the aeronautical services;
- m) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
- n) any other factor which may be relevant for the purpose of the Act.

VII. determine the amount of the development fees;

VIII. determine the amount of the passengers’ service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;

IX. monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf;

X. call for any such information as may be necessary to determine the tariff for aeronautical services; and perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act.

1.3 Vide “The Airports Economic Regulatory Authority of India (Amendment) Act, 2019”, some amendments in the original Act have been made which are extracted below:

“ 1. 1) This Act may be called the Airports Economic Regulatory of India (Amendment) Act, 2019.

2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (appointed date by Central Government is 26.09.2019).

2. In Section 2 of the Airports Economic Regulatory Authority of India Act, 2008 (hereinafter referred to as the principal Act.) in clause (i), for the words “one and a half million’ the words “three and half million’ shall be substituted.

3. In section 13 of the principal Act, after sub-section (i), the following sub-section shall be inserted, namely:-

“(1A) Notwithstanding anything contained in sub-sections (1) and (2), the Authority shall not determine the tariff or tariff structures or the amount of development fees in respect of an airport or part thereof, if such tariff or tariff structures or the amount of development fees has been incorporated in the bidding document, which is the basis for award of operatorship of that airport:

Provided that the Authority shall be consulted in advance regarding the tariff, tariff structures or the amount of development fees which is proposed to be incorporated in the said bidding document and such tariff, tariff structures or the amount of development fees shall be notified in the Official Gazette.”

2. Background

2.1 Airport Economic Regulatory Authority (AERA) issued its Guidelines for determination of tariff for Aeronautical services for Independent Service Providers (ISPs) i.e. “Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011” vide Direction No. 04/2010-11 dated 10.01.2011. Considerable time has passed since then leading to not only a change in the context of economic regulation for airports but also an accumulation of experiences with the Authority of tariffs determined by it.

2.2 In terms of change of context, the AERA is in the process of revisiting the threshold for classification of airports in India as Major Airports from 1.5 million to 3.5 million, which brings down the number of airports under the purview of AERA. Still the airports under the purview of AERA handle passengers in the range of 3.5 million per annum to 65 million per annum. These airports are also in varied stage of development with some planning their expansions and others with recently expanded terminals. Such variation presents a wider range of business issues expected to be facing these airports and ISPs at these airports and accordingly the nature of issues to be handled while determining tariff for aeronautical services for these airports and ISPs appointed by the Airport Operators.

2.3 Government has also prescribed adoption of shared till for the purpose of determination of tariff by AERA mandating a change from the single till adopted by the Authority in its Guidelines.

2.4 In terms of experiences accumulated with the Authority, the Authority has issued its Tariff Orders for different sets of airports – DIAL and MIAL responding to the context of OMDA / SSA, HIAL and BIAL with a different context, and a set of AAI airports under Government’s control. Such varied contexts have led to slightly varied nature of treatment accorded to similar business segments (such as cargo and ground handling).

2.5 Some of the Tariff Orders from the Authority have also been appealed against. Judgments from courts/ tribunals on such appeals will need to be considered in future while determining tariff for Major Airports. Some of these judgments necessitate a revision in the positions of the Authority in concerned Tariff Orders.

2.6 The Authority also observed scenarios of likely low cash flows for airport operators/ISPs as an outcome of tariff determination process on account of multiple factors including over-recovery during earlier period and delayed determination of tariff leaving a few years for implementation of

revised tariffs. The Authority would like to complete the process of determination of tariff before the period for levy of such tariff begins.

2.7 The Authority has issued certain additional guidelines / Orders to provide for a consistent mechanism of handling specific regulatory issues. For instance, the Order from the Authority on Normative Costs to be considered for capital expenditure incurred by airports provides a reference to all airport operators on the range of capital expenditure likely to be considered by the Authority while determining permissible Regulatory Asset Base for expansions / modernizations or related capital expenditure. Similarly the Authority issued consistent rates of depreciation for typical airport assets to be considered for determination of tariff for aeronautical services. To study all these orders to see the implication on the tariff determination process of ISPs.

2.8 With the above background, the Authority is keen to conduct a study with an objective to issue its revised Guidelines for determination of tariff for Aeronautical services for Independent Service Providers (Cargo facility, Ground Handling and Supply of Fuel to the Aircraft).

3. Scope of Work:

The study is proposed to be structured in three parts:

3.1 Analysis of existing context:

3.1.1 Analysis of existing Economic Regulatory Guidelines /Orders.

3.1.1.1 Study the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 issued vide Direction No. 05/2010-11 dated 28.02.2011.

3.1.1.2 Study the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for services provided for Cargo Facility ,Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011 issued vide Direction No. 04/2010-11 dated 10.01.2011

3.1.1.2.1 Review of Materiality aspect, competition aspect and Reasonableness of user agreements with reference to light touch approach.

3.1.1.2.2 Examine the need for framing the separate Guidelines for courier service.

3.1.1.3 Study the Tariff Orders issued by the Authority in respect of select airports including DIAL, MIAL, HIAL, BIAL, CIAL and a few AAI airports. The Authority encountered a range of issues while undertaking these determinations and it is keen to take these up for deliberation under this exercise. These are presented in **Annexure** to TOR.

3.1.1.4 Study the additional Orders issued by the Authority (Normative, Depreciation etc.)

3.1.1.5 Based on the above, the Consultant will compile positions adopted by the Authority against various elements of the Building Blocks for determination of tariff. The Consultant will also identify potential improvement in the process of application in terms of simplification of forms, data requirements/ templates, standardization of elements of tariff model, and requirement of additional information such as business plan for the concerned Control Period.

3.1.1.6 Developing a standardized simplified tariff model based on the framed revised regulations/guidelines and studying the impact of revision on the various tariff components and Airport services

3.1.2 Analysis of extant legal context

3.1.2.1 Study the Orders by Courts/ Tribunals against the Tariff orders of the Authority

3.1.2.2 Study the amendment in AERA Act as approved by the cabinet/Parliament.

3.1.2.3 Identify aspects of the tariff determination getting impacted by these Orders/ Amendments.

3.1.3 In the above background and the output from the above exercise, the selected Consultant will prepare a Draft Consultation Paper with all elements of determination of tariff for aeronautical services in respect of Independent Service Providers as well as various options on the positions to be considered by the Authority. There will be iterative discussions/consultations with Authority in preparing the Draft Consultation Paper. Based on the discussions/consultations with the Authority, the selected Consultant will submit the Final Consultation Paper highlighting preferred position of the Authority on various elements. This final Consultation Paper will be uploaded on the AERA's website for consultation and seeking comments/views from the stakeholders.

3.2 Stakeholder consultations:

3.2.1 The selected Consultant will assist the Authority in conducting stakeholder consultation and analyse the various suggestions/comments made by the stakeholders. The Authority will organize the consultation meeting under its auspices and at its expense.

3.2.2 The selected Consultant will assist the Authority in analyzing/examining the inputs/comments received from the stakeholders on the Consultation Paper. Through a process of iterative consultations with the Authority, the selected Consultant will compile all the comments/inputs received from stakeholders and assist the Authority in finalizing its positions on the comments.

3.3 Finalization of the Revised Guidelines:

3.3.1 Having finalized the positions of the Authority, the selected Consultant will assist it in drafting them in the form of legally binding Revised Order/Guidelines for implementation and enforcement. The selected Consultant shall ensure that these provisions of the Guidelines are in line with the legal framework as well as international best practices.

3.3.2 Drafting of these Guidelines should help the Authority to address the issues highlighted in the **Annexure** in terms of tariff application/determination process.

4. Post finalization of the Guidelines Assistance:

4.1 Post finalization and notification of the Revised Order / Guidelines, the Selected Applicant shall assist AERA in resolving queries received from various sources, interpretations of the modifications, clarifications required related to processing of the tariff proposals wherever required by AERA and other related support services as per requirement of the AERA for a period of **one year** from the date of notification of the Revised Guidelines.

4.2 The Selected Applicant shall assist AERA in all the matters relating to 'Appeals' and 'Legal Cases' filed against the AERA to the extent of the scope of work under this RFP. The selected

Applicant shall submit a written undertaking (to be furnished on Rs.100/- Non-Judicial stamp paper) to AERA that they shall assist AERA in any litigation arising thereof with respect to this assignment in future.

5. Deliverables and Payment Schedule:

In pursuance of this TOR, the selected Consultant shall undertake/deliver the deliverables (the “**Deliverables**”) during the course of this Consultancy as per Clause 4 of this RFP for both the Assignments. The Selected consultant shall be paid professional fees for the services rendered as per the same schedule mentioned at Clause 4.

6. Completion of Services

6.1 All the Deliverables shall be compiled, classified and submitted by the selected Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the selected Consultant is required to submit two hard copies of the reports of each Deliverables.

6.2 The documents comprising the Deliverables shall remain the property of AERA and shall not be used by the selected Consultant for any purpose other than that intended under these Terms of Reference without the permission of AERA.

6.3 Each Deliverable of the Consultancy shall stand completed on acceptance communicated to the selected Consultant in writing by AERA. The selected Consultant is not entitled to any payment of the milestones of Deliverables unless the Deliverable is accepted by AERA in writing. Further, AERA may seek clarifications/queries with respect to the Deliverables, which shall be addressed by the selected Consultant within the timelines stipulated by AERA

6.4 The period of consultancy services shall not be more than **04 (four) months** from the date of LOA for the finalization/ issue of the Revised Guidelines which shall be completed within the stipulated period plus a period of 01 (one) year for ‘**Post finalization of the Guidelines Assistance**’ from the date of notification of the Revised Guidelines.

6.5 AERA reserves the right to extend the period of Consultancy beyond the period of **04 (four) months** for finalization/ issue of the Revised Guidelines, in its own discretion without any financial implication to AERA.

Annexure

List of issues encountered by the Authority while determining tariff for Major Airports:

1. Service Quality Intervention linked to Performance Standards.
2. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service providers/Aeronautical stakeholder.
3. Treatment to subsidiary companies (100% owned) of the Airport Operator for determination of tariff in the respective field. Arrangements between Airport Operators and Subsidiary/Joint Venture companies and treatment of revenues from such contracts thereof.
4. Return on equity during construction period/development stage.
5. Setting norms for debt rates.
6. Some of the ISPs have approached AERA that their services are low asset based and mainly manpower oriented hence examining return on RAB under light touch approach become

irrelevant in their cases. Under this situation whether the Authority may devise any alternative way to examine returns based on capital employed or profit margins for regulation of tariff.

7. Clarity on Tax implication on 30% Non-Aeronautical revenue cross subsidy.
8. Listing the type of aeronautical services to lay out a model tariff plan for ISP's like Cargo/Ground Handling/Fuel Supply.
9. Defined clarity on 'Pass Through' of expenditure and rationale such as high rentals, revenue sharing etc.
10. Treatment of expenditure on fees paid towards Consultancy, Legal etc.
11. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service Providers/other agencies at airports.
12. Treatment of Revenue share Assets, Late stage capex and equity lock in.
13. Clarity on manner of treatment of certain items of income such as Interest Income, Income earned from Non-Airport related Operations.
14. Treatment of Refundable Security Deposits (RSD) received by Airport Operators from ISPs, Commercial contracts etc. Similarly treatment of RSD given by ISPs to Airport Operator and any return arising thereof to them.
15. Addressing the requirement of differential tariff for non-peak hours and other tariff related flexibilities that are required for the Airport Operators/ISPs for increasing the utilization and efficiency in the use of infrastructure.
16. Consider the tariff related matters dealt with in the Model concessionaire agreement for the recent round of Airport privatization.
17. Treatment of Non-Airport related revenues, assets and investments in the tariff determination process.
18. Review and Application of the Order No. 01/2018-19 dated 05.04.2018 on capping of the amount of Royalty/license fee/ Revenue share payable to Airport Operator as a 'Pass Through' expenditure for Independent Service Providers for Cargo facility, Ground Handling service and supply of fuel to the Aircrafts under light touch approach also wherever the Authority feels necessary (in cases with high revenue shares).
19. AERA's approach and entitlements under Light Touch Approach, – need for intrusive reviews such as review of financials, margins, growth of profits, ARR, Return on RAB, etc. while dealing the cases of Independent Service Providers to ensure that super profits do not accrue to the Service Provider and ultimate customer is not burdened with higher tariff(s).
20. Concession agreement between Airport Operator and the ISP, the rates agreed, and manner of treatment of such costs. AERA to determine tariff as per its own regulatory philosophy irrespective of the rates agreed between Airport Operators in the concession agreement between them. Some of the Airport Operators are mentioning ceiling rates also in the concession agreement with the ISPs and linking the ceiling rates with the rates to be determined by AERA. The selected Applicant to examine this aspect and stipulate appropriate clause(s) in the Guidelines to check such practice.
21. Devising the uniform pattern of tariff(s) in the Tariff Card / standard templates for the ISPs providing services for Cargo facility, Ground Handling and Supply of Fuel to the Aircraft.
22. Review of the existing provisions in Guidelines regarding time line for submission of proposal and penal provisions for Airport Operators/ISPs.
23. AERA is also determining aeronautical tariffs in respect of some of the ISPs under Price Cap Approach in terms of the CGF Guidelines or any other ground hence various factors/issues observed while determining tariffs in r/o Airport Operators, also need to be examined while finalizing the Guidelines for determination of tariffs for ISPs under Cost Plus approach.

24. Suggest measures to incentivize on account of Efficiency of operations towards O & M cost, Utility expenses, R & M expenses, Employees cost, cost of debt etc.
25. Apart from above, any other issues as communicated/discussed with the selected applicant in future.

SCHEDULE-II
(See Clause 2.9)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.9 of the RFP and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a ‘conflict of interest’ situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
3. ‘Conflict of Interest’ may arise between AERA and a Consultant or between Consultants and present or future Concessionaires/ Contractors. Some of the situations that would involve ‘conflict of interest’ are identified below:
 - (a) Consultants and Concessionaires/Contractors:
 - (i) No Consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential Concessionaire/ Contractor save and except relationships restricted to project-specific and short-term assignments;
 - (ii) No Consultant should be involved in owning or operating entities resulting from the project; and
 - (iii) No Consultant should bid for works arising from the Project.

The participation of companies that may be involved as investors or consumers and officials of AERA who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify ‘conflict of interest’ is through self-declaration by Consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of AERA. All conflicts must be declared as and when the Consultants become aware of them.
5. Another approach towards avoiding a ‘conflict of interest’ is through the use of “Chinese Walls” to avoid the flow of commercially sensitive information from one part of the Consultant’s Company to another. This could help overcome the problem of availability of limited numbers of experts for the Project. However, in reality, effective operation of “Chinese Walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting ‘Chinese Walls’ approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding ‘conflicts of interest’ and should be considered with caution. As a rule, “Chinese Walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a Consultant coupled with provision of safeguards to the satisfaction of AERA.
6. Another way to avoid ‘conflict of interest’ is through the appropriate grouping of tasks. For example, conflicts may arise if Consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.

7. Another form of ‘conflict of interest’ called “scope-creep” arises when Consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of AERA but which will generate further work for the Consultants. Some forms of contractual arrangements are more likely to lead to “scope-creep.” For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built-in incentives for Consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to AERA at the earliest. Officials of AERA involved in the development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

APPENDICES
TECHNICAL BID

Form - 1

(On Applicant's letter head)
(Date and Reference)

To,

Sub: Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports.

-Assignment(s) applied for:

A	
B	

*Pl tick whichever is applicable

Dear Sir,

With reference to your RFP document dated.....,I/we, having examined all relevant documents and understood their contents, hereby submit our proposal for selection as Consultant for Assistance to Airports Economic Regulatory Authority of India (AERA) for **Review of Regulatory Philosophy and Approach in economic regulation: Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports** and declare as follows:

1. I, [Name], [Designation], of [Name of the Company], a company incorporated under the Companies Act, 1956/2013, having its CIN [●] and registered office at [●], am a duly authorized representative/signatory of [Name of the Company], authorized vide Board Resolution dated [●] to submit the Proposal in the subject matter for and on behalf of the [Name of the Company].

or

I, [Name], [Designation] of [Name of the Partnership Firm], a Partnership firm, registered under the Indian Partnership Act, 1932 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at [●] and having Registration No.[●]dated[●], am a duly authorized representative/signatory of [Name of the Partnership Firm] to submit the Proposal in the subject matter for and on behalf of the [Name of the Partnership Firm].

or

I, [Name], [Designation] of [Name of the Partnership Firm], a Partnership firm, registered under the Limited Liability Partnership Act, 2008 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at [●]and having Registration No. [●]dated[●], am a duly authorized representative/signatory of [Name of the LLP] to submit the Proposal in the subject matter for and on behalf of the [Name of the LLP].

or

I, [Name], am acting as the sole proprietor of the proprietary firm carrying on its business under the name and style as hereinbefore mentioned and having its principal office at [●].

2. Review of Regulatory Philosophy and Approach in economic regulation: **Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports.** The proposal is unconditional and unqualified.
3. I/We acknowledge that the AERA will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the proposal and in the Appendices is true and correct, nothing has been omitted which renders such information misleading and all documents accompanying such proposal are true copies of their respective originals.
4. This statement is made for the express purpose of appointment as the Consultant for the aforesaid assignment.
5. I/We shall make available to the AERA any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
6. I/We acknowledge the right of the AERA to reject our proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
7. I/We certify that in the last three years, we 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 Applicant, nor been expelled from any assignment or contract nor have had any contract terminated for breach on our part.
8. I/We declare that:
 - I/We have examined and have no reservations against the RFP Documents, including any Addendum issued by the AERA;
 - I/We do not have any 'conflict of interest' in accordance with Clause 2.9 of the RFP Document;
 - 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, in respect of any tender or request for proposal issued by or any agreement entered into with the AERA or any other public sector enterprise or any government, Central or State; and,
 - I/We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
9. I/We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with Clause 7.1 of the RFP document.
10. I/We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.

12. I/We further certify that no investigation by a regulatory authority is pending either against us or Associates or against our CEO/Applicant/Partner/Directors.
13. 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 AERA in connection with the selection of Consultant or in connection with the selection process itself in respect of the above mentioned assignment.
14. The **EMD of Rs.3,00,000/- (Rupees Three Lakhs only)** in the form of a Demand Draft, from a Nationalized/Scheduled Bank in India, is attached, in accordance with the RFP document.
15. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the assignment is not awarded to me/us or our proposal is not opened or rejected.
16. I/We agree to keep this offer valid for 90 (ninety) days from the proposal due date as per Clause 1.4 of the RFP.
17. A Power of Attorney in favour of the Authorized Signatory to sign and submit this proposal and documents is attached herewith in Form 4.
18. In the event of my firm/ company/ corporation being selected as the Consultant, I/we agree to enter into an Agreement with AERA for carrying out the assignment as set out in the RFP.
19. The Financial Bid is being submitted in a separate cover(s). This Technical Bid read with the Financial Bid(s) shall constitute the Application which shall be binding on us.
20. I/We understand that in the event of my/our qualifying for more than one assignment (refer clause 3.3.3) my order of preference for further evaluation as per terms of this RFP is as given below:

Order of Preference	Assignment(s)
I	
II	

21. I/We have studied RFP carefully and understand that except to the extent as expressly set forth in the RFP we shall have no claim, right or title arising out of any documents or information provided to us by AERA or in respect of any matter arising out of or concerning or relating to the selection process including the award of Consultancy.
22. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)
(Name and seal of the Applicant)

*In case the Applicant is unable to provide the certification specified in point 10, it may precede the paragraph by the words viz. “Except as specified in Schedulehereto”. The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. AERA will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Applicant for pre-qualification hereunder.

NOTE: Those Applicants who have submitted their bids (Technical and Financial) for these assignments against RFP No.02/2019-20 dated 28.11.2019, will have option either to retain their old bids already submitted or submit fresh bids against RFP No 05/2019-20 dated 18.02.2020. In case the applicants who had applied against RFP No. 02/2019-20 dated 28.11.2019, opt to retain their old bids i.e. technical and financial or anyone of them, they will have to exercise their option in writing (by the Authorized Signatory) before the proposal due date/time of RFP No. 05/2019-20 dated 18.02.2020 and in such case also extend the validity of their old proposals to coterminate with the validity of the current RFP (RFP No. 05/2019-20).However EMD has to be resubmitted as per terms and conditions of this RFP.

Particulars of the Applicant

1.1	Title of Consultancy: Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports.
1.2	State whether applying as a Sole Proprietorship Firm or Partnership Firm or LLP or Company and provide details of the relevant authorization
1.3	State the following:- Name of the Sole Proprietorship Firm or Partnership Firm or LLP or Company Country of incorporation: Registered address: Year of Incorporation: Year of commencement of business: Principal place of business: Whether the company is in the business of consultancy if yes please specify duration/period: Brief description of the Company including details of its main lines of business:- Name, designation, address and phone number of Authorized Signatory of the Applicant: Name: Designation: Company: Address: Phone No.: Fax No.: E-mail address:
1.4	For the Applicant, state the following information: (i) In case of non-Indian Firm, does the Firm have business presence in India? Yes/No If yes, provide the office address(es) in India. (ii) Has the Applicant been penalized by any organization for poor quality of work or breach of contract in the last five years? Yes/No (iii) Has the Applicant ever failed to complete any work awarded to it by any public authority/ entity in last five years? Yes/No (iv) Has the Applicant or any of its Associates been blacklisted by any Government department/Public Sector Undertaking in the last five years? Yes/No (v) Has the Applicant or any of its Associates suffered bankruptcy/insolvency in the last five years? Yes/No Note: If the answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this consultancy assignment.
1.5	[Signature, name and designation of the Authorised Signatory] For and on behalf of

Statement of Legal Capacity
(To be forwarded on the letter head of the Applicant)

Ref. Date:
To,

Dear Sir,

Sub: Review of Regulatory Philosophy and Approach in economic regulation: Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports.

I/We hereby confirm that we, the Applicant, satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that (insert individual's name) will act as our Authorized Representative/will act as the Authorized Representatives of the sole firm/Company on our behalf and has been duly authorized to submit our Proposal.

Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)
For and on behalf of

Power of Attorney

Know all men by these presents, we,(name of firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr/Ms.....son/daughter/wife and presently residing at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the “**Authorized Representatives**”) to do in our name and our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to the submission of our Proposal for selection as the Consultant to ‘**assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports**, including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/responses to the AERA, representing us in all matters before the AERA, signing and execution of all contracts and undertakings/declarations consequent to acceptance of our proposal and generally dealing with the AERA in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the execution of appropriate Agreement/s with the AERA.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representatives pursuant to and in exercise of the powers conferred by the instant deed of Power of Attorney and that all acts, deeds and things done by our said Authorized Representative in exercise of the powers hereby conferred 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)

Witnesses :

- 1.
- 2.

Notarised

Accepted

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

Notes:

The mode of execution of the Powers of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 50 and duly notarized by a notary public.

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

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

Financial Capacity of the Applicant
(Refer Clause 2.6.1(c))

S. No.	Financial Year	Professional Fees from Consultancy Services (Figures in INR)
1		
2		
3		

Certificate from the Statutory Auditor

This is to certify that (Name of the Applicant) had a turnover, as shown above, against the respective years on account of professional fees for providing advisory or consultancy to its clients.

Name of the Authorized Signatory:

Designation:

Name of the Audit firm:

(Signature of the Authorized Signatory of the Statutory Auditor)
Seal of the Firm

Note:

- ❖ Please do not attach any printed Annual Financial Statement.
- ❖ In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

PARTICULARS OF KEY PERSONNEL

1. Particulars of Aviation Expert

S. No.	Whether Employee or Consultant.	Name	Educational Qualification	Length of Professional Experience	Name of the Organization of employment of Aviation Expert	Employed Since	Experience in eligible assignments	Proposed Deployment of the Aviation Expert in the Current Assignment
1								

2. Particulars of Key Personnel

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Name of Firm	Employed Since	Experience in eligible assignments	Proposed Deployment of the Key Personnel in the Current Assignment
1								
2								
3								

Proposed Methodology and Work Plan

The proposed methodology and work plan shall be described as follows:

1. Understanding of Assignment / Project (not more than two pages)

The Applicant shall clearly state its understanding of the Assignments / Projects and also highlight its important aspects. The Applicant may supplement various requirements of the assignments/projects and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the assignments/projects.

2. Methodology and Work Plan (not more than three pages)

The Applicant will submit its methodology for carrying out this assignment, outlining its approach toward achieving the objectives of the assignment. The Applicant will submit a brief write up on its proposed team and organization of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. The Applicant should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

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

Experience of the Applicant
(Refer Clause 2.6.1(a))

S.No.	Name/Details of the Assignments (providing the scope of work conducted)	Year of Assignment
1		
2		

Experience of Key Personnel

[Refer to Clause 2.6]

Name and experience of the Key Personnel:

Designation:

S.No.	Name of the Project / Assignment	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the project	Date of Completion of project assignment	Man days spent
1					
2					
3					
4					
5					
6					
7					
8					

Note: Use separate Form for the Team Leader and each of the Sector Experts.

Curriculum Vitae (CV) of Key Personnel (i.e. Team Leader and Minimum 3 Sector Experts)

[Refer to Clause 2.6]

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:
(Starting with present position, list in reverse order every employment held.)
7. List of projects on which the Personnel has worked-
Project Name Description of assignment performed
8. Details of the current assignment and the time duration for which services are required for the current assignment.

Certification:

1. I am willing to work on the assignment/ project and I will be available for the entire duration of the Consultancy assignment as required.
2. I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.
3. I shall maintain full confidentiality with respect to the material, information, document, etc. as may be made available to me during the proposed assignment.

(Signature and name of the Professional)
Place.....

(Signature and name of the Authorised Signatory of the Applicant)

Note:

1. Use separate form for each Key Personnel.
2. Each page of the CV shall be signed in ink by the Personnel concerned and by the Authorized Representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.

**FINANCIAL BID
Covering Letter**
(On Applicant's letter head)

(Date and Reference)

To,

Dear Sir,

Sub: RFP No. 05/2019-20 for Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports.

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

I/We agree that this offer shall remain valid for a period of 90 (ninety) days from the proposal due date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)

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

RFP No. 05/2019-20 for Review of Regulatory Philosophy and Approach in economic regulation: Revision of the Guidelines for Determination of tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports.

FORMAT FOR FEE QUOTE

Assignment Number	Name of the Assignment	Amount in Rs. (in numbers) (Excluding applicable taxes and levies).	Amount in Rs. (in words) (Excluding applicable taxes and levies).
A			
B			
Grand Total			
Less discount offered			
Net Amount			

(To be signed by the authorized signatory)

NAME & DESIGNATION

Note 1: Separate Financials bids are to be submitted for each assignment in separate covers.

NOTE 2: Those Applicants who have submitted their bids (Technical and Financial) for these assignments against RFP No.02/2019-20 dated 28.11.2019, will have option either to retain their old bids already submitted or submit fresh bids against RFP No 05/2019-20 dated 18.02.2020. In case the applicants who had applied against RFP No. 02/2019-20 dated 28.11.2019, opt to retain their old bids i.e. technical and financial or anyone of them, they will have to exercise their option in writing (by the Authorized Signatory) before the proposal due date/time of RFP No. 05/2019-20 dated 18.02.2020 and in such case also extend the validity of their old proposals to coterminate with the validity of the current RFP (RFP No. 05/2019-20).However EMD has to be resubmitted as per terms and conditions of this RFP.

AGREEMENT

Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Reviewing Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at Major Airports

AGREEMENT No. _____

This agreement (hereinafter called the “**Agreement**”) is made on the _____ of the month of _____ 2019, between, on the one hand, the Deputy Chief, Airports Economic Regulatory Authority of India (hereinafter called the “**Authority**” or “**AERA**”, which expression shall, include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “**Consultant**”, which expression shall, include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal (RFP No. 05/2019-20 (“**RFP**”) for Appointment of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in **Reviewing Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports** (hereinafter called the “**Consultancy**”) invited proposals from applicants possessing the requisite experience and capabilities required for undertaking this consultancy;
- (B) The Consultant submitted its proposal for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposal the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP read together with the clarifications issued by the Authority and this Agreement;
- (C) The Authority, on acceptance of the aforesaid proposal of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated _____ (the “**LOA**”); and
- (D) In pursuance of the **LOA**, the parties have agreed to enter into this Agreement. NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

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

- (a) “**Agreement**” means this Agreement, together with all the Annexures;

- (b) **“Agreement Value”** shall have the meaning set forth in Clause 6.1;
- (c) **“Applicable Laws”** means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (d) **“Confidential Information”** shall have the meaning set forth in Clause 3.3;
- (e) **“Conflict of Interest”** shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (f) **“Dispute”** shall have the meaning set forth in Clause 9.2.1;
- (g) **“Effective Date”** means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) **“Government”** means the Government of India.
- (i) **“INR, Re. or Rs.”** means Indian Rupees;
- (j) **“Party” or “Parties”** means the Authority or the Consultant, individual and collectively means Parties;
- (k) **“Key Personnel”** means the Team Leader and Sector Experts read with the provisions of Clause 2.6.1 of the RFP;
- (l) **“RFP”** means the Request for Proposal (**RFP**) **No.05/2019-20** document in response to which the Consultant’s proposal for providing Services was accepted;
- (m) **“Services”** means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (n) **“Sector Experts”** means the personnel who will bring in experience, particularly in the field of Regulatory Philosophy– tariffs, Aviation, Financial Analysis, Legal issues;
- (o) **“Team Leader”** means the personnel who will lead, co-ordinate and supervise the team for the Consultancy and shall be responsible for the timely, efficient and satisfactory delivery of services in relation to the Consultancy; and

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

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

- (a) Agreement;
- (b) Annexures of Agreement;
- (c) RFP and clarifications issued by the Authority pursuant thereof; and
- (d) Letter of Award

1.2 Relation between the Parties

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

1.3 Rights and obligations

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

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

1.4 Governing law and jurisdiction

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

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- (a) in the case of the Consultant, be given by email and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.9 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside India specified in Sub clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or email to the number/ address as the Consultant may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by email and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.9 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city (Delhi) as the Authority's office, it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal

course of post it ought to have been delivered. It shall be deemed to have been delivered on the actual date and time of the delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed, delivered at the offices of the Authority or any other place of the Authority as required, in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Authorized Representatives

1.9.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.9.

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

Director (P & S)

Airports Economic Regulatory Authority of India

AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi- 110003
Tel: +91 11 24695048
Fax: +91 11 24695039

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

1.10 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay statutory taxes as may be levied under the Applicable Laws and the Authority shall pay the same to the Consultant as per actuals.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect from the date of LOA (the "**Effective Date**").

2.2 Commencement of Services

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

2.3 Termination of Agreement for failure to Commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4 Validity of Agreement

Unless terminated earlier pursuant to Clause 2.9 hereof, the agreement shall be valid for a period of **16 months** (4 months for completion of the assignment + 01 year assistance period on Guidelines after notification of the Order/Direction for notification of the Revised Guidelines) from the date of LOA. However, AERA reserves the right to extend the period at its own discretion without any financial implication to AERA.

2.5 Entire Agreement

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

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

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

- (b) Without prejudice to the generality of clause (a) above, it is specifically clarified that Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 7 (seven) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 Extension of time/Termination of Services

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

Not later than fifteen (15) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Authority will be at liberty to terminate the Agreement and award the same to another party.

2.7.5 Payments

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

2.7.6 Consultation

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

2.8 Suspension of Agreement

Notwithstanding any other clause in this Agreement, the Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 30 (thirty) days;
- (g) a situation of conflict of interest as set out in Clause 2.9 of the RFP and Clause 3.2 of this Agreement;
- (h) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

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

- (a) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach in question, the manner in which such breach has affected the performance of the Services of the Consultant under this Agreement and the action required from the Authority with regard to such breach;
- (c) as the result of the Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner without causing any detrimental effect to the work/ service in question and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof. Further, the Consultant agrees to render all assistance to the Authority in this regard.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the necessary payments to the Consultant after offsetting against these payments any amount that may be due from the Consultant to the Authority having due regard to the completed milestones or deliverable by the Consultant.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award. However, the provisions of this Clause 2.9.6 will not affect the right of the Authority to initiate the process for fresh award of this Agreement or to award this Agreement to some other Consultant.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

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

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant is specified in the Terms of Reference (the "TOR") at **Annexure-I** of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that the Key Personnel of the Consultant comply with the Applicable Laws.

3.1.4 Indemnity

The Consultant shall, subject to the provisions of this Agreement, indemnify AERA, for an amount not exceeding value of the Agreement, for any direct or indirect loss or damage that is caused due to any deficiency in Services.

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement making this Agreement liable to termination at the behest of the Authority.

3.2.2 Prohibition of conflicting activities

Clause 2.9 of the RFP may be referred for further details on conflict of interest.

Note: Decision of the Authority on defining any activity as breach of Agreement, and/ or conflict of interest shall be final and binding on the consultant.

3.2.3 Consultant not to benefit from commissions discounts, etc.

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

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

3.2.5 Without prejudice to the rights of the Authority under Clause 3.2.4 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.6 For the purposes of Clauses 3.2.4 and 3.2.5, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) "**corrupt practice**" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser 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, in order to influence the Selection Process;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- (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 Selection Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant and its Key Personnel shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Key Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement ("**Confidential Information**"), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, its Key Personnel or either of them may disclose, with prior written approval of the Authority, Confidential Information to the extent that such Confidential Information:

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

Subject to the confidentiality obligations above, the Consultant shall be allowed to use this

engagement as an experience citation with other clients.

3.4 Liability of the Consultant

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3 The Parties hereto agree that in case of delay, error, variation, negligence or willful misconduct on the part of the Consultant or Key Personnel or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall be liable to the Authority not exceeding an amount equal to 1% (one percent) of the total value of the Contract per week, subject to a maximum of 10% (ten percent) of the total value of the Contract. AERA will take into consideration the reasons for delay, error or variation, if any, while imposing liquidated damages on the selected applicant. However, in the event of delay caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of Liquidate Damages/ Compensation for Delay.
- 3.4.4 In addition to the above Clause 3.3.3, the Consultant may be censured and/ or debarred for deficiencies on its part in completion of the consultancy assignment.

3.5 Consultant's actions requiring the Authority's prior approval

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

- (a) Appointing such members of the professional Key Personnel as are not listed in Annexure-II; or
- (b) Any other action that is specified in this Agreement.

3.6 Reporting obligations

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

3.7 Documents prepared by the Consultant to be property of the Authority

- 3.7.1 All reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Consultant (or any Third Party) in performing the Services shall become and remain the property of the Authority, and all Intellectual Property Rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the Intellectual Property Rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.
- 3.7.2 The Consultant shall, not later than termination or expiration of this

Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant or a Third Party shall not use these Consultancy Documents for purposes not related to this Agreement without the prior written approval of the Authority.

- 3.7.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as “**Claims**”) which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.8 Materials furnished by the Authority

Materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the Authority. The Consultant would be allowed to retain a copy of its working papers to maintain a professional record of its involvement in the engagement and to comply with applicable legal and regulatory requirements. Also, it is appreciated that it may not be possible for the Consultant to permanently dispose-off all information so furnished (for instance in terms of information embodied in project related emails). In all cases, the Consultant shall be responsible for not using such information for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.9 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Consultancy, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

3.10 Providing access to the Consultant Office and Key Personnel

The Consultant shall ensure that the Authority, and, officials of the Authority having authorization from the Authority, are provided unrestricted access to the Consultant’s Office, and, to all Key Personnel during office hours. The Authority’s any such official shall have the right to inspect the Services in progress, interact with relevant Key Personnel of the Consultant and verify the record of their satisfaction.

4. CONSULTANT’S KEY PERSONNEL

4.1 General

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

4.2 Deployment of Key Personnel

The designations, names, and, other particulars of each of the Consultant's Key Personnel required in carrying out the Services are described in Annexure-II of this Agreement.

4.3 Approval of Key Personnel

4.3.1 The Key Personnel listed in Annexure-II of this Agreement are hereby approved by the Authority. No other Key Personnel shall be engaged without prior approval of the Authority.

4.4 Substitution of Key Personnel

If the Consultant hereafter proposes to engage any person as professional Key Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form 10) of the RFP. The Authority may approve or reject such proposal with 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal with 14 (fourteen) days of the date of receipt thereof under this Clause 4.4, it shall be deemed to have been approved by the Authority.

Notwithstanding the above, the Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. Since the qualifications and profile of the Key Personnel is the sole ground of consideration of this Agreement, it is agreed by the Parties that substitution of Key Personnel shall not be permitted. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to ill health, subject to equally or better qualified and experienced Key Personnel being provided to the satisfaction of AERA. Such substitution shall be limited to only one Key Personnel. AERA expects all the Key Personnel to be available during implementation of the Agreement.

Substitution of the Team Leader will normally not be considered, except in case of death or incapacitation due to accident, illness etc., and, may lead to disqualification of the Applicant or termination of the Agreement.

4.5 The Consultant shall be liable to the Authority for any costs or effect of or damage to the performance of services to the Authority or any other event of loss or damage incurred or likely to be incurred by the Authority, if any during such period of substitution of the Key Personnel, or as a result thereof.

4.6 Team Leader

The person designated as the Team Leader of the Consultant's Key Personnel shall be responsible for the coordinated, timely and efficient functioning of the Key Personnel. In addition, he shall be responsible for day to day performance of the services, as specified in Clause 2.6.1 of the RFP.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

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

- (a) provide the Consultant, its Key Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Key Personnel to perform the Services; and

- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

The Authority shall assist in arranging meetings / interactions / consultations with stakeholders, setting out the context and expectations from stakeholder. In this regard, the Authority may issue such advisories to stakeholders, as may be necessary, for provision of required data, information or responses on consultations to the Consultant.

5.2 Access to Major Airports in connection with the Services

The Authority shall make best efforts to ensure that the Consultant have access to the Major Airports **if required** for the performance of Services.

5.3 Payment

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

5.4 Change in Applicable Law

TDS on consultancy fees shall be deducted and statutory taxes shall be payable by the Authority as per the applicable laws.

6. PAYMENT TO THE CONSULTANT

6.1 Agreement Value

An abstract of the cost of the Services payable to the Consultant is set forth in Annexure-III of the Agreement. (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. _____ (Rupees _____ only).

6.2 Currency of payment

All payments shall be made in Indian Rupees.

6.3 Mode of billing and payment

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

- (a) The Consultant shall be paid for its services as per the Payment Schedule at **Annexure-IV** of this Agreement, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes to the satisfaction of the Authority the work pertaining to the preceding stage.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Consultant to be made within 21 (twenty one) days after the receipt by the Authority of duly completed bills

with necessary particulars (the “**Due Date**”).

- (c) The final payment under this Clause 6.3 shall be made only after the final deliverable (“**Deliverables**”) shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the Deliverables shall be deemed approved by the Authority as satisfactory upon expiry of 90 (ninety) days after receipt of the Deliverables by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services or the Deliverables. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections, the foregoing process shall be repeated. All the Deliverables shall be compiled, classified and submitted by the Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the Consultant is required to submit two hard copies of the reports of each Deliverables.
- (d) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of the Deliverables in accordance with Clause 6.3(c). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten percent) per annum.
- (e) Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of the Deliverables in accordance with Clause 6.3 (c).
- (f) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. PERFORMANCE GUARANTEE

7.1 Performance Guarantee

- 7.1.1 For the purposes of this Agreement, Performance Guarantee shall be deemed to be an amount equal to **10% (ten per cent) of the Agreement Value (the “Performance Guarantee”)**. The Consultant shall be required to provide a Performance Guarantee in the form of a Bank Guarantee issued by a nationalized bank or a scheduled bank in India (Bank as defined under section 2(e) of the Reserve Bank of India Act, 1934).
- 7.1.2 Notwithstanding anything to the contrary contained in Clause 7.1.1, AERA shall invoke the Performance Guarantee, to be appropriated against breach of terms and conditions of the contract in completing the task or towards any amounts as may be payable by the Consultant to AERA. Further, the Performance Guarantee shall be retained by AERA for a period of one year from the date of completion of consultancy assignment and will be released after submission of an affidavit (on non-judicial stamp paper of Rs.100/-) that they will assist AERA in ‘Appeals’ and ‘Legal Cases’ against the Orders of the Authority and to implement the Tribunal (Appellate Tribunal- TDSAT at present) Orders. The balance remaining out of the Performance Guarantee, if any, or the entire Performance

Guarantee after adjustment of Penalty, as the case may be, shall be returned to the Consultant within a period of 30 (thirty) days after the period of one year from the completion of the consultancy assignment and issuance of completion certificate by AERA to the Consultant.

For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts over and above the Performance Guarantee, AERA, without prejudice to its rights and remedies as may be available under applicable laws, may make deductions from any subsequent payments due and payable to the Consultant, hereunder, either in this agreement or any other live agreement with AERA as if it is appropriating the Performance Guarantee in accordance with the provisions of this Agreement.

7.1.3 The Consultant may, in lieu of retention of the amounts as referred above, furnish a Bank Guarantee. This will be in addition to the Performance Guarantee as referred to in Clause 7.1.1 above.

7.1.4 The Authority shall have the right to invoke and appropriate the proceeds of the Performance Guarantee without notice to the Consultant in the event of breach of this Agreement specified in this Clause 7.1.

8. LIQUIDATED DAMAGES / COMPENSATION FOR DELAY

Without prejudice to the generality of Clause 3.4, the Parties agree to the following:

8.1 LIQUIDATED DAMAGES FOR ERROR/VARIATION

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by AERA in a reasonable manner and recovered from the Consultant by way of liquidated damages. This is without prejudice to the other remedies as may be available as per applicable law. Overall LD, whether on account of delay and error / variation, shall be limited to 10% (Ten percent) of the Agreement/ Award Value.

8.2 LIQUIDATED DAMAGES FOR DELAY/ COMPENSATION FOR DELAY.

In case of delay in completion of the work as specified in the delivery schedule, the Consultant shall be liable to pay Liquidated Damages/ Compensation for Delay not exceeding an amount equal to 1% (one percent) of the total value of the Agreement, per week, subject to a maximum of 10% (ten percent) of the total value of the Agreement. AERA will take into consideration the reasons for delay, if any, while imposing Liquidated Damages on the selected Applicant. However, in the event of delay caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of Liquidity Damages/Compensation for Delay.

8.3 PENALTY FOR DEFICIENCY IN SERVICES

In addition to the Liquidated Damages listed hereinabove, as specified in Clause 8.1 and clause 8.2 above, the Consultant may be censured and/ or debarred for deficiencies on its part in completion of the consultancy assignment.

9. FAIRNESS AND GOOD FAITH

9.1 Good Faith

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

9.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

10. SETTLEMENT OF DISPUTES

10.1 Amicable settlement

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

10.2 Dispute resolution

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

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

10.3 Conciliation

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

10.4 Arbitration

10.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre

for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act,1996 read along with its Amendment in 2015. The place of such arbitration shall be the New Delhi where the Authority has its headquarters and the language of arbitration proceedings shall be English.

10.4.2 There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the “**Rules**”.

10.4.3 The Arbitral Tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.

10.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.

10.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED AND DELIVERED

For and on behalf of Consultant

SIGNED AND DELIVERED

For and on behalf of Airport Economic Regulatory Authority of India

In the presence of:

1.

2.

TERMS OF REFERENCE

Name of the Assignments:

A. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators at major airports.

B. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Independent Service Providers at major airports.

TERMS OF REFERENCE FOR ASSIGNMENT - A

A. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators at major airports.

1. General

1.1 The Parliament of India, enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the ‘Act’).The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the ‘AERA’) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came in to force w.e.f. 1stSeptember 2009.

1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in Section 13 of the Act, which are as below:-

- I. determine the tariff for aeronautical services taking into consideration –
 - a) the capital expenditure incurred and timely investment in the improvement of airport facilities;
 - b) the service provided, its quality and other relevant factors;
 - c) the cost for improving efficiency;
 - d) economic and viable operation of major airports;
 - e) revenue received from services other than the aeronautical services;
 - f) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
 - g) any other factor which may be relevant for the purpose of the Act.
- II. determine the amount of the development fees;

- III. determine the amount of the passengers' service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;
- IV. monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf;
- V. call for any such information as may be necessary to determine the tariff for aeronautical services; and perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act.

1.3 Vide "**The Airports Economic Regulatory Authority of India (Amendment) Act, 2019**", some amendments in the original Act have been made which are extracted below:

" 1. 1) This Act may be called the Airports Economic Regulatory of India (Amendment) Act, 2019.

2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (appointed date by Central Government is 26.09.2019).

2. In Section 2 of the Airports Economic Regulatory Authority of India Act, 2008 (hereinafter referred to as the principal Act.) in clause (i), for the words "one and a half million" the words "three and half million" shall be substituted.

3. In section 13 of the principal Act, after sub-section (i), the following sub-section shall be inserted, namely:-

"(1A) Notwithstanding anything contained in sub-sections (1) and (2), the Authority shall not determine the tariff or tariff structures or the amount of development fees in respect of an airport or part thereof, if such tariff or tariff structures or the amount of development fees has been incorporated in the bidding document, which is the basis for award of operatorship of that airport:

Provided that the Authority shall be consulted in advance regarding the tariff, tariff structures or the amount of development fees which is proposed to be incorporated in the said bidding document and such tariff, tariff structures or the amount of development fees shall be notified in the Official Gazette."

2. Background

2.1 Airport Economic Regulatory Authority (AERA) issued its Guidelines for determination of tariff for aeronautical services for Airport Operators i.e. "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011" vide Direction No. 05/2010-11 dated 28.02.2011. Considerable time has passed since then leading to not only a change in the context of economic regulation for airports but also an accumulation of experiences with the Authority of tariffs determined by it.

2.2 In terms of change of context, the AERA is in the process of revisiting the threshold for classification of airports in India as Major Airports from 1.5 million to 3.5 million, which brings down the number of airports under the purview of AERA. Still the airports under the purview of AERA handle passengers in the range of 3.5 million per annum to 65 million per annum. These airports are also in varied stage of development with some planning their expansions and others with recently expanded terminals. Such variation presents a wider range of business issues expected to be facing these airports and accordingly the nature of issues to be handled while determining tariff for aeronautical services for these airports.

2.3 Government has also prescribed adoption of shared till for the purpose of determination of tariff by AERA mandating a change from the single till adopted by the Authority in its Guidelines.

2.4 Context would also change with new airports likely to be bid out on the basis of pre-determined tariff, where the role of the Authority will get restricted to possibly an advisory role. The Authority would like to explore the nature of such advisory or any other role in detail.

2.5 In terms of experiences accumulated with the Authority, the Authority has issued its Tariff Orders for different sets of airports – DIAL and MIAL responding to the context of OMDA / SSA, HIAL and

BIAL with a different context, and a set of AAI airports under Government's control. Such varied contexts have led to slightly varied nature of treatment accorded to similar business segments (such as cargo and ground handling).

2.6 Some of the Tariff Orders from the Authority have also been appealed against. Judgments from courts/ tribunals on such appeals will need to be considered in future while determining tariff for Major Airports. Some of these judgments necessitate a revision in the positions of the Authority in concerned Tariff Orders.

2.7 The Authority also observed scenarios of likely low cash flows for airport operators as an outcome of tariff determination process on account of multiple factors including over-recovery during earlier period and delayed determination of tariff leaving a few years for implementation of revised tariffs. The Authority would like to complete the process of determination of tariff before the period for levy of such tariff begins.

2.8 The Authority has issued certain additional guidelines / Orders to provide for a consistent mechanism of handling specific regulatory issues. For instance, the Order from the Authority on Normative Costs to be considered for capital expenditure incurred by airports provides a reference to all airport operators on the range of capital expenditure likely to be considered by the Authority while determining permissible Regulatory Asset Base for expansions / modernizations or related capital expenditure. Similarly the Authority issued consistent rates of depreciation for typical airport assets to be considered for determination of tariff for aeronautical services.

2.9 With the above background, the Authority is keen to conduct a study with an objective to issue its revised Guidelines for determination of tariff for Aeronautical services for Airport Operators.

3. Scope of Work:

The study is proposed to be structured in three parts:

3.1 Analysis of existing context:

3.1.1 Analysis of existing Economic Regulatory Guidelines /Orders.

3.1.1.1 Study the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 issued vide Direction No. 05/2010-11 dated 28.02.2011.

3.1.1.2 Study the Tariff Orders issued by the Authority in respect of select airports including DIAL, MIAL, HIAL, BIAL, CIAL and a few AAI airports. The Authority encountered a range of issues while undertaking these determinations and it is keen to take these up for deliberation under this exercise. These are presented in **Annexure to TOR**.

3.1.1.3 Study the additional Orders issued by the Authority (Normative, Depreciation etc.)

3.1.1.4 Based on the above, the Consultant will compile positions adopted by the Authority against various elements of the Building Blocks for determination of tariff. The Consultant will also identify potential improvement in the process of application in terms of modifications/ simplification of forms, data requirements/ templates, standardization of elements of tariff model, and requirement of additional information such as business plan for the concerned Control Period.

3.1.1.5 Developing a standardized simplified tariff model based on the framed revised regulations/guidelines and studying the impact of revision on the various tariff components and Airport services

3.1.2 Analysis of extant legal context

3.1.2.1 Study the Orders by Courts/ Tribunals against the Tariff orders of the Authority

3.1.2.2 Study the amendment in AERA Act as approved by the cabinet/Parliament.

3.1.2.3 Identify aspects of the tariff determination getting impacted by these Orders/ Amendments.

3.1.3 In the above background and the output from the above exercise, the selected Consultant will and prepare a Draft Consultation Paper with all elements of determination of tariff for aeronautical services in respect of airport operators as well as various options on the positions to be considered by the Authority. There will be iterative discussions/consultations with Authority in preparing the Draft Consultation Paper. Based on the discussions/consultations with the Authority, the selected Consultant will submit the Final Consultation Paper highlighting preferred position of the Authority on various elements. This final Consultation Paper will be uploaded on the AERA's website for consultation and seeking comments/views from the stakeholders.

3.2 Stakeholder consultations

3.2.1 The selected Consultant will assist the Authority in conducting stakeholder consultation and analyse the various suggestions/comments made by the stakeholders. The Authority will organize the consultation meeting under its auspices and at its expense.

3.2.2 The selected Consultant will assist the Authority in analyzing/examining the inputs/comments received from the stakeholders on the Consultation Paper. Through a process of iterative consultations with the Authority, the selected Consultant will compile all the comments/inputs received from stakeholders and assist the Authority in finalizing its positions on the comments.

3.3 Finalization of the Revised Guidelines:

3.3.1 Having finalized the positions of the Authority, the selected Consultant will assist it in drafting them in the form of legally binding Revised Order/Guidelines for implementation and enforcement. The selected Consultant shall ensure that these provisions of the Guidelines are in line with the legal framework as well as international best practices.

3.3.2 Drafting of these Guidelines should help the Authority to address the issues highlighted in the **Annexure** to this TOR in terms of tariff application/determination process.

4. Post finalization of the Guidelines Assistance:

4.1 Post finalization and notification of the Revised Regulations / Guidelines, the Selected Applicant shall assist AERA in resolving queries/issues received from various sources, interpretations of the modifications, clarifications required related to processing of the tariff proposals wherever required by AERA and other related support services as per requirement of the AERA for a period of **one year** from the date of notification of the Revised Guidelines.

4.2 The Selected Applicant shall assist AERA in all the matters relating to 'Appeals' and 'Legal Cases' filed against the AERA to the extent of the scope of work under this RFP. The selected Applicant

shall submit a written undertaking (to be furnished on Rs.100/- Non-Judicial stamp paper) to AERA that they shall assist AERA in any litigation arising thereof with respect to this assignment in future.

5. Deliverables and Payment Schedule:

In pursuance of this TOR, the selected Consultant shall undertake/deliver the following deliverables (the “**Deliverables**”) during the course of this Consultancy.

The Selected consultant shall be paid professional fees for the services rendered as per following schedule:

SNO.	Milestones	Time Frame for completion of Assignment	Payment Schedule.
1.	Submission of initial reports and framework preparation on Revision of the Guidelines.	01 (one) month	20%
2.	Preparation, Finalisation and issue of Consultation Paper on Revision of the Guidelines for Airport Operators	01 (one) month	20%
3.	Assisting AERA in Stakeholder consultation and analysing/evaluating Stakeholders’ responses	01 (one) month	15%
4.	Preparation, Finalisation and issue of Final Order/Direction for tariff determination for Airport Operators and notification of the Order/Direction.	01 (one) month	35%
5.	Assisting AERA in dealing with the issues/queries received after notification of the revised Guidelines for a period of one year (from the date of notification of the Guidelines). 10% balance payment to be released after satisfactory completion of the post notification assistance period of one year.	01 (One) year from the date of notification of the Revised Guidelines	10%

Note -1 If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm with make them liable for action(s) given in Para 5 “Liquidated Damages and Penalties” (para 5.4). Decision of AERA in this regard shall be final and binding on the consultant firm.

6. Completion of Services

6.1 All the Deliverables shall be compiled, classified and submitted by the selected Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the selected Consultant is required to submit two hard copies of the reports of each Deliverables.

6.2 The documents comprising the Deliverables shall remain the property of AERA and shall not be used by the selected Consultant for any purpose other than that intended under these Terms of Reference without the permission of AERA.

6.3 Each Deliverable of the Consultancy shall stand completed on acceptance communicated to the selected Consultant in writing by AERA. The selected Consultant is not entitled to any payment

of the milestones of Deliverables unless the Deliverable is accepted by AERA in writing. Further, AERA may seek clarifications/queries with respect to the Deliverables, which shall be addressed by the selected Consultant within the timelines stipulated by AERA.

6.4 The period of consultancy services shall not be more than **04 (four) months** from the date of LOA for the finalization/ issue of the Revised Guidelines which shall be completed within the stipulated period plus a period of 01 (one) year for 'Post finalization of the Guidelines Assistance' from the date of notification of the Revised Guidelines.

6.5 AERA reserves the right to extend the period of Consultancy beyond the period of **04 (four) months** for finalization/issue of the Revised Guidelines at its own discretion without any financial implication to AERA.

Annexure

List of issues encountered by the Authority while determining tariff for Major Airports

1. UDF issue considering the definition of DF as per Aircraft Rules, AAI Act, 1994 and AERA Act, 2008.
2. Service Quality Intervention linked to Performance Standards.
3. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service providers/Aeronautical stakeholder.
4. Treatment to subsidiary companies (100% owned) of the Airport Operator for determination of tariff in the respective field. Arrangements between Airport Operators and Subsidiary/Joint Venture companies and treatment of revenues from such contracts thereof.
5. Return on equity to Airport Operator during construction period/development stage.
6. Setting norms for debt rates for varied Airport Operators.
7. Clarity on Tax implication on 30% Non-Aeronautical revenue cross subsidy.
8. Concept of Base Airports Charges for airports other than Delhi and Mumbai.
9. Defined clarity on 'Pass Through' of expenditure and rationale such as high rentals, revenue sharing etc.
10. Treatment of expenditure on fees paid towards Consultancy, Legal etc.
11. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service Providers/other agencies at airports.
12. Treatment of Revenue share Assets, Late stage capex and equity lock in.
13. Manner of evaluating the efficiency of expenditure incurred by Airport Operator considering the results of the study conducted by AERA.
14. Funding requirements for Airport Projects and Operator responsibilities.
15. Clarity on manner of treatment of certain items of income such as Interest Income, Income earned from Non-Airport related Operations.
16. Treatment of Refundable Security Deposits (RSD) received by Airport Operators from ISPs, Commercial contracts etc. Similarly treatment of RSD given by ISPs to Airport Operator and any return arising thereof to them.
17. Examining the principles of allocating the Annual Revenue Requirement to various chargeable components including the proportion of recovery from passengers through UDF and other chargeable components of tariff from airlines/other stakeholder.
18. Addressing the requirement of differential tariff for non-peak hours and other tariff related flexibilities that are required for the Airport Operators for increasing the utilization and efficiency in the use of Airport infrastructure.

19. Consider the tariff related matters dealt with in the Model concessionaire agreement for the recent round of Airport privatization.
20. Treatment of Non-Airport related revenues, assets and investments in the tariff determination process.
21. Concession agreement between Airport Operator and the ISP, the rates agreed, and manner of treatment of such costs. AERA to determine tariff as per its own regulatory philosophy irrespective of the rates agreed between Airport Operators in the concession agreement between them.
22. Review of the existing provisions in Guidelines regarding time line for submission of proposal and penal provisions for Airport Operators/ISPs.
23. Suggest measures to incentivize on account of Efficiency of operations towards O & M cost, Utility expenses, R & M expenses, Employees cost, cost of debt etc.
24. Devising standard templates for airports tariff.
25. Apart from above, any other issue as communicated/discussed with the selected applicant in future.

TERMS OF REFERENCE FOR ASSIGNMENT - B

B. Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Independent Service Providers at major airports

1. General

1.1 The Parliament of India, enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the ‘Act’). The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the ‘AERA’) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came in to force w.e.f. 1st September 2009.

1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in Section 13 of the Act, which are as below:-

- I. determine the tariff for aeronautical services taking into consideration –
 - a) the capital expenditure incurred and timely investment in the improvement of airport facilities;
 - b) the service provided, its quality and other relevant factors;
 - c) the cost for improving efficiency;
 - d) economic and viable operation of major airports;
 - e) revenue received from services other than the aeronautical services;
 - f) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
 - g) any other factor which may be relevant for the purpose of the Act.
- II. determine the amount of the development fees;
- III. determine the amount of the passengers’ service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;
- IV. monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf;
- V. call for any such information as may be necessary to determine the tariff for aeronautical services; and perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act.

1.3 Vide “The Airports Economic Regulatory Authority of India (Amendment) Act, 2019”, some amendments in the original Act have been made which are extracted below:

“ 1. 1) This Act may be called the Airports Economic Regulatory of India (Amendment) Act, 2019.

2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (appointed date by Central Government is 26.09.2019).

2. In Section 2 of the Airports Economic Regulatory Authority of India Act, 2008 (hereinafter referred to as the principal Act.) in clause (i), for the words “one and a half million’ the words “three and half million’ shall be substituted.

3. In section 13 of the principal Act, after sub-section (i), the following sub-section shall be inserted, namely:-

“(1A) Notwithstanding anything contained in sub-sections (1) and (2), the Authority shall not determine the tariff or tariff structures or the amount of development fees in respect of an airport or part thereof, if such tariff or tariff structures or the amount of development fees has been incorporated in the bidding document, which is the basis for award of operatorship of that airport:

Provided that the Authority shall be consulted in advance regarding the tariff, tariff structures or the amount of development fees which is proposed to be incorporated in the said bidding document and such tariff, tariff structures or the amount of development fees shall be notified in the Official Gazette.”

2. Background

2.1 Airport Economic Regulatory Authority (AERA) issued its Guidelines for determination of tariff for Aeronautical services for Independent Service Providers (ISPs) i.e. “Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011” vide Direction No. 04/2010-11 dated 10.01.2011. Considerable time has passed since then leading to not only a change in the context of economic regulation for airports but also an accumulation of experiences with the Authority of tariffs determined by it.

2.2 In terms of change of context, the AERA is in the process of revisiting the threshold for classification of airports in India as Major Airports from 1.5 million to 3.5 million, which brings down the number of airports under the purview of AERA. Still the airports under the purview of AERA handle passengers in the range of 3.5 million per annum to 65 million per annum. These airports are also in varied stage of development with some planning their expansions and others with recently expanded terminals. Such variation presents a wider range of business issues expected to be facing these airports and ISPs at these airports and accordingly the nature of issues to be handled while determining tariff for aeronautical services for these airports and ISPs appointed by the Airport Operators.

2.3 Government has also prescribed adoption of shared till for the purpose of determination of tariff by AERA mandating a change from the single till adopted by the Authority in its Guidelines.

2.4 In terms of experiences accumulated with the Authority, the Authority has issued its Tariff Orders for different sets of airports – DIAL and MIAL responding to the context of OMDA / SSA, HIAL and BIAL with a different context, and a set of AAI airports under Government’s control. Such varied contexts have led to slightly varied nature of treatment accorded to similar business segments (such as cargo and ground handling).

2.5 Some of the Tariff Orders from the Authority have also been appealed against. Judgments from courts/ tribunals on such appeals will need to be considered in future while determining tariff for Major Airports. Some of these judgments necessitate a revision in the positions of the Authority in concerned Tariff Orders.

2.6 The Authority also observed scenarios of likely low cash flows for airport operators/ISPs as an outcome of tariff determination process on account of multiple factors including over-recovery during earlier period and delayed determination of tariff leaving a few years for implementation of revised tariffs. The Authority would like to complete the process of determination of tariff before the period for levy of such tariff begins.

2.7 The Authority has issued certain additional guidelines / Orders to provide for a consistent mechanism of handling specific regulatory issues. For instance, the Order from the Authority on Normative Costs to be considered for capital expenditure incurred by airports provides a reference to all airport operators on the range of capital expenditure likely to be considered by the Authority while determining permissible Regulatory Asset Base for expansions / modernizations or related capital

expenditure. Similarly the Authority issued consistent rates of depreciation for typical airport assets to be considered for determination of tariff for aeronautical services. To study all these orders to see the implication on the tariff determination process of ISPs.

2.8 With the above background, the Authority is keen to conduct a study with an objective to issue its revised Guidelines for determination of tariff for Aeronautical services for Independent Service Providers (Cargo facility, Ground Handling and Supply of Fuel to the Aircraft).

3. Scope of Work:

The study is proposed to be structured in three parts:

3.1 Analysis of existing context:

3.1.1 Analysis of existing Economic Regulatory Guidelines /Orders.

3.1.1.1 Study the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 issued vide Direction No. 05/2010-11 dated 28.02.2011.

3.1.1.2 Study the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for services provided for Cargo Facility ,Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011 issued vide Direction No. 04/2010-11 dated 10.01.2011

3.1.1.2.1 Review of Materiality aspect, competition aspect and Reasonableness of user agreements with reference to light touch approach.

3.1.1.2.2 Examine the need for framing the separate Guidelines for courier service.

3.1.1.3 Study the Tariff Orders issued by the Authority in respect of select airports including DIAL, MIAL, HIAL, BIAL, CIAL and a few AAI airports. The Authority encountered a range of issues while undertaking these determinations and it is keen to take these up for deliberation under this exercise. These are presented in **Annexure** to TOR.

3.1.1.4 Study the additional Orders issued by the Authority (Normative, Depreciation etc.)

3.1.1.5 Based on the above, the Consultant will compile positions adopted by the Authority against various elements of the Building Blocks for determination of tariff. The Consultant will also identify potential improvement in the process of application in terms of simplification of forms, data requirements/ templates, standardization of elements of tariff model, and requirement of additional information such as business plan for the concerned Control Period.

3.1.1.6 Developing a standardized simplified tariff model based on the framed revised regulations/guidelines and studying the impact of revision on the various tariff components and Airport services

3.1.2 Analysis of extant legal context

3.1.2.1 Study the Orders by Courts/ Tribunals against the Tariff orders of the Authority

3.1.2.2 Study the amendment in AERA Act as approved by the cabinet/Parliament.

3.1.2.3 Identify aspects of the tariff determination getting impacted by these Orders/ Amendments.

3.1.3 In the above background and the output from the above exercise, the selected Consultant will and prepare a Draft Consultation Paper with all elements of determination of tariff for aeronautical services in respect of Independent Service Providers as well as various options on the positions to be considered by the Authority. There will be iterative discussions/consultations with Authority in preparing the Draft Consultation Paper. Based on the discussions/consultations with the Authority, the selected Consultant will submit the Final Consultation Paper highlighting preferred position of the Authority on various elements. This final Consultation Paper will be uploaded on the AERA's website for consultation and seeking comments/views from the stakeholders.

3.2 Stakeholder consultations:

3.2.1 The selected Consultant will assist the Authority in conducting stakeholder consultation and analyse the various suggestions/comments made by the stakeholders. The Authority will organize the consultation meeting under its auspices and at its expense.

3.2.2 The selected Consultant will assist the Authority in analyzing/examining the inputs/comments received from the stakeholders on the Consultation Paper. Through a process of iterative consultations with the Authority, the selected Consultant will compile all the comments/inputs received from stakeholders and assist the Authority in finalizing its positions on the comments.

3.3 Finalization of the Revised Guidelines:

3.3.1 Having finalized the positions of the Authority, the selected Consultant will assist it in drafting them in the form of legally binding Revised Order/Guidelines for implementation and enforcement. The selected Consultant shall ensure that these provisions of the Guidelines are in line with the legal framework as well as international best practices.

3.3.2 Drafting of these Guidelines should help the Authority to address the issues highlighted in the **Annexure** in terms of tariff application/determination process.

4. Post finalization of the Guidelines Assistance:

4.1 Post finalization and notification of the Revised Order / Guidelines, the Selected Applicant shall assist AERA in resolving queries received from various sources, interpretations of the modifications, clarifications required related to processing of the tariff proposals wherever required by AERA and other related support services as per requirement of the AERA for a period of **one year** from the date of notification of the Revised Guidelines.

4.2 The Selected Applicant shall assist AERA in all the matters relating to 'Appeals' and 'Legal Cases' filed against the AERA to the extent of the scope of work under this RFP. The selected Applicant shall submit a written undertaking (to be furnished on Rs.100/- Non-Judicial stamp paper) to AERA that they shall assist AERA in any litigation arising thereof with respect to this assignment in future.

5. Deliverables and Payment Schedule:

In pursuance of this TOR, the selected Consultant shall undertake/deliver the following deliverables (the "**Deliverables**") during the course of this Consultancy.

The Selected consultant shall be paid professional fees for the services rendered as per following schedule:

SNO.	Milestones	Time Frame for completion of Assignment	Payment Schedule.
1.	Submission of initial reports and framework preparation on revision of the Order/Guidelines.	01 (one) months	20%
2.	Preparation, Finalisation and issue of Consultation Paper on Revision of the Order/Guidelines for Cargo, Ground Handling and Fuel Service Providers.	01 (one) month	20%
3.	Assisting AERA in Stakeholder consultation and analysing/evaluating Stakeholders' responses.	01 (one) month	15%
4.	Preparation, Finalisation and issue of Final Order/Directions for tariff determination for ISPs and notification of the Order/Direction.	01 (one) month	35%
5.	Assisting AERA in dealing with the issues/queries received after notification of the revised Order/Guidelines for a period of one year (from the date of notification of the Guidelines). 10% balance payment to be released after satisfactory completion of the post notification assistance period of one year.	01 (One) year from the date of notification of the Revised Guidelines	10%

Note -1 If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm will make them liable for action(s) given in Para 5 "Liquidated Damages and Penalties" (para 5.4). Decision of AERA in this regard shall be final and binding on the consultant firm.

6. Completion of Services

6.1 All the Deliverables shall be compiled, classified and submitted by the selected Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the selected Consultant is required to submit two hard copies of the reports of each Deliverables.

6.2 The documents comprising the Deliverables shall remain the property of AERA and shall not be used by the selected Consultant for any purpose other than that intended under these Terms of Reference without the permission of AERA.

6.3 Each Deliverable of the Consultancy shall stand completed on acceptance communicated to the selected Consultant in writing by AERA. The selected Consultant is not entitled to any payment of the milestones of Deliverables unless the Deliverable is accepted by AERA in writing. Further, AERA may seek clarifications/queries with respect to the Deliverables, which shall be addressed by the selected Consultant within the timelines stipulated by AERA

6.4 The period of consultancy services shall not be more than **04 (four) months** from the date of LOA for the finalization/ issue of the Revised Guidelines which shall be completed within the stipulated period plus a period of 01 (one) year for 'Post finalization of the Guidelines Assistance' from the date of notification of the Revised Guidelines.

6.5 AERA reserves the right to extend the period of Consultancy beyond the period of **04 (four)** months for finalization/ issue of the Revised Guidelines, in its own discretion without any financial implication to AERA.

Annexure

List of issues encountered by the Authority while determining tariff for Major Airports:

1. Service Quality Intervention linked to Performance Standards.
2. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service providers/Aeronautical stakeholder.
3. Treatment to subsidiary companies (100% owned) of the Airport Operator for determination of tariff in the respective field. Arrangements between Airport Operators and Subsidiary/Joint Venture companies and treatment of revenues from such contracts thereof.
4. Return on equity during construction period/development stage.
5. Setting norms for debt rates.
6. Some of the ISPs have approached AERA that their services are low asset based and mainly manpower oriented hence examining return on RAB under light touch approach become irrelevant in their cases. Under this situation whether the Authority may devise any alternative way to examine returns based on capital employed or profit margins for regulation of tariff.
7. Clarity on Tax implication on 30% Non-Aeronautical revenue cross subsidy.
8. Listing the type of aeronautical services to lay out a model tariff plan for ISP's like Cargo/Ground Handling/Fuel Supply.
9. Defined clarity on 'Pass Through' of expenditure and rationale such as high rentals, revenue sharing etc.
10. Treatment of expenditure on fees paid towards Consultancy, Legal etc.
11. Treatment of Rental/Lease income from Aeronautical assets/Aeronautical Service Providers/other agencies at airports.
12. Treatment of Revenue share Assets, Late stage capex and equity lock in.
13. Clarity on manner of treatment of certain items of income such as Interest Income, Income earned from Non-Airport related Operations.
14. Treatment of Refundable Security Deposits (RSD) received by Airport Operators from ISPs, Commercial contracts etc. Similarly treatment of RSD given by ISPs to Airport Operator and any return arising thereof to them.
15. Addressing the requirement of differential tariff for non-peak hours and other tariff related flexibilities that are required for the Airport Operators/ISPs for increasing the utilization and efficiency in the use of infrastructure.
16. Consider the tariff related matters dealt with in the Model concessionaire agreement for the recent round of Airport privatization.
17. Treatment of Non-Airport related revenues, assets and investments in the tariff determination process.
18. Review and Application of the Order No. 01/2018-19 dated 05.04.2018 on capping of the amount of Royalty/license fee/ Revenue share payable to Airport Operator as a 'Pass Through' expenditure for Independent Service Providers for Cargo facility, Ground Handling service and supply of fuel to the Aircrafts under light touch approach also wherever the Authority feels necessary (in cases with high revenue shares).
19. AERA's approach and entitlements under Light Touch Approach, – need for intrusive reviews such as review of financials, margins, growth of profits, ARR, Return on RAB, etc. while dealing

- the cases of Independent Service Providers to ensure that super profits do not accrue to the Service Provider and ultimate customer is not burdened with higher tariff(s).
20. Concession agreement between Airport Operator and the ISP, the rates agreed, and manner of treatment of such costs. AERA to determine tariff as per its own regulatory philosophy irrespective of the rates agreed between Airport Operators in the concession agreement between them. Some of the Airport Operators are mentioning ceiling rates also in the concession agreement with the ISPs and linking the ceiling rates with the rates to be determined by AERA. The selected Applicant to examine this aspect and stipulate appropriate clause(s) in the Guidelines to check such practice.
 21. Devising the uniform pattern of tariff(s) in the Tariff Card for the ISPs providing services for Cargo facility, Ground Handling and Supply of Fuel to the Aircraft.
 22. Review of the existing provisions in Guidelines regarding time line for submission of proposal and penal provisions for Airport Operators/ISPs.
 23. AERA is also determining aeronautical tariffs in respect of some of the ISPs under Price Cap Approach in terms of the CGF Guidelines or any other ground hence various factors/issues observed while determining tariffs in r/o Airport Operators, also need to be examined while finalizing the Guidelines for determination of tariffs for ISPs under Cost Plus approach.
 24. Suggest measures to incentivize on account of Efficiency of operations towards O & M cost, Utility expenses, R & M expenses, Employees cost, cost of debt etc.
 25. Apart from above, any other issues as communicated/discussed with the selected applicant in future.

Annexure -II

Deployment of Key Personnel (including Aviation Expert)
(Refer Clause 4.2 of the Agreement)

Particulars of Key Personnel

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Name of Firm	Employed Since	Experience in Eligible Assignments	Proposed Deployment of the Key Personnel in the Current assignment

Particulars of Aviation Expert

S. No.	Whether Employee or Consultant	Name	Educational Qualification	Length of Professional Experience	Name of the organisation of employment of Aviation Expert	Employed Since	Experience in eligible assignments	Proposed Deployment of the Aviation Expert in the Current Assignment
1.								

Fees payable for services rendered

(Refer Clause 6.1)

Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Reviewing Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators and Independent Service Providers at major airports

	Amount in Rs. (in numbers) (Excluding applicable taxes and levies).	Amount in Rs. (in words) (Excluding applicable taxes and levies).
Grand Total		
Less Discount offered		
Net Amount		

Payment Schedule

Assignment A: Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Airport Operators at major airports.

The Consultant shall be paid professional fee for the services which shall be linked to milestone achievements as indicated below:

SNO.	Milestones	Time Frame for completion of Assignment	Payment Schedule.
1.	Submission of initial reports and framework preparation on Revision of the Guidelines.	01 (one) month	20%
2.	Preparation, Finalisation and issue of Consultation Paper on Revision of the Guidelines for Airport Operators	01 (one) month	20%
3.	Assisting AERA in Stakeholder consultation and analysing/evaluating Stakeholders' responses	01 (one) month	15%
4.	Preparation, Finalisation and issue of Final Order/Direction for tariff determination for Airport Operators and notification of the Order/Direction.	01 (one) month	35%
5.	Assisting AERA in dealing with the issues/queries received after notification of the revised Guidelines for a period of one year (from the date of notification of the Guidelines). 10% balance payment to be released after satisfactory completion of the post notification assistance period of one year.	01 (One) year from the date of notification of the Revised Guidelines	10%

Note -1 If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm with make them liable for action(s) given in Para 5 "Liquidated Damages and Penalties" (para 5.4). Decision of AERA in this regard shall be final and binding on the consultant firm.

Payment Schedule

Assignment B: Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Review of Regulatory Philosophy and Approach in Economic Regulation: Revision of the Guidelines for Determination of Tariff(s) for Aeronautical Services provided by Independent Service Providers at major airports.

The Consultant shall be paid professional fee for the services which shall be linked to milestone achievements as indicated below:

SNO.	Milestones	Time Frame for completion of Assignment	Payment Schedule.
1.	Submission of initial reports and framework preparation on revision of the Order/Guidelines.	01 (one) months	20%
2.	Preparation, Finalisation and issue of Consultation Paper on Revision of the Order/Guidelines for Cargo, Ground Handling and Fuel Service Providers.	01 (one) month	20%
3.	Assisting AERA in Stakeholder consultation and analysing/evaluating Stakeholders' responses.	01 (one) month	15%
4.	Preparation, Finalisation and issue of Final Order/Directions for tariff determination for ISPs and notification of the Order/Direction.	01 (one) month	35%
5.	Assisting AERA in dealing with the issues/queries received after notification of the revised Order/Guidelines for a period of one year (from the date of notification of the Guidelines). 10% balance payment to be released after satisfactory completion of the post notification assistance period of one year.	01 (One) year from the date of notification of the Revised Guidelines	10%

Note -1 If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm with make them liable for action(s) given in Para 5 "Liquidated Damages and Penalties" (para 5.4). Decision of AERA in this regard shall be final and binding on the consultant firm.