



Mumbai Port Trust

Request for Proposal (RFP)

For

**“Independent Engineer Services for Project - Set-up,
Operate and Maintain Floating Storage and Regasification
Unit in Mumbai Harbour on Land license model”**

August 2021

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DISCLAIMER

The information contained in the “**Bidding Documents**” (or “**Bid documents**”) for this project comprises of this Request of Proposal (the “**RFP**”) provided now or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of **Authority** (the “**Authority**”) or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

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

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

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

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Operator, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Authority shall not be liable in any manner whatsoever for any costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

Tender Notice

Mumbai Port Trust invites the experienced, resourceful firms with proven capabilities as detailed in the Bid Documents to participate in E-Tender process for

“Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model”

Details are available on the websites <http://www.mumbaiport.gov.in> and <http://www.eprocure.gov.in>

**Chief Engineer
Mumbai Port Trust**

मुंबई पोर्ट ट्रस्ट
MUMBAI PORT TRUST



Civil Engineering Department
Tender No.: FSRU/2019/IE

No. FSRU/2019/IE/400

21 August 2021

TENDER NOTICE

1. Online bids through E-Tender process are invited by the Chief Engineer on behalf of the Board of Trustees of the Port of Mumbai (also referred to as Mumbai Port Trust) from experienced, resourceful firms with proven technical and financial capabilities as detailed in RFP (bid) document for the Independent Engineer Services for the project “Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model.”

1	Project Name	Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model
2	Brief Summary of Project	MbPT is desirous to appoint a reputed firm as Independent Engineer (IE) for a period of 42 months (further extendible by 12 months if necessary) for its recently awarded project –“ Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model ”; wherein the IE shall be responsible for providing its services as per the Terms of Reference (“TOR”) attached herewith under Appendix IX and the terms of engagement shall be applicable as per Draft Consultancy Agreement enclosed herewith as Appendix X.
3	Bid Process	Single Stage Bidding with two cover system: 1. Qualification 2. Financial Bid
4	Tender Fee (non-refundable)	Rs. 10,500/- inclusive of 5% GST payable online at https://eplatform.mbptedi.gov.in (MSME Exemption available. Refer RFP provisions).
5	Bid Security / Earnest Money Deposit (EMD)	No Bid Security / EMD will be applicable for this tender as per the Ministry of Ports, Shipping and Waterways letter No.PD-24015/71/2020-PDVII(e-340929) dated 26-11-2020 and Ministry of Finance, Department of Expenditures OM No.F-9/4/2020-PPD dated 12-11-2020.

		In lieu of Bid Security/EMD, the Bidders are required to submit a Bid Security Declaration along with the tender as per the format enclosed as Appendix II. Any bid not accompanied by the above mentioned Bid Security Declaration shall be treated as Non-responsive and shall be rejected by the MbPT.
6	Downloading of tender documents	Details of the tender are available on the websites http://www.mumbaiport.gov.in and http://www.eprocure.gov.in
7	Date of Invitation of RFP (E-publishing on CPPP Portal)	21 August 2021
8	Last date for receiving pre-bid queries	30 August 2021, 3:00 PM Bidders are required to send pre-bid queries at chiefengineer@mumbaiport.gov.in
9	Pre-bid conference	31 August 2021, 03:00 PM at Office of Chief Engineer, Mumbai Port Trust, Port Bhavan, 3rd Floor, SV Marg, Fort, Mumbai 400001. If necessary, video conferencing link will be shared on the request of Bidders via email at dk.jain@mumbaiport.gov.in
10	Replies to pre-bid queries	At least 7 days prior to Bid Due Date In case of delay, Bid Due Date to be extended suitably.
11	Bid submission start date	31 August 2021 at 03:00 PM
12	Bid Due Date	13 September 2021 at 03:00 PM (Only Online Bid Submission, no physical submission unless specifically asked by MbPT on later stage for physical verification).
13	Technical Bid Opening	14 September 2021 at 03:00 PM
14	Financial Bid Opening	To be intimated later
15	Issue of the letter of Award (LOA)	Within 7 days from the approval of bid
16	Validity of bids	120 Days from the Bid Due Date

2. Interested eligible Bidders may obtain further information and inspect the bid documents at the e-Procurement website <https://eprocure.gov.in>. This website can also be accessed by clicking the link at MbPT's Website <http://www.mumbaiport.gov.in>. The bid documents sets will be available for down load till due date on www.eprocure.gov.in and www.mumbaiport.gov.in as detailed in the tender notice.
3. The downloading and submission of Bid Documents shall be carried out as mentioned at Instructions for Online Bid Submission in the RFP and instructions at e-Procurement website <https://eprocure.gov.in>. No editing, addition/ deletion of matter shall be permitted.

4. Pre bid replies/addendum/ amendments/ errata if any etc. will be made available at the e-procurement website <https://eprocure.gov.in> and Bidders are requested to check and download the same for submission. This website can also be accessed by clicking the link at MbPT's Website <http://www.mumbaiport.gov.in>.
5. The Bidder has to submit their bid online at the e-procurement website <https://eprocure.gov.in> using valid Digital Signature Certificates. As bid submission is online on CPP portal, the payment of Tender Fee will be done online. Bidder shall visit <https://eplatform.mbptedi.gov.in> for making the payment for Tender Fee and choose the option "Latest Tenders" on the dashboard. After selecting the relevant tender, the Bidder can make online payment after entering the basic details of bank for refund purpose, the receipt generated as PDF file shall be uploaded by the Bidder on CPP Portal under relevant option as a proof for the payment, failing which bid will not be opened. The details of bank payment reference number and payment date also need to be entered while uploading in the relevant fields. Since the Bid documents set are non-transferable, the Bidder who is making the online payment should only utilize the same for submitting his/her own bid on CPP portal.
6. Bids of the Bidders will not be opened in case the Bid Security Declaration and Tender fee is not submitted in the form and manner described above.
7. Bidders may please note that if the offers are not received according to the instructions detailed herein, the same may be liable for rejection. Any corrections and remarks shall be either type written or must be in ink and duly authorized. The offers of the Bidders whose bid as described above is not received till due date and time, even though posted in time or online bids submitted after due date and time will be considered as late Bid and will not be accepted.
8. The bids shall remain valid for a period of 120 days from Bid Due Date.
9. Financial bid should not be submitted elsewhere other than as specified in RFP in any case.
10. Note: Bidder is responsible to download Bid document and Addendums/ Amendments/ Errata/ Replies to the queries of the Party etc., if any, issued by MbPT, from the website before submission of the Bid. Any shortfall in submission of the said Addendums/ Amendments / Errata/ Replies to the queries of the Party etc. along with the downloaded documents while submitting the Bid then such offer may not be considered.
11. Bidders who are registered with any of the following organizations under the public procurement policy with effect from 18.09.2015 are eligible for availing benefits of exemption of cost of tender fee. They are required to submit documentary proof of such registration along with the offer, as detailed in Instructions to Tenders, for claiming the available exemptions.
 - i) District Industries centers(DICs).
 - ii) Khadi & Village Industries commission(KVIC).
 - iii)Khadi & Village Industries Board(KVIB).
 - iv)Coir Board.
 - v) National Small Industries Corporation (NSIC), Govt. of India enterprises under "Single Point Registration Scheme" of Ministry of MSME.
 - vi)Directorate of handicrafts and handloom.
 - vii) Any other body specified by Ministry of Micro Small & Medium Enterprises (MoM SME).
 - viii) Udyam Registration Certificate (URC)

Chief Engineer
Mumbai Port Trust

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[The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the Consultancy Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein.]

1 INTRODUCTION

1.1 Background

The Mumbai Port Trust (the “Authority” or “MbPT”) is engaged in the continuous development of Mumbai Port and as part of this endeavour, in order to meet the growing market demand of natural gas in the western coast of India, Authority has decided to setting-up Floating Storage and Regasification Unit (FSRU) in Mumbai harbour.

The Authority has decided to undertake the project “Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model”. After due bidding and Bid Process, the project has been awarded to the successful bidder - Consortium of consisting of (i) M/s Shapoorji Pallonji Oil and Gas Private Limited, and (ii) M/s Bumi Armada Netherlands B.V. Authority has already executed License Agreement with the project special purpose vehicle SP Armada Clean Energy Ventures Private Limited (“SPACE” or “Licensee” in terms of the License Agreement) formed by the bidder’s consortium. The project is being implemented in accordance with the terms and conditions stated in the said License Agreement. As per the terms, it is required to appoint Independent Engineer for the implementation of project.

Therefore, Authority is desirous to appoint a reputed firm as Independent Engineer (“**Independent Engineer (IE)**”) for a period of 42 months (further extendable by 12 months if necessary) for its recently awarded project - “Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbor on Land license model” wherein the IE shall be responsible for providing its engineering services as per the Terms of Reference (“**TOR**”) attached herewith under Appendix IX and Draft Consultancy Agreement attached herewith under Appendix X.

Brief particulars of the Project are provided in the table below:

Name of the Project	Agreement Period	Bid Parameter
Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on land license model	42 Months (further extendable by 12 months if necessary)	Lowest lump sum Monthly Fees [to be quoted] (Excluding GST) Payable to Independent Engineer (IE) as per the terms of Consultancy Agreement

1.2 Request for Proposal

The Authority invites Proposals (the “**Proposals**”) for selection of an Independent Engineer (the “**Independent Engineer (IE)**”) who shall provide engineering Independent Engineer Services towards the implementation of the Project. The Independent Engineer (IE) shall review designs & drawings, construction methodology and monthly progress reports furnished by Concessionaire and undertake other activities in conformity with the TOR (collectively the “**Consultancy**”).

1.3 Brief description of the Bidding Process

- 1.3.1 The Authority has adopted a single stage Bid Process (collectively the “Bid Process”) in evaluating the Proposals comprising technical and financial bids to be submitted on-line. At first, a technical evaluation will be carried out for responsiveness and minimum eligibility requirement. Based on this technical evaluation, a list of pre-qualified short-listed Bidders shall be prepared and financial bid shall be opened for these pre-qualified bidders only. The combined scoring system shall be adopted as brought at clause no 3.7. The Bidder who secures highest combined score shall be declared as the selected bidder (the “Selected Bidder”).
- 1.3.2 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority (collectively the “Bidding Documents”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.4 for submission of Bid (the “Bid Due Date”).
- 1.3.3 The Authority shall be entitled to disqualify a Bidder in accordance with the previously mentioned guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.
- 1.3.4 The Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of 120 (One Hundred and Twenty) days from the Bid Due Date.
- 1.3.5 The Bidding Documents include the Terms of Reference (“TOR”) for the Project enclosed as Appendix IX. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.3.6 No Bid Security / EMD will be applicable for this tender as per the Ministry of Ports, Shipping and Waterways letter No.PD-24015/71/2020-PDVII(e-340929) dated 26-11-2020 and Ministry of Finance, Department of Expenditures OM No.F-9/4/2020-PPD dated 12-11-2020. In lieu of Bid Security/EMD, the Bidders are required to submit a Bid Security Declaration along with the tender as per the format enclosed as Appendix II. Any bid not accompanied by the above mentioned Bid Security Declaration shall be treated as Non-responsive and shall be rejected by the MbPT.

1.4 Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

1	Date of Invitation of RFP	21.08.2021
2	Last date for receiving pre-bid queries	30.08.2021, 3.00 PM
3	Pre-bid conference	31.08.2021, 3.00 PM
4	Bid submission start date	31.08.2021, 3.00 PM
5	Bid Due Date	13..09.2021, 3.00 PM
6	Technical Bid Opening	14.09.2021,3.00 PM
7	Financial Bid Opening	To be intimated later
8	Issue of the Letter of Award / Work Order	Within 7 days from the approval of bid
9	Validity of bids	120 Days from Bid Due Date

1.5 Pre-Bid Conference

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

Date: 31.08.2021

Time: 3.00 PM

Venue: Chief Engineer's chamber, Civil Engineering Department, 3rd Floor, Port Bhavan, Shoorji Vallabhdas Road, Ballard Estate, Fort, Mumbai – 400001.

If necessary, video conferencing link will be shared on the request of Bidders via email at dk.jain@mumbaiport.gov.in

- 1.5.1 Any queries or request for additional information concerning this RFP shall be submitted in writing by e-mail at dk.jain@mumbaiport.gov.in within specified date. The subject shall clearly bear the following identification/ title:

“Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on land license model

”

2 INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Scope of Proposal & general instruction

- 2.1.1 Detailed description of the objectives, scope of services, deliverables and other requirements relating to this Consultancy are specified in this RFP and TOR. In case a Bidder firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it may participate in the Bid Process either individually (the “Sole Firm”) or Consortium of firms in response to this invitation. The term Bidder (the “Bidder”) means a registered business entity in India, it may be any of the sole proprietorship, partnership, limited liability or company incorporated under Companies Act.
- 2.1.2 Bidders are advised that the selection of Independent Engineer (IE) shall be on the basis of an evaluation by the Authority through the Bid Process specified in this RFP. Bidders shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Bid Process will be given and that the Authority’s decisions are without any right of appeal whatsoever.
- 2.1.3 The Bidder shall submit its Proposal in the form and manner specified in this RFP. The Technical proposal shall be submitted in the form at Appendix-V and the Financial Bid shall be submitted in the form at Appendix-VI. Upon selection, the Bidder shall be required to enter into an agreement (“Consultancy Agreement”) with the Authority in the form specified at Appendix X.
- 2.1.4 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually shall not be entitled to submit another Bid as the case may be.
- 2.1.5 Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of the Bidding Documents shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.6 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.1.7 This RFP is not transferable.
- 2.1.8 Bidders are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Authority and the Project site, sending written queries to the Authority, and attending a Pre-Proposal Conference on the date and time specified in Clause 1.5.
- 2.1.9 The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Bidding Documents shall be binding on the Authority nor confer any right on the Bidders, and the

Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Bidding Documents.

2.2 Condition of Eligibility of Bidders

To be eligible for evaluation of its Proposal, the Bidder shall fulfil the following:

2.2.1 **Technical Capacity:** The Bidder shall have, over the past 10 (ten) years preceding the Bid Due Date, undertaken at least one Eligible Assignment as specified below:

“Independent Engineer Services / Project Management Services for Construction, Inspection, Commissioning of LNG Project / FSRU project costing more than Rs.5400 million,”

2.2.2 **Financial Capability:** The Bidder shall have minimum average annual turnover of of Rs.1,00,00,00,000/- (Rupees Hundred Crore only) in last three financial years preceding the Bid Due Date. Best of the 3 years out of last 5 years will be considered.

2.3 Evaluation scheme for Technical Score:

The bidder who has qualified in Technical capacity and Financial capability above, will be considered for evaluation. For the purpose of determining Technical Capacity, bidders shall be awarded Technical Score out of maximum 100 marks as per following marking scheme:

Sr. no	Criteria	Sub-criteria	Allocated Marks	Documentary Evidence
1.	In last 10 years- Projects for Independent Engineer / PMC in LNG Project/ FSRU project involving in design of marine structures, Mooring analysis, Stability and Motion analysis of FSRU, . (Maximum Marks: 50)	Successfully completed experience in 1 Project	20	Work Order / Completion Certificate from respective client(s)
		Successfully completed experience in 2 Projects	30	
		Successfully completed experience in 3 Projects	40	
		Successfully completed experience in 4 and above Projects	50	
2	In last 10 years- Successfully completed single contract for the eligible works above, project costing :	700 crore	05	Completion Certificate mentioning the contact
		Between 700 to 1400 crore	10	

	(Maximum Marks: 15)	Between 1400 to 2100 crore	15	value / payment received from respective client(s)
3.	Organizational Capability 1: Team strength for core engineering / technical team in direct payroll – having minimum qualification of a Bachelors’ Degree in Engineering in a relevant major (Maximum Marks: 15)	< 100 Technical Employees	3	Company HR Head’s Certificate for technical team strength as on 31 st March 2021
		100 to 200 Technical Employees	5	
		> 500 Technical Employees	15	
4.	Turnover (Rs.in crore) (Maximum Marks: 5)	10	2 marks	Valid Accreditation certificate
		50	3 marks	
		100	5 marks	
5.	Organizational Capability 3: Key Personnel: 1. Technical Leads (min. 2 Nos.) having <ul style="list-style-type: none"> • Post graduate specialization in relevant technical subject • At least 15 years of work experience with critical skillsets as required to perform above design / Consulting requirements • Should have experience in projects mentioned in S.no. 1 and 3 above (Maximum Marks: 10)	5 marks for each qualifying CV of Technical Leads	10	CVs in required format along with qualification and work experience proof
		2. Engineering Managers / Experts (min. 5 Nos.) having <ul style="list-style-type: none"> • Bachelor’s degree in Engineering • At least 8 years of work experience with critical skillsets as required to perform above design / Consulting requirements • Should have experience in projects mentioned in S.no. 1 above (Maximum Marks: 5)	1 mark for each qualifying CV of Engineering Expert	

Note –

1. \$ For conversion of US Dollars to Rupees, the rate of conversion shall be from the daily exchange rate published by the International Monetary Fund for the relevant date. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be

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

Note –

1. The Key Personnel are not required to be stationed at Mumbai Port full time, however they shall be visiting site as per project need basis and MbPT Head Office for official meetings with port officials. No travelling allowances and out of pocket expenses shall be paid additionally by Mumbai Port.
2. 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 future assignment of the Authority for a period of 5 (five) years. The award of this Consultancy to the Bidder may also be liable to cancellation in such an event.
3. A Bidder may, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise A Sub-Consultant, however, shall not be a substitute for any Key Personnel.

2.4 Submission Documents for Qualification

2.4.1 The Bidder shall submit following documents for its qualification and evaluation:

Sr. No.	Documents to be submitted online	Online submission (soft copy)
1	Scanned copy of the online receipt for Tender Fees Rs. 10,500/- (inclusive of 5% GST)	Yes
2	Integrity Pact as per Appendix VII	Yes
3	Letter for bid, details of Bidder, incorporation / registration certificate and statement of legal capacity as per Appendix I	Yes
	Self-Declaration for Bid Security / EMD as per Appendix II	Yes
5	1. Power of Attorney (POA) for signing of bid along with necessary board resolutions (where applicable) as per Appendix III 2. In case of Consortium, add additional POA by consortium members in the name of Lead Member)	Yes
6	Anti-collusion Certificate as per Appendix IV	Yes
7.	1. Documents for Technical Experience of Bidders as per Appendix V – Annex II 2. Supporting documents such as Client certificate / work orders / payment proof. 3. Statutory Auditor / CA certificate(s) stating the fee received in respect of each of the Eligible Assignments specified in the RFP	Yes
8.	1. Documents for Financial Capacity of Bidders as per Appendix V – Annex I	Yes

Sr. No.	Documents to be submitted online	Online submission (soft copy)
	2. Statutory Auditor / Chartered Accountant Certificate for the income from professional fee received in past 3 financial years 3. Balance Sheet, P&L and Cash flow statements of last 3 financial years.	
9.	Summary of Key Personnel's experience as per Appendix V – Annex III	Yes
10.	CVs of Key Personnel in required format along with documents for educational qualification as per Appendix V – Annex IV	Yes
11.	Financial Bid in the respective Excel (BoQ) format as per eProcurement portal	Yes
12.	Bid Documents signed on cover page	Yes

2.4.2 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.

2.4.3 A Bidder or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder or its Associate.

2.4.4 While submitting a Proposal, the Bidder should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Bidders may format the specified forms making due provision for incorporation of the requested information.

2.5 Conflict of Interest

2.5.1 A Bidder shall not have a conflict of interest that may affect the Bid Process or the Consultancy (the "Conflict of Interest"). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority including consideration of such Bidder's Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

The Authority requires that the Independent Engineer (IE) provides professional, objective, and impartial advice and at all times hold the Authority's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Independent Engineer (IE) shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority.

2.5.2 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bid Process, if:

- a) the Bidder, its consortium member (the “Member”) or Associate (or any constituent thereof) and any other Bidder, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of a Bidder, its Member or Associate (or any shareholder thereof having a shareholding more than 5 per cent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
- b) a constituent of such Bidder is also a constituent of another Bidder; or
- c) such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or
- d) such Bidder has the same legal representative for purposes of this Application as any other Bidder; or
- e) such Bidder has a relationship with another Bidder, 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 Bidder; or
- f) There is a conflict among this and other consulting assignments of the Bidder (including its personnel and Sub-Consultant) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Independent Engineer (IE) will depend on the circumstances of each case. While providing Independent Engineer Services to the Authority for this particular assignment, the Independent Engineer (IE) shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same

project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or

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

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

- 2.5.3 A Bidder eventually appointed to provide its services for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to Consultancy/ advisory services performed for the Authority in continuation of this Consultancy or to any subsequent Consultancy/ advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Independent Engineer (IE) shall include a partner in the Independent Engineer (IE)’s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Independent Engineer (IE), as the case may be, and any Associate thereof.

2.6 Acknowledgement by Bidder

- 2.6.1 It shall be deemed that by submitting the Proposal, the Bidder has
- a) made a complete and careful examination of the RFP;
 - b) received all relevant information requested from the Authority;

- c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in Clause 2.4 above;
- d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.4 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.

2.6.2 The Authority shall not be liable for any omission, mistake or error on the part of the Bidder 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 Bid Process, including any error or mistake therein or in any information or data given by the Authority.

2.7 Right to reject any or all Proposals

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

2.7.2 Without prejudice to the generality of Clause 2.7.1, the Authority reserves the right to reject any Proposal if:

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

Misrepresentation/ improper response by the Bidder may lead to the disqualification of the Bidder. If the Bidder is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Bidder gets disqualified / rejected, then the Authority reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bid Process.

B. DOCUMENTS

2.8 Contents of the RFP

2.7.3 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9 and any clarifications and interpretations issued in accordance with Clause 2.8.

Invitation for Bids

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Evaluation of Bids

Section 4. Fraud & Corrupt Practices

Section 5. Pre Bid Conference

Section 6. Miscellaneous

Appendices

- I. Annex I : Letter for Bid
Annex II: Details of Bidder
Annex III: Statement of Legal Capacity
- II. Self-Declaration for Bid Security
- III. Power of Attorney for signing of Bid (use Similar format for Consortium)
- IV. Anti-Collusion Certificate
- V. Annex I: Format of Financial Capacity for purpose of evaluation
Annex II: Format of Technical Capacity for purpose of evaluation
Annex III: Summary of Organization's experience
Annex IV: CVs of Key Personnel
- VI. Format of Financial Bid
- VII. Integrity Pact
- VIII. Instruction for Online bid submission
- IX. Terms of Reference
- X. Draft Consultancy Agreement

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by email at dk.jain@mumbaiport.gov.in. Queries should reach on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.4. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 7 (Seven) days prior to the Bid Due Date. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.8.2 The Authority shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification including within any specified time limit. All the queries and its responses thereto, shall be hoisted on the website of the Authority without identifying the source of queries.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued shall be deemed part of

the Bidding Documents. Verbal clarifications and information given by the Authority or its employees or representatives/ advisors shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an addendum to the RFP.
- 2.9.2 Any addendum issued hereunder will be published on the websites of the Authority.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

2.10 Other Provisions

- 2.10.1
 1. The scanned copy of Integrity Pact (IP) Agreement signed by the employer is uploaded along with the tender document. The bidder has to download the IP Agreement, sign and shall upload the same scanned copy of signed IP Agreement along with the bid.
 2. The unsigned scan copy of IP Agreement by the bidder shall be treated as invalid and the bid shall be considered as non-responsive bid.
 3. In case the letter of intent / work order of contract / procurements is for Rs. 45 Lakhs and above, the successful bidder shall execute Integrity Pact Agreement on stamp paper of appropriate value. The scanned copy of Integrity Pact Agreement signed by the Employer, Bidder and uploaded by the bidder with the tender document shall be treated as Integrity Pact, till the formal execution of Integrity Pact by the successful bidder.
 4. IP essentially envisages an agreement between prospective vendors / bidder, and Mumbai Port Trust, committing the person / officials of both sides to not to resort to any corrupt practice in any aspect of the contract at any stage. Only those vendors / bidders who commit themselves to IP with MbPT, would be consider for evaluation of bid. IP would be implemented through Independent External Monitor (IEM), eminent person appointed by MbPT with approval of Central Vigilance Commission. The IEM would asses independently and objectively, as to whether and what extent the parties have complied with their obligations under the IP. IEM would have access to all contract documents, whenever required. The bidder may raise disputes / complaints if any with the IEM. The IEM would examine complaints received by him and give his recommendations / views to the Chairman of Mumbai Port.
 5. Shri P.K. Gopinath, IPoS (Retd.) has been nominated as Independent External Monitor (IEM) for the implementation of Integrity Pact whose address is as under:
S – 427, First Floor, GK – 1,
New Delhi – 110048
Ph. No. 011 – 4183 1210
Mob. No. : 0099157 66100
Email : krishnagopinath@gmail.com

C. PREPARATION AND SUBMISSION OF BIDS

2.11 Format and Signing of Bid

- 2.11.1 The Bidder shall in its Bid provide all the information sought under the Bidding Documents. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.11.2 Interested Bidders will have to download the tender document from MbPT website www.mumbaiport.gov.in and/or www.eprocure.gov.in and the Bidder has to submit the tender fee online with their offer. The downloading of the tender documents shall be carried out strictly as provided on the web site. No editing, addition / deletion of matter shall be permitted, if such action is observed at any stage, such offer is liable for outright rejection.
- 2.11.3 The Bidder is responsible to download Addendums / Amendments / Errata / replies to the queries of the Bidder etc. if any, issued by the Authority, from web site before the submission of the Bid Document. Any shortfall in submissions of the said Addendum / Amendments / Errata / replies to the queries of the bid document, etc. along with the downloaded documents while submitting the bid documents will not be considered. Incomplete Bid documents shall be rejected outright.
- 2.11.4 The Bid shall be typed and signed by the authorized signatory of the Bidder who shall also initial each page, in blue/black 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 Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers.
- 2.11.5 Bidders should attach clearly marked and referenced continuation sheets in the Event that the space provided in the prescribed forms in the Annexes is insufficient.; Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information.

2.12 Uploading of Bids

- 2.12.1 The interested Bidders (“Bidders”) are being called upon to submit their qualification details in Cover-1 at the CPPP website (“Qualification”) as per Appendix V and Financial Bids in the format at Appendix-VI in Cover-2 at the CPPP website (“Financial Bid”) (both shall collectively have referred as “Bid”) in accordance with the terms specified in these Bidding Documents. The Bid shall be valid for a period of 120 (one hundred and eighty) days from the Bid Due Date. The Bidders shall submit their respective Bids online at the CPPP website (<https://eprocure.gov.in/eprocure/app>) only. Any bid submitted in only physical form shall be rejected by the Authority. For the purpose of submission of the Bid online, a Bidder shall first register itself on the CPPP.
- 2.12.2 The detailed procedure for online bid submission has been provided in “Instructions for Online Bid Submission” of this tender
- 2.12.3 Complete bid submission is online on the website www.eprocure.gov.in. The payment of Tender Fee (Rs. 10,500/- inclusive of 5% GST towards the non-refundable Bid fee/ Cost of Bid Documents) can be done online. Bidder shall visit <https://eplatform.mbptedi.gov.in> for making the payment for Tender Fee and choose the option “Latest Tenders” on the dashboard. After selecting the relevant tender, the Bidder can make online payment after entering the basic details of bank for refund purpose, the receipt generated shall be uploaded by the Bidder on CPP Portal

under relevant option as a proof for the payment, failing which Tender will not be opened. The details of bank payment reference number and payment date also need to be entered while uploading in the relevant fields.

- 2.12.4 No Physical submission is required unless specifically asked by Authority on later stage for physical verification.
- 2.12.5 Since the Tender set is non-transferable, the Bidder who is making the online payment should only utilize the same for submitting his/her own Tender on CPP portal.
- 2.12.6 Each Bid shall have to be prepared and submitted in accordance with provisions of this RFP. Thus the Bid shall comprise of 2 (two) submissions:

Submission 1: Qualification / Technical Bid

Submission 2: Financial Bid

- 2.12.7 All the documents for each Submission as per above clause should be uploaded by the Bidders in the form of PDF files in the same order as mentioned below, on the e-tendering website during the online Bid Preparation stage.
- 2.12.8 All eligible/interested Bidders are required to be enrolled on portal <https://eprocure.gov.in/eprocure/app> before downloading tender documents and participate in e-tendering.
- 2.12.9 The Bidders are requested to familiarize themselves with the use of the e-Tendering portal (central procurement portal) of Government of India well in advance.
- 2.12.10 The Bidders are required to download the RFP Document/bid documents within the prescribed date & time mentioned in online tender schedule. After expiry of the date and time for tender document download, Department / Authority will not be responsible for any such failure on account of Bidders for not downloading the document within the schedule even though they have paid the cost of the tender to the Department Authority. In such case the cost of the RFP document/bid document paid by the Bidders will not be refunded.
- 2.12.11 The Authority reserves the right to verify all statements, information and documents, submitted by the Bidder in response to the RFP. Any such verification or the lack of such verification by the Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.
- 2.12.12 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 Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Independent Engineer (IE) either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority without the Authority being liable in any manner whatsoever to the Bidder or Independent Engineer (IE), as the case may be.

In such an event, the Authority shall be entitled to declare the Bidder not eligible to participate in future tenders as provided in Appendix II self-declaration without prejudice to any other right or remedy that may be available to the Authority.

The Bidders are required to submit soft copies of all the documents electronically on-line on the CPP Portal, using valid Digital Signature Certificates.

2.13 Bid Due Date

2.13.1 Bids should be submitted as per the schedule provided in Clause 1.4 and in the manner and form as provided in the RFP / Bid Documents.

2.13.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an addendum in accordance with Clause 2.8 uniformly for all Bidders.

2.14 Late Bids

2.14.1 Bids will not be accepted by the e-tendering system (or the Authority) after the specified time on the Bid Due Date and the same shall not be eligible for consideration and shall be summarily rejected.

2.15 Modification / Substitution / Withdrawal of Bids

2.15.1 The Bidder may substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.15.2 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.16 Rejection of Bids

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

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

2.17 Validity of Bids

2.17.1 The Bids shall be valid for a period of not less than **120 (one hundred and Twenty) days from the Bid Due Date**. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority, provided that the Selected Bidder shall extend the validity of the Bid until the execution of the Consultancy Agreement.

2.18 Confidentiality

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

2.19 Correspondence with the Bidder

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

B. BID SECURITY

2.20 Self-Declaration for Bid Security

2.20.1 No Bid Security / EMD will be applicable for this tender as per the Ministry of Ports, Shipping and Waterways letter No.PD-24015/71/2020-PDVII(e-340929) dated 26-11-2020 and Ministry of Finance, Department of Expenditures OM No.F-9/4/2020-PPD dated 12-11-2020. In lieu of Bid Security/EMD, the Bidders are required to submit a Bid Security Declaration along with the tender as per the format enclosed as Appendix II. Any bid not accompanied by the above mentioned Bid Security Declaration shall be treated as Non-responsive and shall be rejected by the MbPT.

2.20.2 Authority shall be entitled to declare the Bidder not eligible to participate in future tenders as provided in Appendix II self-declaration without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Consultancy Agreement, or otherwise, under the following conditions, if:

- a. Bidder submits a non-responsive Bid;
- b. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- c. In the case of Selected Bidder, if within the specified time limit –
 - i it fails to sign and return the duplicate copy of LOA;
 - ii it refuses to sign the Consultancy Agreement;
 - iii the Operator fails to provide the Performance Security within the period prescribed.
- d. a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
- e. the Selected Bidder fails or refuses to provide any documents required to be provided by it after its selection;

3 EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority will examine and evaluate the Bids in accordance with the provisions set out in this RFP.
- 3.1.2 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid and such Bidder shall provide its response within the time specified by the Authority in this regard.

3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:
 - a. it is received as per the format prescribed in this RFP;
 - b. it is received by the Bid Due Date including any extension thereof;
 - c. it is signed, marked and uploaded as stipulated in this RFP;
 - d. the Bid Security Declaration is submitted as specified in this RFP;
 - e. it is accompanied by the Power(s) of Attorney as specified in this RFP as applicable;
 - f. it contains certificates from its Statutory Auditor / CAs/chartered accountant in the formats specified at Appendix of the RFP;
 - g. it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (and if formats have been specified, then in those formats);
 - h. it contains the Bidding Documents signed by the authorized signatory of the Bidder;
 - i. it does not contain any condition or qualification; and
 - j. it is not non-responsive or inconsistent in terms of the Bidding Documents.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.
- 3.2.3 Any entity which has been barred by the Central Govt. or any entity controlled by it, from participating in any project, and the bar subsists as on the Bid Due Date, would not be eligible to submit Bid.
- 3.2.4 A Bidder should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder.

3.3 Selection of Bidder

- 3.3.1 Subject to the provisions of Clause 2.15, the Bidders whose Bid are adjudged as responsive in terms of Clause 3.2.1 and technically qualified in terms of eligibility criteria under this RFP, the Authority shall prepare a list of pre-qualified and shortlisted Bidders for opening of their Financial Bids. A date, time and venue will be notified to all Bidders for announcing the result

of evaluation and opening of Financial bids. Before opening of the Financial Bids, the list of pre-qualified and shortlisted Bidders along with their Technical Score will be read out. The opening of Financial bids shall be done in presence of respective representatives of Bidders who choose to be present. The Authority will not entertain any query or clarification from Bidders who fail to qualify at any stage of the Bid Process.

- 3.3.2 Bidders are advised that Selection will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bid Process or Selection will be given.
- 3.3.3 Any information contained in the Proposal shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Consultancy is subsequently awarded to it.
- 3.3.4 The Bidder securing highest combined score calculated as per clause 3.7 will be declared as Selected Bidder.

3.4 Evaluation of Submission 1: Qualification

- 3.4.1 In the first stage, the Qualification documents will be evaluated on the basis of Bidder's experience, financial capacity and the experience of Key Personnel. Only those Bidders whose Technical Proposals score 70 marks or more out of 100 shall qualify for further consideration
- 3.4.2 In computing the eligibility of the Bidder under this RFP, the Technical Capacity & Financial Capacity of their respective Associates would be eligible hereunder, provided Bidders has at least 51% equity shares in the Associate.
- 3.4.3 The scoring criteria for Technical Score to be used for evaluation shall be as per clause 2.2 of this RFP.
- 3.4.4 The Bidder should furnish the required information and evidence in support of its claim of Technical Capacity, as required in clause 2.2 of this RFP.
- 3.4.5 Authority may, at its own discretion, seek additional clarification and information on the documents submitted in support of eligibility criteria.

3.5 Short listing of Bidders

Of the Bidder(s) whose technical score is equal to or more than 70 points shall be pre-qualified and short-listed for opening of Financial Bid. However, if the number of such pre-qualified Bidders is less than two, the Authority may, in its sole discretion, pre-qualify the Bidder(s) whose technical score is less than 70; provided that in such an event, the total number of pre-qualified and short-listed Bidders shall not exceed two.

3.6 Financial Bid

The Financial Bid shall consist of lump sum monthly fees payable to the Independent Engineer (IE) by Authority on successful delivering its services as per the terms of Consultancy Agreement. The payment terms shall in accordance with the provisions of Consultancy Agreement.

3.7 Evaluation Bid Parameter

After opening of Financial bids of pre-qualified bidders, the lowest Financial bid (FM) will be given a financial score (FS) of 100 points. The financial scores of other proposals will be computed as follows:

$$FS = 100 \times FM/F$$

(Where F = Amount of Financial bid)

Thereafter, all pre-qualified bidders will finally be ranked according to their Combined Score (S) by combining Technical (TS) and Financial (FS) scores as follows:

$$S = TS \times 0.8 + FS \times 0.2$$

Where 'S' is the combined score and weightages assigned to Technical Proposal and Financial bid shall be 0.80 and 0.20 respectively.

The qualified Bidder who secures highest combined score would be declared as the Selected Bidder. In the event that two or more Bidders secure same combined score, the work will be awarded to the lowest financial Bidder.

The Authority will determine whether the Financial bids are complete and unconditional. The cost indicated in the Financial bid shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Independent Engineer (IE).

3.8 Contacts during Bid Evaluation

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

3.9 Award if Consultancy

After selection, a Letter of Award ("LOA") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 3 (three) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the Event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, declare the Bidder not eligible to participate in future tenders as provided in Appendix II self-declaration on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

3.10 Execution of Consultancy Agreement

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

3.11 Commencement of assignment

The Independent Engineer (IE) shall commence the Services at the Project site within 7 (seven) days of the date of the Agreement, or such other date as may be mutually agreed. If the Independent Engineer (IE) fails to either sign the Agreement as specified in RFP or commence the assignment as specified herein, the Authority may invite the Bidder submitting second lowest Financial bid for negotiations.

3.12 Proprietary data

Subject to the provisions of RFP, all documents and other information provided by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders and the Independent Engineer (IE), as the case may be, are to treat all information as strictly confidential. The Authority will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Independent Engineer (IE) to the Authority in relation to the Consultancy shall be the property of the Authority.

4 FRAUD AND CORRUPT PRACTICES

4.1 Fraud and Corrupt Practices

- 4.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Consultancy Agreement. Notwithstanding anything to the contrary contained herein, in the LOA, the Consultancy Agreement, the Authority as the case may be may reject a Bid, withdraw the LOA, or terminate the Consultancy Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an Event, the Authority shall be entitled to declare the Bidder not eligible to participate in future tenders as provided in Appendix II self-declaration
- 4.1.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Consultancy Agreement, or otherwise, if a Bidder or Operator, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Consultancy Agreement, such Bidder or Operator shall not be eligible to participate in any tender or RFP issued by any Department or Undertaking of Government of India during a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.1.3 For the purposes of this Clause 4.1.3, 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 directly or indirectly the actions of any person connected with the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Consultancy Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) acting contrary to applicable anti-bribery or anti-corruption laws;
 - (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

- (c) “**coercive practice**” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5 PRE-BID CONFERENCE

5.1 Pre Bid Conference

- 5.1.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only duly authorized representatives of the Bidders shall be allowed to participate in the Pre-Bid conference. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.1.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority 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. The Authority shall provide clarifications to only those queries which Authority has received in writing from the Bidders. The Authority will not provide clarifications to queries received orally.

6 MISCELLANEOUS

6.1 Miscellaneous

- 6.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the State of Maharashtra and Court at Mumbai only shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.
- 6.1.2 The Authority, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:
- (a) suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Authority by, on behalf of, and/or in relation to any Bidder;
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder
 - (e) amend, modify or reissue the Bidding Documents or any part thereof;
 - (f) to accept or reject any or all of the Bids; and/or
 - (g) include additional evaluation criteria or to modify the eligibility criteria for the further short-listing of person for issue of the Bidding Documents during the Bidding Process.
 - (h) to consider any variation in the Bid submitted by the Bidder provided such variation is as per the project scope, project structure and as per the terms and conditions of the RFP

Appendix I

Annex I: Letter for Bid

[On the letter head of the Bidder/lead Member]

Original or copy No:

Dated:

To,

**Chief Engineer,
Mumbai Port Trust
Port Bhavan, 3rd Floor, Shoorji Vallabhdas Marg,
Fort Mumbai, (400001)
Maharashtra, India**

Sub: Bid for “**Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model**”

Sir,

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

1. I acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidders for the aforesaid Project and I certify that all information provided in the Bid and in Appendices to this Letter of Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
2. The Bid is being submitted and submissions in this letter are being made for the express purpose of our selection as Operator for the aforesaid Project.
3. I shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the submissions.
4. I acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive my/our right to challenge the same on any account whatsoever.
5. I certify that in the last 3 (three) years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. I certify that we are not barred by Government of Maharashtra (GoM), any other State Government in India (SG) or Government of India (GoI), or any of the agencies of GoM/SG/GoI from participating in similar projects as on(Bid Due Date).

7. I declare that:

- (a) I have examined and have no reservations to the RFP, including any addendum issued by the Authority;
 - (b) I have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Section 4.1 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State;
 - (c) I hereby certify that I have taken steps to ensure that in conformity with the provisions of Clause 4.1 of the RFP, no person acting for me/ us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
8. I understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Bidders, in accordance with the RFP.
 9. I understand that the Authority or its representatives shall have the right to physically verify project facilities that are part of the project experience claimed by us. I agree to abide by the decision of the Authority in this regard and hereby waive my/our right to challenge the same on any account whatsoever.
 10. I believe that I satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.
 11. I certify that in regard to matters other than security and integrity of the country, I have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 12. I further certify that in regard to matters relating to security and integrity of the country, I have not been charge-sheeted by any Government Instrumentality or convicted by a court of law.
 13. I further certify that no investigation by a regulatory authority is pending either against me or against our chief executive officer or any of my/our directors/managers/employees.
 14. I undertake that in case due to any change in facts or circumstances during the Bidding Process, I am attracted by the provisions of disqualification in terms of the provisions of this RFP, I shall intimate the Authority of the same immediately.
 15. The Statement of Legal Capacity as per format provided at Annex-III in Appendix-I of the RFP, duly signed, is enclosed.
 16. I hereby irrevocably waive any right, which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
 17. In the Event of me being declared as the Selected Bidder, I agree to enter into a Consultancy Agreement in accordance with the draft that has been provided to me prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

18. I have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly set forth in the Consultancy Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Project.
19. I offer a Bid Security Declaration to the Authority in accordance with the RFP Document.
20. I agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened or rejected.
21. The Premium has been quoted by me after taking into consideration all the terms and conditions stated in the RFP, Consultancy Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
22. I agree and undertake to abide by all the terms and conditions of the RFP.
23. I agree and undertake to be jointly and severally liable for all our obligations under the Consultancy Agreement as per the provisions set out therein.
24. I shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in this RFP.
25. I hereby give an undertaking that the Authority shall not be responsible to procure any approvals for the project. It shall solely be our responsibility to get all necessary approvals.

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

Yours faithfully,

Date: (Signature of the authorised signatory)

Place:

(Name and designation of the authorised signatory)

(Name and seal of the Bidder)

Appendix I

ANNEX-II: Details of Bidder

[On the letter head of the Bidder]

Original or copy No: Dated:

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/or commencement of business (provide a true copy of the incorporation certificate):
2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in [this/these Project(s)]:
3. Details of individual(s) who will serve as the point of contact/communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone number:
 - (f) E-Mail Address:
 - (g) Fax number:
4. Particulars of the authorized signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone number:
 - (e) Fax number:

Appendix I

ANNEX-III: Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder)

Original or copy No:

Ref. Date:

To,

Chief Engineer

Mumbai Port Trust

Dear Sir,

We hereby confirm that we/ satisfy the terms and conditions laid out in the RFP.

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of

(include consortium members also, if applicable)

APPENDIX II: Self Declaration In Lieu of Bid Security

Format of Declaration In Lieu of EMD / Bid Security

(To be submitted on the Bidder's Letter Head)

I/We (Insert Name and Address of Bidder) am/are submitting this declaration in lieu of Bid Security/Earnest Money Deposit for the **Tender no. FSRU/2019/IE** for **Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model**, thereby fully accepting that I/We will be suspended and shall not be eligible to participate in the Tenders invited by Mumbai Port Trust, for a period of Two years from the date of such Suspension Orders, under the following circumstances:-

- a) If after the opening of Tender, I/We withdraw or modify my/our Tender during the period of validity specified in the Bid Documents (including extended validity, if any) or do not accept the correction of the Tender Price pursuant to any arithmetical errors.
- b) If after the award of work, I/We fail to furnish the required Performance Security or sign the Consultancy Agreement, within the time limits given by Mumbai Port Trust.

Signature of the Bidder with seal

Date:

APPENDIX III: Power of Attorney for signing of Bid

Know all persons by these presents, [We (name of the company) incorporated under the laws of India and having its registered office at [.....] “**Company**”] do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds, matters and things as are necessary or required in connection with or incidental to submission of our Bid for “**Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model**” pursuant to the RFP dated [.....] (“**RFP**”) issued by the Authority (the “**Authority**”) and for our selection as Selected Bidder including but not limited to signing and submission of all Bids and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Consultancy Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Consultancy Agreement with the Authority.

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

Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

IN WITNESS WHEREOF,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 2.....

For

(Signature)

(Name, Title and Address)

Witnesses:

(Notarised)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)

Notes:

1. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
3. *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*
4. *Use same format with necessary modification for members of consortium.*

APPENDIX IV: Anti-Collusion Certificate

(To be executed on Rs. 100 stamp paper)

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely “Prevention of Corruption Act, 1988” and its subsequent amendments thereof.

We hereby certify and confirm that in the preparation and submission of our Proposal, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Proposal.

Dated thisDay of, 20.....

.....

(Name of the Bidder)

.....

(Signature of the Bidder / Authorised Person)

.....

(Name of the Authorised Person)

Appendix V

Annex I: Format of Financial Capacity for purpose of evaluation

(all amounts in Rs. \$)

Bidder	[enter Bidder Name]				
1. Average Annual Turnover	Year 1	Year 2	Year 3	Year 4	Year 5
	[enter]	[enter]	[enter]	[enter]	[enter]
	[enter average of Best 3 years out of 5]				

Instructions:

1. The Bidder shall attach copies of the balance sheets, financial statements and annual reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
 - a) reflect the financial situation of the Bidder;
 - b) be audited by a Statutory Auditor / CA;
 - c) be complete, including all notes to the financial statements; and
 - d) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Year 1 will be the latest completed financial year (i.e. FY 2020-21), preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year.
3. The Bidder shall also provide the name and address of the Bankers to the Authority.
4. The Bidder, except in the case of publicly listed companies, shall provide an Auditor's Certificate specifying the turnover of the Bidder.
5. ^{\$} For conversion of US Dollars to Rupees, the rate of conversion shall be from the daily exchange rate published by the International Monetary Fund for the relevant date. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

Appendix V

Annex II: Format of Technical Capacity for purpose of evaluation

Technical Capacity of the Bidder[@]

No	Project Name	Client	Scope title	Duration	Consultancy Fee (Rs. Crore)

Note:

1. Bidders are required to enclose supporting evidence with respect to each Eligible Assignment such as Completion Certificate, work order from client.
2. Bidders are required to enclose certificate from Statutory Auditor / Chartered Accountant to certify the Consultancy Fee, in absence of which zero marks will be awarded in respective marking category.
3. For conversion of US Dollars to Rupees, the rate of conversion shall be from the daily exchange rate published by the International Monetary Fund for the relevant date. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

Appendix V

Annex III: Summary of Organization's Experience

Fill separate table form for Eligible Assignment, use supporting documents wherever seems necessary.

Name of Project	
Assignment title for consultancy / IE / PMC	
Name of Client	
Project Cost for Client	
Consultancy Fee / Contract value for Bidder	
Duration of Assignment – start / end	
Brief details about Project	
Brief Scope of Work for Bidder	
Current status of project	

Appendix V

Annex IV: Format for CVs of Key Personnel

1.	Proposed Position		
2.	Name of Personnel		
3.	Date of Birth		
4.	Nationality		
5.	Educational Qualification		
	University/College	Name of Degree	Year of Passing
	Additional Qualification	Certifying Authority	Year of certification
6.	Employment Record		
	Period	Authority	Last Position Held
		Total Years of experience (As on 31st May 2021)	
7.	Relevant work experience: List of projects on which the Personnel has worked		
1	Assigned Name: Duration: Client: Estimated Project Cost: Description of Responsibilities:		
2	Assigned Name: Duration: Client: Estimated Project Cost: Description of Responsibilities:		
3	Assigned Name: Duration: Client: Estimated Project Cost: Description of Responsibilities:		
4	Assigned Name: Duration: Client: Estimated Project Cost: Description of Responsibilities:		
5	Assigned Name: Duration: Client: Estimated Project Cost: Description of Responsibilities:		
6	Assigned Name:		

	Duration: Client: Estimated Project Cost: Description of Responsibilities:
8.	Details of the current assignment and the time duration for which services are required for the current assignment.
9.	Certification
	<p>1. I am willing to work on the Project and I will be available for entire duration of the Project assignment as required.</p> <p>2. I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.</p> <p>Place:</p> <p style="text-align: right;">(Signature and name of the Key Personnel)</p> <p style="text-align: center;">(Signature and name of the authorized signatory of the Applicant)</p>

Appendix VI: Format of Financial Bid

(BOQ Excel file to be downloaded to be submitted online only)

[To be submitted online (submission 2) only]

Appendix VII: Integrity Pact

BETWEEN
MUMBAI PORT TRUST (MbPT) hereinafter referred to as "The Principal"
AND
(Name of The bidders and consortium members)hereinafter referred to as
"The Bidder"

Preamble:

The Principal intends to award, under laid down organizational procedures, contract/s for Tender No. **Tender no. FSRU/2019/IE Independent Engineer Services for Project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model.** The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources, and of fairness / transparency in its relations with its Bidder(s) and /or Contractor(s). In order to achieve these goals, the principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principal mentioned above.

Section 1 - Commitments of the Principal.

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

Section 2 - Commitments of the Bidder(s) / Contractor(s)

- (1) The Bidder (s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
 - (a) The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit, which he/she is not legally entitled to, in order to obtain in exchange any advantage or during the execution of the contract.
 - (b) The Bidder(s) /Contractor(s) will not enter with other Bidders in to any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness, or to introduce cartelization in the bidding process.

- (c) The Bidder(s)/Contractor(s) will not commit any offence, under the relevant IPC/PC Act; further the Bidder(s)/Contractor(s) will not use improperly, for purposes of competition, or personal gain, or pass on to others, any information or document provided by the Principal, as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - (d) The bidder(s)/contractor(s) of foreign origin shall disclose the name and address of the agents / representatives in India if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality shall furnish the name and address of the foreign principle if any. Further details as mentioned in the “Guidelines on Indian agents of Foreign Suppliers” shall be disclosed by the Bidder(s)/ Contractor(s). Further, as mentioned in the guidelines all the payments made to the Indian agents/ representative have to be in Indian rupees only. Copy of the “Guidelines on Indian agents of Foreign Suppliers “as Annexed and marked as Annex- “A”.
 - (e) The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with the award of the contract.
- (2) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section-3 Disqualification from Tender process and exclusion from future contracts.

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression, through a violation of Section-2, above or in any other form, such as to put his reliability or credibility in question, the principal is entitled to disqualify the Bidder(s)/ contractor(s), from the tender process, or take action as per the procedure mentioned in the “Guidelines on Banning of Business dealings”. Copy of the “Guidelines on Banning of Business dealings” is annexed and marked as Annexure “B”.

Section-4 Compensation for damages.

1. If the Principal has disqualified the Bidder(s), from the tender process prior to the award, according to Section-3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.
2. If the Principal has terminated the contract according to Section-3, or if the Principal is entitled to terminate the contract according to Section-3, the Principal shall be entitled to demand and recover from the Contractor, liquidated damages of the contract value, or the amount equivalent to Performance Bank Guarantee.

Section-5 Previous transgression

1. The Bidder declares that, no previous transgressions occurred in the last 3 years, with any other company, in any country, confirming to the anti-corruption approach or with any other Public Sector Enterprise in India, that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process for action can be taken as per the procedure mentioned in “Guidelines on Banning of Business dealings”.

Section-6 Equal treatment of all Bidders/Contractors/Subcontractors

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

2. The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors.
3. The Principal will disqualify from the tender process all Bidders, who do not sign this pact or violates its provisions.

Section-7 Criminal charges against violation Bidder(s)/Contractor(s)/Sub-contractor(s)

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

Section-8 Independent External Monitor/ Monitors

1. The principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor, is to review independently and objectively, whether and to what extent, the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions, by the representative of the parties and performs his functions neutrally and independently. He reports to the Chairman, MbPT.
3. The Bidder(s)/Contractor(s) accepts that, the monitor has the right to access, without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access, to the project documentation. The same is applicable to Subcontractors. The monitor is under contractual obligation, to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
4. The Principal will provide to the Monitor, sufficient information about all meetings, among the parties related to the Project, provided such meetings could have an impact, on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the management to discontinue, or take corrective action, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties, that they act in a specific manner, refrain from action or tolerate action.
6. The Monitor will submit a written report, to the Chairman, MbPT within 8 to 10 weeks, from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
7. Monitor shall entitle to compensation on the same terms as being extended to / provided to Independent Directors on the MBPT Board.
8. If the Monitor has reported to Chairman, MbPT, a substantiate suspension of an offence, under relevant IPC/PC Act, and the Chairman, MbPT has not, within reasonable time, taken visible action to proceed against such offence, or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
9. The word 'Monitor' would include both singular and Plural.

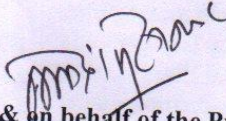
Section-9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the contractor 10 months after the last payment under the contract, and for all other bidders & three months the contract has been awarded.

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

Section-10 Other Provisions

- This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Mumbai, Maharashtra.
- Changes and supplements as well as termination notices, need to be made in writing. Side agreements have not been made.
- If the Contractor is a partnership or a consortium, this agreement must be, signed by all partners or consortium members.
- Should one or several provisions of this agreement, turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement, to their original intentions.



(For & on behalf of the Principal)

मुळ अधिकारी
मुंबई बंदर विश्वस्त
CHIEF ENGINEER
MUMBAI PORT TRUST

Office seal

Place: Mumbai

Date:



Witness-1: (for Principal)

Name and Address.....

(Keshav Sunar)

Dy. Chief Engineer

Mumbai Port Trust

(For & On behalf of Bidder/ Contractor)

Office seal

Place: Mumbai

Date:

Witness-2:(for Bidder/ Contractor)

Name and Address.....

.....

.....

.....

GUIDELINES FOR INDIAN AGENTS OF FOREIGN SUPPLIERS

- 1.0 Valid Authorized Dealership Certificate from the Foreign Principal/O.E.M. should be submitted by the Indian Agent/Dealer and such firm's name shall be added to the Approved List of O.E.M. and Authorized Dealers.
- 2.0 Registered address of the foreign principal and their Indian Agent should appear in the Authorized Dealership Certificate.
- i) The tenderer shall submit an undertaking along with their tender offer that they have not made any payment or illegal gratification to any person/authority connected with the tender process so as to influence the tender process and have not committed any offense under the Prevention of Corruption Act in connection with the tender.
- ii) The tenderer shall disclose any payments made or proposed to be made to any intermediaries (agents etc.) in connection with the tender.
- 2.1 MbPT standard payment terms are as per mutually agreed INCO terms.
Agency Commission: MbPT does not agree to pay any agency commission either in Indian or in Foreign Currency.
- 2.2 Failure to furnish correct and detailed information as called for in paragraph 2.0 above may render the concerned tenderer's offer liable for rejection OR in the event of a contract materializing, the same may be liable for termination by MbPT. Besides, a penalty of payment of a named sum OR banning business dealings with MbPT may be levied.

GUIDELINES ON BANNING OF BUSINESS DEALINGS CONTENTS

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1. Introduction

- 1.1 The Board of Trustees of the Port of Mumbai (The Board / MbPT), incorporated by The Major Port Trusts Act, 1963, as amended by Major Port Trusts (Amendment) Act, 1974 and is an authority within the meaning of article 12 of Constitution of India. MbPT has also to safeguard its commercial interests, MbPT deals with agencies, who have a very high degree of integrity, commitments and sincerity towards the work undertaken. It is not in the interest of MbPT to deal with Agencies who commit deception, fraud or other misconduct in the execution of contracts awarded / orders issued to them. In order to ensure compliance with the constitutional mandate, it is incumbent on MbPT to observe principles of natural justice before banning the business dealings with any Agency.
- 1.2 Since banning of business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

2. Scope

- 2.1 The General Condition of Contract (GCC) of MbPT generally provide that MbPT reserves the rights to remove from list of approved suppliers/ contractors or to ban business dealings if any Agency has been found to have committed misconduct and also to suspend business dealings pending investigation.

- 2.2 Similarly, in case of sale of material there is a clause to deal with the Agencies / customers / buyers who indulge in lifting of material in unauthorized manner.
- 2.3 However, absence of such a clause does not in any way restrict the right of MbPT to take action / decision under these guidelines in appropriate cases.
- 2.4 The procedure of (i) Removal of Agency from the List of approved suppliers / contractors (ii) Suspension and (iii) Banning of Business Dealing with Agencies has been laid down in these guidelines.
- 2.5 These guidelines apply to all departments of MbPT.
- 2.6 It is clarified that these guidelines do not deal with the decision of the Management not to entertain any particular Agency due to its prior / inadequate performances or for any other reason.
- 2.7 The banning shall be with prospective effect, i.e. future business dealings.

3. Definitions

In these Guidelines, unless the context otherwise requires

- (i) Party/ Contractor/ Supplier/ Purchaser/ Customer shall mean and include a public limited company or a private limited company, a firm whether registered or not, an individual, a co-operative society or an association or a group of persons engaged in any commerce, trade, industry etc. Party/ Contractor / Supplier/ Purchaser / Customer in the context of those guidelines is indicated as ‘Agency’
- (ii) ‘Inter-connected Agency’ shall mean two or more companies having any of the following features:
- (a) If one is a subsidiary of the other.
 - (b) If the Director(s), Partner(s), Manager(s) or Representative(s) are common.
 - (c) If management is common.
 - (d) If one owns or controls the other in any manner.
- (iii) ‘Competent Authority’ and ‘Appellate Authority’ shall mean the following:
- a) For MbPT Banning
The Head of the Department shall be “Competent Authority” for the purpose of these guidelines. Chairman, MbPT shall be ‘Appellate Authority’ in respect of such cases except banning of business dealings with Foreign Suppliers of imported material.
 - b) For banning of business dealings with Foreign Suppliers of imported material, MbPT’s HOD Committee (MHC) shall be the ‘Competent Authority’. The Appeal against the Order passed by MHC shall lie with Chairman as First Appellate Authority.
 - c) In case the foreign supplier is not satisfied by the decision of the First Appellate Authority, it may approach Chairman as Second Appellate Authority.

- d) MbPT Board shall have overall power to take *suo-moto* action on any information available or received by him and pass such order(s) as he may think appropriate, including modifying the order(s) passed by any authority under these guidelines.
- iv) ‘Investigating Department’ shall mean any Department Investigating into the conduct of the Agency and shall include the Vigilance Department, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.
- v) List of approved Agencies – Parties / Contractors / Suppliers/ Purchasers/ Customers shall mean and include list of approved registered Agencies – Parties/ Contractors / Suppliers / Purchasers / Customers etc.

4. Initiation of Banning / Suspension

Action for banning/ suspension business dealing with any Agency should be initiated by the department having business dealing with them after noticing the irregularities or misconduct on their part. Besides any department, Vigilance Department may also be competent to initiate such action.

5. Suspension of Business Dealings

- 5.1 If the conduct of any Agency dealing with MbPT is under investigation by any department (except Foreign Supplier of imported material), the Competent Authority may consider whether the allegations under investigation are of a serious nature and whether pending investigation, it would be advisable to continue business dealings with the Agency. If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, if any, decides that it would not be in the interest to continue business dealings pending investigation, it may suspend business dealings with the Agency. The order to this effect may indicate a brief of the charges under investigation. It is decided that inter-connected Agencies would also come within the ambit of the order of suspension, the some should be specifically stated in the order. The order of suspension would operate for a period not more than six months and may be communicated to the Agency as also to the Investigating Department. The Investigating Department may ensure that their investigation is completed and whole process of final order is over within such period.
- 5.2. The order of suspension shall be communicated to all Departmental Heads. During the period of suspension, no business dealing may be held with the Agency.
- 5.3 As far as possible, the existing contract(s) with the Agency may continue unless the Competent Authority, having regards to the circumstances of the case, decided otherwise.
- 5.4 If the gravity of the misconduct under investigation is very serious and it would not be in the interest of MbPT, as a whole, to deal with such an Agency pending investigation, the competent Authority may send his

recommendations to Chief Vigilance Officer (CVO), MbPT Head of Department (HOD) along with the material available. If HOD considers that depending upon the gravity of the misconduct, it would not be desirable to have any dealings with the Agency concerned an order suspending business dealing may be issued by the Competent Authority, copy of which may be endorsed to the Agency concerned. Such an order would operate for a period of six months from the date of issue.

5.5 For suspension of business dealing with foreign suppliers of imported material, following shall the procedure.

- i) Suspension of the foreign suppliers shall apply throughout MbPT .
- ii) Based on the complaint forwarded or received directly by Vigilance Department, if Gravity of the misconduct under investigation is found serious and it is felt that it would not be in the interest of MbPT to continue to deal with such Agency pending investigations. Vigilance Dept. may send such recommendation on the matter to HOD to place before MHC consisting of the following:

1. Head of Finance Department.
2. Head of Executing Department.
3. Head of User Department.
4. Head of Legal Department.

The Committee shall expeditiously examine the report, give its comments/recommendations within twenty-one days of receipt of the reference by HOD.

- iii) If MHC opines that it is a fit case for suspension, MHC may pass necessary orders which shall be communicated to the foreign supplier by HOD.

5.6 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into - correspondence / argument with the Agency at this Stage.

5.7 It is not necessary to give any show cause notice or personal hearing to the Agency before issuing the order of suspension. However, if investigations are not complete in six months' time, the Competent Authority may extend the period of suspension by another three months, during which period the investigation must be completed.

6 Ground on which Banning of Business Dealing can be initiated

6.1 If the security consideration including questions of loyalty of the Agency to the State, so warrants.

6.2 If the Director / Owner of the Agency, Proprietor or partner of the firm is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealing with the Government or any other public sector enterprises or MbPT, during the last five years.

6.3 If there is strong justification for believing that the Directors Proprietors, Partners, owner of the Agency have been guilty of malpractices such bribery, corruption, fraud, substitution of tenders, interpolations, etc.

- 6.4 If the Agency continuously refuses to return/ refund/ the dues of MbPT without showing adequate reason and this is not due to any reasonable dispute which attract proceeding in arbitration of Court of Law.
- 6.5 If the Agency employs a public servant dismissed / removed or employs person convicted for an offence involving corruption or abetment of such offences.
- 6.6 If business dealing with the Agency have been banned by the Govt. or any other public sector enterprises.
- 6.7 If the Agency has resorted to Corrupt, fraudulent practices including misrepresentation of facts.
- 6.8 If the Agency uses intimidation / threatening or brings under outside pressure on MbPT or its Official in acceptance/ performances of the job under the contract.
- 6.9 If the Agency indulgence in repeated and / or deliberate use of delay tactics in complying with contractual stipulations.
- 6.10 willful indulgence by the Agency in Supplying sub-standard material irrespective of whether pre-dispatch inspection was carried out by MbPT or not.
- 6.11 Based on the findings of the investigation report of CBI/Police against the Agency for malafide/unlawful acts or improper conduct on his part in matters relating to MbPT or even otherwise;
- 6.12 Establishment litigant nature of the Agency to derive under benefit.
- 6.13 Continued poor performance of the Agency in several contracts.
- 6.14 If the Agency misuses the premises of facilities of MbPT forcefully occupies tampers or damages the properties including land, water resources forests/ trees, etc.

(Note: The examples given above are only illustrative and not exhaustive.

The Competent Authority may decide to ban business dealing for any good and sufficient reason).

7. Banning of Business Dealings.

- 7.1 Normally, a decision to ban business dealings with any Agency should apply throughout the MbPT. However, the Competent Authority can impose such ban if in the particular case banning of business dealings will serve the purpose and achieve its objective and banning throughout the MbPT is not required in view of the local conditions and impact of the misconduct/ default. Any ban imposed shall be applicable across the MbPT.
- 7.2 For banning, the proposal should be sent by Head of Executing Department to the CVO setting out the facts of the case and the justification of the action proposed alongwith all the relevant papers and documents except for banning of business dealings with Foreign suppliers of imported material.

The Vigilance Department shall process the proposal for a prima-facie view in the matter by the Competent Authority nominated for MbPT-wide banning.

The CVO shall get feedback about that agency from the HOD, based on this feedback, a prima-facie, decision for banning/ or otherwise shall be taken by the Competent Authority.

If the prima-facie decision for banning has been taken, the Vigilance Department shall issue a show-cause notice to the agency conveying why it should not be banned throughout MbPT. After considering the reply of the Agency and other circumstances and facts of the case, a final decision for banning shall be taken by the Competent Authority.

7.3 There will be a Standing Committee to be appointed by HOD for processing the cases of Banning of Business Dealings except for banning of business dealings with foreign suppliers. However, for procurement of items/ award of contracts, to meet the requirement of Department, the committee shall be consisting of HOD from Executing, Finance, Law& User Department. Member from Executing Department shall be the convener of the Committee. The functions of the Committee shall, inter-alia include.

- i) To study the report of the investigating Agency and decide it a prima-facie case for MbPT-wide / Local unit, wise banning exists, if not, send back the case to the Competent Authority.
- ii) To recommend for issue of show cause notice to the Agency by the concerned department.
- iii) To examine the reply to show cause notice and call the Agency for personal hearing if required.
- iv) To submit final recommendation to the Competent Authority for banning or otherwise.

7.4 If the Competent Authority is prime-facie of view that action for banning business dealings with the Agency is called for, a show cause notice may be issued to the Agency as per paragraph 9.1 and an enquiry held accordingly.

7.5 Procedure for Banning of Business Dealings with Foreign supplier of imported material.

- i) Banning of the agencies shall apply throughout the MbPT including subsidiaries.
- ii) Based on the complaint forwarded by HOD or received directly by Vigilance Department, an investigation shall be carried out by Vigilance Department. After investigation depending upon the gravity of the misconduct Vigilance Department may send their report to HOD to be placed before MHC consisting of the following:

-

- (i) Head of Finance Department.
- (ii) Head of Executing Department.
- (iii) Head of User Department.
- (iv) Head of Legal Department.

The committee shall examine the report and give its comments/ recommendations within 21 days of receipt of the reference by HOD.

- iii) If MHC opinion that it is a fit case for initiating banning action, it will direct HOD to issue show-cause notice to the agency for replying within a reasonable period.
- iv) On receipt of the reply or on expiry of the stipulated period, the case shall be submitted by HOD to MHC for consideration & decision.
- v) The decision of the MHC shall be communicated to the agency by HOD.

8. Removal from List of Approved Agencies- Suppliers/ Contractors, etc.

- 8.1 If the Competent Authority decides that the charge against the Agency is of a minor nature, it may issue a show-cause notice as to why the name of the Agency should not be removed from the list of approved Agencies- Suppliers/ Contractors, etc.
- 8.2 The effect of such an order would be that the Agency would not be disqualified from competing in Open Tender Enquiries but Limited Tender Enquiry may not be given to the Agency concerned.
- 8.3 Past performance of the Agency may be taken into account while processing for approval of the Competent Authority for awarding the contract.

9. Show-cause Notice

- 9.1 In case where the Competent Authority decides that action against an Agency is called for, a show-cause, notice has to be issued to the Agency, Statement containing the imputation of misconduct or misbehavior may be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defense.
- 9.2 If the Agency requested for inspection of any relevant document in possession of MbPT, necessary facility for inspection of documents may be provided.
- 9.3 The Competent Authority may consider and pass an appropriate speaking order.
 - a) For exonerating the Agency if the charges are not established.
 - b) For removing the Agency from the list of approved Suppliers/Contractors, etc.
 - c) For banning the business dealings with the Agency.
- 9.4 It is to ban business dealing, the period for which the ban would be operative may be mentioned. The order may also mention that the ban would extend to file interconnected Agencies of the Agency.

10. Appeal against the Decision of the Competent Authority

- 10.1 The Agency may file an appeal against the order of the Competent Authority banning business dealings, etc. The appeal shall lie to Appellate Authority. Such an appeal shall lie preferred within one month from the date of receipt of the order banning business dealing etc.
- 10.2 Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

11. Review of the Decision by the Competent Authority

Any petition/ application filed by the Agency concerning the review of the banning order passed originally by HOD under the existing guidelines either before or after filing of appeal before the Appellate Authority or after disposal of appeal by the Appellate Authority, the review petition can be decided by the HOD upon disclosure of new facts/ circumstances or subsequent development necessitating such review. The Competent Authority may refer the same petition to the Standing Committee for examination and recommendation.

12. Circulation of the names of Agencies with whom Business dealings have been banned.

- 12.1 Depending upon gravity of misconduct established, the Competent Authority of the corporate office, may circulate the names of Agency with whom business dealings have been banned, to the Government Departments, other Public Sector Enterprises, etc. for such action as they deem appropriate.
- 12.2 If Government Departments or a Public Sector Enterprise request for more information about the Agency with whom business dealings have been banned, a copy of the report of Inquiring Authority together with the copy of the order of the Competent Authority/ Appellate Authority may be supplied.
- 12.3 If Business dealings with any Agency have been banned by the Central of State Government of any other Public Sector Enterprises, MbPT may without any further enquiry or investigation issue an order banning dealing with the Agencies and its inter connected Agencies.

APPENDIX VIII – Instructions for Online Bid Submission

The Bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the Bidders in registering on the CPP Portal, prepare their bids in accordance with the requirements and submitting their bids online on the CPP Portal.

More information useful for submitting online bids on the CPP Portal may be obtained at: <https://eprocure.gov.in/eprocure/app>.

REGISTRATION

- 1) Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal (URL:<https://eprocure.gov.in/eprocure/app>) by clicking on the link "Online Bidder Enrollment" on the CPP Portal which is free of charge.
- 2) As part of the enrolment process, the Bidders will be required to choose a unique user name and assign a password for their accounts.
- 3) Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.
- 4) Upon enrolment, the Bidders will be required to register their valid Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify/ nCode/e Mudhra etc.), with their profile.
- 5) Only one valid DSC should be registered by a Bidder. Please note that the Bidders are responsible to ensure that they do not lend their DSC's to others which may lead to misuse.
- 6) Bidder then logs in to the site through the secured log-in by entering their user ID/password and the password of the DSC/e-Token.

SEARCHING FOR TENDER DOCUMENTS

- 1) There are various search options built in the CPP Portal, to facilitate Bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the Bidders may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keyword set to search for a tender published on the CPP Portal.
- 2) Once the Bidders have selected the tenders they are interested in; they may download the required documents/ tender schedules. These tenders can be moved to the respective 'My Tenders' folder. This would enable the CPP Portal to intimate the Bidders through SMS/e-mail in case there is any corrigendum issued to the tender document.

- 3) The Bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification/help from the Help desk.

PREPARATION OF BIDS

- 1) Bidder should take into account any corrigendum published on the tender document before submitting their bids.
- 2) Please go through the tender advertisement and the tender document carefully to understand the documents required to be submitted as part of the bid. Please note the number of covers in which the bid documents have to be submitted, the number of documents-including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.
- 3) Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document/schedule and generally, they can be in PDF/XLS/RAR/DWF/JPG formats. Bid documents may be scanned with 100 dpi with black and white option which helps in reducing size of the scanned document.
- 4) To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, annual reports, auditor certificates etc.) has been provided to the Bidders. Bidders can use "MySpace "or" Other Important Documents" area available to them to upload such documents. These documents may be directly submitted from the "My Space" are a while submitting a bid, and need not be uploaded again and again. This will lead to a reduction in the time required for bid submission process.

SUBMISSION OF BIDS

- 1) Bidder should log into the site well in advance for bid submission so that they can upload the bid in time i.e. on or before the bid submission time. Bidder will be responsible for any delay due to other issues.
- 2) The Bidder has to digitally sign and upload the required bid documents one by one as indicated in the tender document.
- 3) Bidder has to select the payment option as "offline" to pay the tender fee/EMD as applicable and enter details of the instrument.
- 5) Bidders are requested to note that they should necessarily submit their Financial Bids in the format provided and no other format is acceptable. If the Financial Bid has been given as a standard financial offer format with the tender document, then the same is to be downloaded and to be filled by all the Bidders. Bidders are required to download the financial offer file, open it and complete the white colored (unprotected) cells with their respective financial quotes and other details (such as name of the Bidder). No other cells should be changed. Once the details have been completed, the Bidder should save it and submit it online, without changing the file name. If the financial offer file is found

to be modified by the Bidder, the bid will be rejected.

- 6) The server time (which is displayed on the Bidder's dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the Bidders, opening of bids etc. The Bidders should follow this time during bid submission.
- 7) All the documents being submitted by the Bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128 bit encryption technology. Data storage encryption of sensitive fields is done. Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.
- 7) The uploaded tender documents become readable only after the tender opening by the authorized bid openers.
- 8) Upon the successful and timely submission of bids (i.e. After Clicking "Freeze Bid Submission" in the portal), the portal will give a successful bid submission message & a bid summary will be displayed with the bid no. and the date & time of submission of the bid with all other relevant details.
- 9) The bid summary has to be printed and kept as an acknowledgement of the submission of the bid. This acknowledgement may be used as an entry pass for any bid opening meetings.

ASSISTANCE TO BIDDERS

- 1) Any queries relating to the tender document and the terms and conditions contained therein should be addressed to the Chief Engineer, Mumbai Port Trust.
- 2) Any queries relating to the process of online bid submission or queries relating to CPP Portal in general may be directed to the 24 x 7 CPPP Portal Help desk. The contact number for the help desk is 180030702232.

APPENDIX IX – Terms of Reference

The terms of reference for the Independent Engineer shall include the scope of work (review of design and drawings, notification of objection thereto, inspection of Construction Works and Tests to be carried out, notification of shortfalls if any, issue of completion certificate, seeking of approval from collector of customs for the purpose of operationalizing the facilities and services) which shall include the manner and timeliness of the reports of the Independent Engineer to be submitted while performing the services within the scope of work. Following is an indicative scope of work of the Independent Engineer. The scope would be revised to include such other functions as are required to be undertaken pursuant to specific provisions of the license agreement executed between Board of Trustees of the Port of Mumbai and SP Armada Clean Energy Ventures Private Limited in respect of the Project (“**License Agreement**”) and the Consultancy Agreement.

Unless the context requires otherwise, capitalised words used but not defined in this Appendix and the Consultancy Agreement shall have the meaning ascribed to them under the License Agreement.

1. Role and functions of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the Project. The role and functions of the Independent Engineer shall include the following:

- (i) review of the Designs and Drawings;
- (ii) conducting Tests on completion of construction and issuing Completion/Provisional Certificate;
- (iii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (iv) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (v) assisting the Parties in resolution of disputes as regards the Designs & drawings; and
- (vi) undertaking all other duties and functions as envisaged under the Agreement.
- (vii) Certify the achievements of/ adherence to the Performance Standards as per this License Agreement / as notified by TAMP.
- (viii) review, inspection and monitoring of Construction Works;

2. Review or Designs and Drawings

- (i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Licensee along with supporting data, including, if relevant the geo-technical and

hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the License Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.

- (ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Licensee and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Licensor, if any while furnishing the comments.
- (iii) If the Independent Engineer does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Licensee within 21 days of the submission, it shall be deemed that the Independent Engineer has no suggestions to make with respect to the Designs and Drawings.
- (iv) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.
- (v) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Licensee, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.
- (vi) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.
- (vii) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Licensee to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Licensee for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- (viii) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Licensee for its own quality assurance in accordance with Good Industry Practice.

- (ix) In the event that the Licensee carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Licensee to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.
- (x) In the event that the Licensee fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Licensee to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Licensee, the Independent Engineer shall review the same and send its comments to the Licensor and the Licensee forthwith.
- (xi) If at any time during the Construction Phase, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Licensee has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Licensor forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- (xii) Upon remedial measures being taken by the Licensee for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Licensor.
- (xiii) If suspension of Construction Works is for reasons not attributable to the Licensee, the Independent Engineer shall determine the extension of time for completion, to which the Licensee is reasonably entitled, and shall notify the Licensor and the Licensee of the same.
- (xiv) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Annexure hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

3. Issuance of Completion Certificate

- (a) At least 60 (sixty) days prior to the likely completion of the Project, the Licensee shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate (as defined in the License Agreement) and determine and notify to the Licensee the schedule and manner of the tests as are specified in Annex 1 that it shall carry out to ensure that the Project meets with the Construction Standards. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Licensee, and notified to the Authority who may designate its representative to witness the Tests. In the event of the Licensee and the Independent Engineer failing to mutually agree on the dates for conducting

the Tests, the Licensee shall fix the dates by not less than 10 (ten) Days' notice to the Independent Engineer.

- (b) Upon completion of each Test, the Independent Engineer shall provide to the Licensee and the Authority copies of all Test data including detailed Test results.
- (c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Licensee and the Authority a Completion Certificate substantially in the form set forth in Appendix 10 of the License Agreement. In the event the Tests are not successful, the Licensee shall be entitled to assess and identify the reason for such failure and remedy/ rectify the Construction Works and the required Tests shall be re-performed. If such Tests are successful, the Independent Engineer shall forthwith issue to the Licensee and the Authority a Completion Certificate substantially in the form set forth in Appendix 10 of the License Agreement.
- (d) Upon request by the Licensee, the Independent Engineer may issue a provisional certificate of completion (“**Provisional Certificate**”) if the tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete.

4. **Other obligations of the Independent Engineer**

- (a) The Independent Engineer shall not unreasonably withhold approval in the event of interruption and diversion required to be undertaken by the Licensee as set out under Clause 6.4(h) of the License Agreement.
- (b) In the event the Authority suspends whole or a part of the Construction Works, the Licensee can represent to the Authority/ Independent Engineer, the remedial measures to remedy the defects notified. The Licensee may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.

5. Tests

- (i) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the Project Requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Licensee and their Contractor shall be as per the relevant provisions of this Agreement.
- (ii) The Licensee shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipments and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the Good Industry Practice shall be used for testing with the approval of the Independent Engineer.
- (iii) The Licensee shall carry out all necessary tests on materials and works independently and keep their records for reference. The Licensee shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.
- (iv) The provisions of type and frequency of test in relevant IS codes are minimum. The Licensee shall conduct all possible tests to ensure quality construction and installation of equipments and machinery.
- (v) The Independent Engineer at its discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipments and machinery and any other component to ascertain the soundness of the work.

Schedule of Test:

- (i) The Licensee shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of this Agreement.
- (ii) The Licensee shall notify the Independent Engineer for its readiness for tests to be conducted.

Tests:

- (i) **Visual and physical test:** The Independent Engineer shall conduct a visual and physical check of the Project Requirements to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- (ii) **Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of the IS codes for manufacture and testing of equipments and machinery

- (iii) **Structural test:** All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
- (iv) **Environmental Audit:** The Independent Engineer shall carry out a check to determine conformity of the Project Requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
- (v) **Safety Review:** Safety audit of the Project Requirements shall have to be undertaken with the assistance of the relevant statutory authorities and determine conformity of the Project Requirements with the provisions of the Agreement.
- (vi) **The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipment for testing shall be arranged by the Licensee.

The test procedure shall be followed as per ASTM, BIS, IS. Test shall also satisfy the appropriate Licensor and Certification:

- (i) Dock safety Directorate
- (ii) Environmental Licensor
- (iii) Director of Explosives
- (iv) Fire
- (v) Ground Water Licensor
- (vi) Customs

6. Test of Handling Equipment & Electrification works

The Licensee shall within a period of 45 (Forty Five) days from the Date of Award of the Agreement shall submit to Licensor a report highlighting type of tests that would require to be carried out as per the type of the equipment for the above mentioned project.

Licensor within 10 (ten) days of receipt of such document shall give their comments.

The Licensee shall incorporate comments of the Licensor and shall submit the revised document within 10 (ten) days of receipt of comments.

7. Operation and Maintenance Manual

The Independent Engineer shall verify the operational and maintenance manuals of the Project Requirements as received from the Licensee and also verify the contents of the manual in order to meet the following requirements: The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual shall also cover the minimum maintenance requirement to adhere to the Performance Standards as per the provisions of this Agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.

APPENDIX X – Draft Consultancy Agreement

Consultancy Agreement

For

“Independent Engineer services

For project –

**Set-up, Operate and Maintain Floating Storage and Regasification Unit in
Mumbai Harbour on Land license model”**

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AGREEMENT

Independent Engineer services for project – “Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model”

this AGREEMENT (hereinafter called the “**Agreement**”) is made on the _____ day of the month of _____ 2***, between,

on the one hand, the Board of Trustees of the Port of Mumbai (hereinafter called the “**Authority**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires)

and, on the other hand,..... (hereinafter called the “**Independent Engineer (IE)**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal for “Independent Engineer Services for project - Set-up, Operate and Maintain Floating Storage and Regasification Unit in Mumbai Harbour on Land license model” (“**Project**”) invited proposals for such Project (hereinafter called the “**Consultancy**”);
- (B) The Independent Engineer (IE) submitted its proposals for the aforesaid work, whereby the Independent Engineer (IE) represented to the Authority that it has the required professional skills, and in the said proposals the Independent Engineer (IE) also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) The Authority, on acceptance of the aforesaid proposals of the Independent Engineer (IE), awarded the Consultancy to the Independent Engineer (IE) vide its Letter of Award dated _____ “LOA”); and
- (D) In respect of the Project as described above, the Authority has executed a license agreement with SP Armada Clean Energy Ventures Private Limited (“**Licensee**”) on the terms and conditions set out therein (“**License Agreement**”). A copy of the License Agreement has been provided by the Authority to the Independent Engineer.
- (E) 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 Annexes;
- (b) “Agreement Value” shall have the meaning as provided in Annex-3
- (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) “Construction Works” means all works, equipment and things necessary to complete the Project and provide the Project Facilities and Services in accordance with this Agreement.
- (g) “Construction Standards” means the construction standards set out in the annexure to Appendix-4 of the License Agreement.
- (h) “Dispute” shall have the meaning set forth in Clause 9.2.1;
- (i) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (j) “INR, Re. or Rs.” means Indian Rupees;
- (k) “Member”, in case the Independent Engineer (IE) consists of a joint venture or consortium of more than one entity, means any of these entities, and “Members” means all of these entities;
- (l) “Party” means the Authority or the Independent Engineer (IE), as the case may be, and Parties means both of them;
- (m) “Personnel” means persons hired by the Independent Engineer (IE) or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (n) “Project Facilities and Services” means the facilities and services as set out under the Project Requirements, to be provided by the License Agreement in accordance with the License Agreement;
- (o) “Project Requirements” means the minimum requirements as to the construction, operation and maintenance of the Project and provision of Project Facilities and Services set out in Appendix 4 of the License Agreement.
- (p)
- (q) “Services” means the work to be performed by the Independent Engineer (IE) pursuant to this Agreement, as described in the Terms of Reference hereto;
- (r) “Sub-Consultant” means any entity to which the Independent Engineer (IE) subcontracts any part of the Services in accordance with the provisions of Clause 4.7;
- (s) “Tests” means the tests as are specified in Annex 1 – Terms of Reference that Independent Engineer (IE) shall carry out to ensure that the Project meets with the Construction Standards;
- (t) “Third Party” means any person or entity other than the Government, the Authority, the Independent Engineer (IE) or a Sub-Consultant.

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

1.1.2. The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts 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) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Award.

1.2. Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Independent Engineer (IE). The Independent Engineer (IE) shall, subject to this Agreement, have complete charge of Personnel and Sub-Consultant 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 Independent Engineer (IE) shall be as set forth in the Agreement, in particular:

- (a) the Independent Engineer (IE) shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) the Authority shall make payments to the Independent Engineer (IE) 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 subject to Clause 9 below (*Settlement of Disputes*), the courts at Mumbai 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, copied to the Licensee (in all cases) and shall:

- (a) in the case of the Independent Engineer (IE), be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Independent Engineer

(IE)'s Representative set out below in Clause 1.10 or to such other person as the Independent Engineer (IE) may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside ***** may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Independent Engineer (IE) may from time to time designate by notice to the Authority;

- (b) in the case of the Authority, be given by facsimile or e-mail 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 1.10 or to such other person as the Authority may from time to time designate by notice to the Independent Engineer (IE); provided that if the Independent Engineer (IE) does not have an office in Mumbai/Navi Mumbai it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

It shall be the duty of the Parties to copy all notices and communication under this Agreement or otherwise to the Licensee. .

1.8. Location

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

1.9. Authority of Member-in-charge

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

1.10. Authorized Representatives

- 1.10.1. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Independent Engineer (IE), as the case may be, may be taken or executed by the officials specified in this Clause 1.10.
- 1.10.2. The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:
Chief Engineer,
Civil Engineering Department
Mumbai Port Trust
chiefengineer@mumbaiport.gov.in
- 1.10.3. The Independent Engineer (IE) may designate one of its employees as Independent Engineer (IE)'s Representative. Unless otherwise notified, the Independent Engineer (IE)'s Representative shall be:

Tel: _____
Mobile: _____
Fax: _____
Email: _____

1.11. Taxes and duties

Unless otherwise specified in the Agreement, the Independent Engineer (IE) shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1. Effectiveness of Agreement

This Agreement shall come into force and effect on the Date of Award of License as set out under the License Agreement (the “**Effective Date**”). For the purposes of this Clause, Date of Award of License shall be informed by the Authority to the IE on or before 2 days before the date of the Date of Award of License. In case the appointment of IE is after the Date of Award of License, the date of signing of this Agreement shall be considered as Effective Date.

2.2. Commencement of Services

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

2.4. Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall expire upon the completion of 42 months period from Effective Date. If necessary, Authority may extend the Agreement period further for 12 months if it may be necessary for successful completion of the Project.

2.5. Entire Agreement

2.5.1. This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and the Licensee 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 Independent Engineer (IE) arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

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

2.5.3. Notwithstanding any other provision, the written consent of the Licensee shall be obtained prior to carrying out any amendment or modification to this Agreement and atleast 30(thirty) days' notice shall be provided to the Licensee for the purposes of providing its comments, objections and / or approval.

2.6. Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

Notwithstanding any other provision, the written consent of the Licensee shall be obtained prior to carrying out any amendment or modification to this Agreement and atleast 30(thirty) days' notice shall be provided to the Licensee for the purposes of providing its comments, objections and / or approval.

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, despite exercise of due care and diligence, as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultant or Personnel 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.

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 14 (fourteen) 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 minimise the consequences of any event of Force Majeure.

2.7.4. Extension of time

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

2.7.5. Payments

The Independent Engineer shall not be entitled to receive any payment for the period during which Force Majeure event continues to subsists provided that in the event any Services are performed by the Independent Engineer during such period, then notwithstanding anything contrary contained in this Agreement, payment for such Services shall be made by the Authority to the IE on mutually acceptable terms and conditions.

2.7.6. Consultation

Not later than 30 (thirty) days after the Independent Engineer (IE) 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 circumstance

2.8. Suspension of Agreement

The Authority may, by written notice of suspension to the Independent Engineer (IE), suspend all payments to the Independent Engineer (IE) hereunder if the Independent Engineer (IE) 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 within a period not exceeding 30 (thirty) days after receipt by the Independent Engineer (IE) of such notice of suspension.

2.9. Termination of Agreement

2.9.1. By the Authority

The Authority may, by not less than 30 (thirty) days written notice of termination to the Independent Engineer (IE) and copied to the Licensee, 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 Independent Engineer (IE) fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in the notice of termination within 30 (thirty) days of receipt of such notice of termination or within such further period as the Authority may have subsequently granted in writing;
- (b) the Authority by itself or on a report of the Licensee, has reason to believe that the Independent Engineer has failed to discharge its duties in a fair, appropriate and diligent manner;
- (c) the Independent Engineer (IE) 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;
- (d) the Independent Engineer (IE) fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof and as set out in Clause 9.4.6;
- (e) the Independent Engineer (IE) submits to the Authority and/ or the Licensee, documents or a statement which has a material effect on the rights, obligations or interests of the Authority and / or the Licensee and which the Independent Engineer (IE) knows to be false;
- (f) any document, information, data or statement submitted by the Independent Engineer (IE) in its Proposals, based on which the Independent Engineer (IE) was considered eligible or successful, is found to be false, incorrect or misleading;
- (g) as the result of Force Majeure, the Independent Engineer (IE) is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (h) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2. By the Independent Engineer (IE)

The Independent Engineer (IE) may, by not less than 30 (thirty) days written notice to the Authority and copied to the Licensee, 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 Independent Engineer (IE) 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 Independent Engineer (IE) 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 Independent Engineer (IE) may have subsequently granted in writing) following the receipt by the Authority of the Independent Engineer (IE)'s notice specifying such breach;
- (c) as the result of Force Majeure, the Independent Engineer (IE) is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (c) 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 survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Independent Engineer (IE)'s obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Independent Engineer (IE)'s Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4. Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Independent Engineer (IE) 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 at its own cost. With respect to documents prepared by the Independent Engineer (IE) and equipment and materials furnished by the Authority, the Independent Engineer (IE) shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

2.9.5. Payment upon Termination

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

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

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.

3. OBLIGATIONS OF THE INDEPENDENT ENGINEER (IE)

3.1. General

3.1.1. Standards of Performance

The Independent Engineer (IE) 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 Independent Engineer (IE) 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 in any dealings with Sub-Consultants or Third Parties.

3.1.2. Terms of Reference

The scope of services to be performed by the Independent Engineer (IE) is specified in the Terms of Reference (the "TOR") at Annex-1 of this Agreement. The Independent Engineer (IE) shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3. Applicable Laws

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

3.2. Conflict of Interest

3.2.1. The Independent Engineer (IE) shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2. Independent Engineer (IE) and Affiliates not to be otherwise interested in the Project
The Independent Engineer (IE) agrees that, during the term of this Agreement and after its termination, the Independent Engineer (IE) or any Associate thereof and any entity affiliated with the Independent Engineer (IE), as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to Consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent Consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Independent Engineer (IE) shall include a partner in the Independent Engineer (IE)'s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Independent Engineer (IE), as the case may be, and any Associate thereof.

3.2.3. Prohibition of conflicting activities

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

- (a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4. Independent Engineer (IE) not to benefit from commissions, discounts, etc.

The remuneration of the Independent Engineer (IE) pursuant to Clause 6 hereof shall constitute the Independent Engineer (IE)'s sole remuneration in connection with this Agreement or the Services and the Independent Engineer (IE) 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 Independent Engineer (IE) shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

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

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

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

- (a) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid 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 Bid 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 Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid 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 Bid 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 Bid 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 Bid 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 Bid Process.

3.3. Confidentiality

The Independent Engineer (IE), its Sub-Consultants and the Personnel or either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, 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 and/ or the Licensee to the Independent Engineer (IE), its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, the Licensee, their technology, technical processes, business affairs or finances or any information relating to the Authority’s and the Licensee’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Independent Engineer (IE) 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 Independent Engineer (IE), its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- i) was in the public domain prior to its delivery to the Independent Engineer (IE), its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Independent Engineer (IE), its Sub-Consultants and the Personnel of either of them;

- ii) was obtained from a third party with no known duty to maintain its confidentiality;
- iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Independent Engineer (IE), its Sub-Consultants and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- iv) is provided to the professional advisers, agents, auditors or representatives of the Independent Engineer (IE) or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Independent Engineer (IE) or its Sub-Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.
- v) is provided to the Licensee and its employees, contractors etc. for the purposes of the Project.

3.4. Liability of the Independent Engineer (IE)

- 3.4.1. The Independent Engineer (IE)'s liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2. Independent Engineer (IE)'s liability towards the Authority
The Independent Engineer (IE) 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. Except as set out hereunder, the Parties hereto agree that in case of negligence or willful misconduct on the part of the Independent Engineer (IE) or on the part of any person or firm acting on behalf of the Independent Engineer (IE) in carrying out the Services, the Independent Engineer (IE), with respect to damage caused to the Authority's property, shall not be liable to the Authority:
 - i) for any indirect or consequential loss or damage; and
 - ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Independent Engineer (IE) may be entitled to receive from any insurance maintained by the Independent Engineer (IE) to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.
- 3.4.4. This limitation of liability specified in Clause 3.4.3 shall not affect the Independent Engineer (IE)'s liability, if any, (i) for damage to Third Parties caused by the Independent Engineer (IE) or any person or firm acting on behalf of the Independent Engineer (IE) in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value; and (ii) Liquidated Damages as set out in this Agreement.

3.5. Insurance to be taken out by the Independent Engineer (IE)

- 3.5.1 The Independent Engineer (IE) shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Independent Engineer (IE)'s, as the case may be) own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as specified in the Agreement and in accordance with good industry practice.
 - (a) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Independent

Engineer (IE) shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premium have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.

(b) If the Independent Engineer (IE) fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Authority shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Independent Engineer (IE), to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Independent Engineer (IE), and the Independent Engineer (IE) shall be liable to pay such amounts on demand by the Authority.

(c) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Authority as the beneficiary of the Independent Engineer (IE) and the Independent Engineer (IE) shall procure an undertaking from the insurance company to this effect; provided that in the event the Independent Engineer (IE) has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Authority as the sole beneficiary of the Independent Engineer (IE) or require an undertaking to that effect.

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

- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of Rs. 4,00,00,000 (Rupees four crore);
- (b) Authority's liability and workers' compensation insurance in respect of the Personnel of the Independent Engineer (IE) and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) professional liability insurance for an amount no less than the Agreement Value.

The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in Clause 6.1.2 of the Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

3.6. Accounting, inspection and auditing

The Independent Engineer (IE) shall:

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

3.7. Independent Engineer (IE)'s actions requiring the Authority's prior approval

The Independent Engineer (IE) shall obtain the Authority's prior approval in writing before taking any of the following actions:

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

3.8. Reporting obligations

The Independent Engineer (IE) shall submit to the Authority and the Licensee the reports specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.9. Documents prepared by the Independent Engineer (IE) to be property of the Authority

- 3.9.1. All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "Consultancy Documents") prepared by the Independent Engineer (IE) (or by the Sub-Consultants 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 Independent Engineer (IE) 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 Independent Engineer (IE).
- 3.9.2. The Independent Engineer (IE) shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Independent Engineer (IE) may retain a copy of such Consultancy Documents. The Independent Engineer (IE), its Sub-Independent Engineer (IE)s or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.
- 3.9.3. The Independent Engineer (IE) 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 unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Independent Engineer (IE) or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.10. Equipment and materials furnished by the Authority

Equipment and materials made available to the Independent Engineer (IE) by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Independent Engineer (IE) shall furnish forthwith to the Authority, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Authority. While in possession of such

equipment and materials, the Independent Engineer (IE) shall, unless otherwise instructed by the Authority in writing, insure them in an amount equal to their full replacement value.

3.11. Providing access to Project Office and Personnel

The Independent Engineer (IE) shall ensure that the Authority, and officials of the Authority having authority from the Authority, are provided unrestricted access to the Project Office and to all Personnel during office hours. The Authority's official, who has been authorised by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Independent Engineer (IE) and verify the records relating to the Services for his satisfaction.

3.12. Accuracy of Documents

The Independent Engineer (IE) shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. 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 Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Independent Engineer (IE) or arises out of its failure to conform to good industry practice. The Independent Engineer (IE) shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4. INDEPENDENT ENGINEER (IE)'S PERSONNEL AND SUB-CONSULTANTS

4.1. General

The Independent Engineer (IE) shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2. Deployment of Personnel

- 4.2.1. The designations, names and the estimated periods of engagement in carrying out the Services by each of the Independent Engineer (IE)'s Personnel are described in Annex-2 of this Agreement.
- 4.2.2. Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-2 may be made by the Independent Engineer (IE) by written notice to the Authority.
- 4.2.3. If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexures of the Agreement may be increased by agreement in writing between the Authority and the Independent Engineer (IE), provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.2.

4.3. Approval of Personnel

- 4.3.1. The Professional Personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other Professional Personnel shall be engaged without prior approval of the Authority.
- 4.3.2. If the Independent Engineer (IE) hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Independent Engineer (IE) may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

4.4. Substitution of Key Personnel

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Independent Engineer (IE) and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of remuneration equal to 2% (two per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted. In case of a second substitution, such reduction shall be equal to 5% (five per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted.

4.5. Working hours, overtime, leave, etc.

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

4.6. Resident Team Leader and Project Manager

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

4.7. Sub-Consultants

Sub-Consultants listed in Annex-4 of this Agreement are hereby approved by the Authority. The Independent Engineer (IE) may, with prior written approval of the Authority and the Licensee, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the Independent Engineer (IE) under this Clause 4.

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

5.2. Access to land and property

The Authority warrants that the Independent Engineer (IE) shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Independent Engineer (IE) as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Independent Engineer (IE) as a result thereof pursuant to Clause 6.1.3.

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Independent Engineer (IE) in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration and reimbursable expenses otherwise payable to the Independent Engineer (IE) under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto after obtaining the prior written consent of the Licensee, and corresponding adjustments shall be made to the aforesaid Agreement Value.

6. PAYMENT TO THE INDEPENDENT ENGINEER (IE)

Subject to the other provisions of this Agreement, in consideration of the Services performed by the Independent Engineer (IE) under this Agreement, the Authority shall make to the Independent Engineer (IE) monthly payments as provided in Annex 3 of this Agreement. The Payment shall be made on submission of monthly invoice and after certification for satisfactory performance from concern officer of Mumbai Port Trust.

In order to avoid delay or stoppage of work, in the event any Sub-Consultant or Personnel is not paid by the Consultant, the Authority shall have the right to discharge the dues of such Sub-Consultant or Personnel, provided a rightful claim is made by such Sub-Consultant or Personnel to the Authority and the Independent Engineer is informed of such claim being made by the Sub-Consultant or Personnel. The amounts discharged by the Authority pursuant to this Clause shall be deducted from the total amount paid by the Authority to the Independent Engineer.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1. Performance Security

- 7.1.1. The Independent Engineer shall provide to the Authority an unconditional and irrevocable bank guarantee in favour of the Authority en-cashable and enforceable at Mumbai within 30 days from the execution of this Agreement. for due performance of its obligations under the Agreement (the “**Performance Security**”). The Performance Security for a sum equivalent to 3% (three per cent) of the Agreement Value shall be provided to the Authority. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the expiry of the term of this Agreement. Failure of the Independent Engineer to provide a valid Performance Guarantee in accordance with this Clause shall entitle the Authority to terminate this Agreement in accordance with the terms hereof and also if relevant, to forfeit the Bid Security paid by the Independent Engineer..
- 7.1.2. The Independent Engineer (IE) may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a bank guarantee substantially in the form specified at Annex-4 of this Agreement.

7.2. Liquidated Damages

7.2.1. Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Independent Engineer (IE) and such error or variation is the result of negligence or lack of due diligence on the part of the Independent Engineer (IE), the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Independent Engineer (IE) by way of deemed liquidated damages, subject to a maximum of 5% (five per cent) of the Agreement Value.

7.2.2. Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Agreement Value per day, subject to a maximum of 5% (five per cent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Independent Engineer (IE), suitable extension of time shall be granted.

7.2.3. Encashment and appropriation of Performance Security

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Independent Engineer (IE) in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.3. Penalty for deficiency in Services

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

8. FAIRNESS AND GOOD FAITH

8.1. Good Faith

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

8.2. Operation of the Agreement

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

9. SETTLEMENT OF DISPUTES

9.1. Amicable settlement

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

9.2. Dispute resolution

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

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

9.3. Conciliation

In the event of any Dispute between the Parties, either Party may call upon Chairman of Mumbai Port and the Chairman of the Board of Directors of the Independent Engineer (IE) 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.

9.4. Arbitration

9.4.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by 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. The venue of such arbitration shall be Mumbai and the language of arbitration proceedings shall be English.

9.4.2. 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.

9.4.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the

date it is made, and the Independent Engineer (IE) and the Authority agree and undertake to carry out such Award without delay.

- 9.4.4. The Independent Engineer (IE) and the Authority agree that an Award may be enforced against the Independent Engineer (IE) and/or the Authority, as the case may be, and their respective assets wherever situated.
- 9.4.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 9.4.6. Notwithstanding anything contrary, it is hereby agreed between the Parties that if either the Authority and / or the Licensee disputes any advice, instruction or decision of the Independent Engineer and the same is submitted for dispute resolution in accordance with Article 5.1(e) of the License Agreement, then the outcome of such dispute resolution shall be binding on the IE and such subject matter shall not be submitted to dispute resolution under this Agreement.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

Independent Engineer (IE):

Authority

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

1.

2.

Annex-1

Terms of Reference

(Replicate Appendix IX of RFP)

Annex-2

Key Personnel Details

(Include as submitted in Bid)

Annex-3
Payment Schedule

THIS IS A PROFORMA.
THE FINANCIAL QUOTE IS NOT TO BE
SUBMITTED IN THE TECHNICAL SUBMISSION

Lump sum Monthly Fee	Rs.
Contract Price / Agreement Value	42 x Rs..... = Rs.....

To be paid on submission of monthly invoice and work certification from concern department of Mumbai Port.

Above amount excludes GST which shall be paid over and above as per applicable GST laws and guidelines.

Annex- 4
Bank Guarantee for Performance Security
(Refer Clause 7.1.2)

To
Board of Trustees of Port of Mumbai

In consideration of Board of Trustees of Port of Mumbai (hereinafter referred as the “Authority”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s, having its office at (hereinafter referred as the “Independent Engineer (IE)” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority’s Agreement no. Dated valued at Rs..... (Rupees.....), (hereinafter referred to as the “Agreement”) Independent Engineer Services for the Project “X”, and the Independent Engineer (IE) having agreed to furnish a Bank Guarantee amounting to Rs. (Rupees) to the Authority for performance of the said Agreement.

1. We, (hereinafter referred to as the “Bank”) at the request of the Independent Engineer (IE) do hereby undertake to pay to the Authority an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Independent Engineer (IE) of any of the terms or conditions contained in the said Agreement.
2. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Independent Engineer (IE) of any of the terms or conditions contained in the said Agreement or by reason of the Independent Engineer (IE)’s failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees).
3. We, (indicate the name of Bank) undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Independent Engineer (IE) in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Independent Engineer (IE) shall have no claim against us for making such payment.

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

5. We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Independent Engineer (IE) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Independent Engineer (IE) and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Independent Engineer (IE) or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Independent Engineer (IE) or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Independent Engineer (IE)(s).

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

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

For

.....

Name of Bank:

Seal of the Bank:

Dated, the day of, 20

(Signature, name and designation of the authorised signatory)

NOTES:

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

SCHEDULE-3

(See Clause 2.3.3)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.
2. Independent Engineer (IE)s 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 Independent Engineer (IE)s should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the Authority and a Independent Engineer (IE) or between Independent Engineer (IE)s and present or future concessionaries/contractors. Some of the situations that would involve conflict of interest are identified below:
 - (a) Authority and Independent Engineer (IE)s:
 - i) Potential Independent Engineer (IE) should not be privy to information from the Authority which is not available to others; or
 - ii) potential Independent Engineer (IE) should not have defined the project when earlier working for the Authority; or
 - iii) potential Independent Engineer (IE) should not have recently worked for the Authority overseeing the project.
 - (b) Independent Engineer (IE)s and concessionaires/contractors:
 - i) No Independent Engineer (IE) should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/contractor save and except relationships restricted to project-specific and short-term assignments; or
 - ii) no Independent Engineer (IE) should be involved in owning or operating entities resulting from the project; or
 - iii) no Independent Engineer (IE) should bid for works arising from the project.The participation of companies that may be involved as investors or consumers and officials of the Authority who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by Independent Engineer (IE)s. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the Independent Engineer (IE)s 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 Independent Engineer (IE)’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 Independent Engineer (IE) coupled with provision of safeguards to the satisfaction of the Authority.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if Independent Engineer (IE)s 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 Independent Engineer (IE)s advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the Independent Engineer (IE)s. 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 Independent Engineer (IE)s to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Independent Engineer (IE)s should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.