

No.KOPT/KDS/CIV/T/2338/653

Date: 12.04.2019

### **CORRIGENDUM-IV**

**Ref. Tender Notice No.:** KOPT/KDS/CIV /T/2338/89

**Date:** 27.02.2019

**E Tender No. 2019\_KoPT\_449628\_1**

**Corrigendum Notice I vide No. KOPT/KDS/CIV/T/2338/533 Date: 25.03.2019**

**Corrigendum Notice II vide No. KOPT/KDS/CIV/T/2338/555 Date: 29.03.2019**

**Corrigendum Notice II vide No. KOPT/KDS/CIV/T/2338/ Date: 06.04.2019**

**Name of Work :- E-tendering for "** Design, fabricate, supply , test and deliver of one no. Main Pontoon of size 30.0M x 9.25M x 1.60M (average depth) fitted with all fittings, fixtures and fenders all complete at approved location at Kolkata Dock System or at Bdge Budge Moorings and one no. for Diamond Harbour Jetty" **Total two nos. Pontoon."**

In continuation to the earlier Two Corrigendum Notice I , II & III , as mentioned above Corrigendum Notice IV is now being issued as mentioned below.

<b>Page Ref.</b>	<b>In place of</b>	<b>To be read as</b>
<b>Page no. 16 to 31 in Special Conditions of Contract and wherever applicable</b>	Joint Venture Clause was not included	<b>Joint Venture Clause is now being included as mentioned below.</b> Ref- Appendix-I
	Inspection and certification of pontoons	<b>Unless otherwise spcified in the tender document the inspection to be carried out by authorised officials of Kolkata Port Trust</b>

**All other terms & conditions and Clauses will remain same as per original**

**E Tender No. 2019\_KoPT\_449628\_1**

**Superintending Engineer**  
**For मुख्य अभियंता/ Chief Engineer**

## **Appendix-I**

### **JOINT VENTURES / CONSORTIUM CLAUSE.**

#### **A. JOINT VENTURES / CONSORTIUM AND OTHER FORMS OF ASSOCIATION**

**In case the tender is submitted in joint venture/consortium, the Bidder shall submit the following confirmation along with their offer submitted with this tender.**

i) All joint venture agreements / consortium agreements, technical collaboration agreement shall ensure that all parties of the joint venture/consortium are individually and jointly responsible for the tender conditions and such agreements are legally valid.

ii) Joint venture/consortium should be in the nature of legally acceptable agreements and such agreements should be notarized. An Application letter as per Annexure-I also to be submitted.

iii) Such joint venture/consortium agreement should contain explicitly the scope and responsibilities of all the partners in the joint venture/consortium in terms of financial and technical commitments/contribution. The JV/consortium should be equally, severally and jointly responsible.

iv) One of the members of the consortium shall be authorized as being in-charge (lead member), and this authorization shall be evidenced by a power of attorney duly signed by the authorized signatories of the consortium Members as per the format enclosed in the tender document as (Annexure-IIIA /IIIB).

v) The validity of the joint venture/consortium agreement entered upon on the award of Letter of Acceptance (LOA) by Kolkata Port Trust should continue for the entire period of contract as specified in the tender. All such agreements shall be irrevocable for the above periods.

vi) Firms with at least 26% equity holding each shall be allowed to jointly meet the eligibility criteria.

vii) Where the bidder is a consortium the average annual financial turnover of the individual members forming the consortium shall be submitted.

viii) The entity processing the tender must be a member of the consortium submitting the tender.

ix) It is clarified that an unsuccessful bidder or JV/Consortium shall not be permitted to join a successful JV/Consortium whose bid is accepted at a later date.

x) In case of a Consortium, the combined Technical and Financial Capability of those members who have and shall have share of at least 26% (twenty six per cent) each, should satisfy the above conditions of eligibility, provided that each such member shall, for the entire period of the contract, hold share not less than 26%.

#### **A.1 FURTHER CONDITIONS FOR JV/CONSORTIUM:**

Intending tenderer(s), as Consortium, is eligible to participate in the tender. The term "Tenderer" used in this document would apply to either a Single Entity or a group of entities, i.e. a Consortium. Further, the Tenderer may be a natural person, private entity, government owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in this tender document.

i) The Tenderer shall not have a conflict of interest that affects the Tendering Process. Any Tenderer found to have a **Conflict of Interest** shall be disqualified. A Tenderer shall be deemed to have a **Conflict of Interest** affecting the Tendering Process, if:

ii) The Tenderer, its Member or Associate (or any constituent thereof) and any other Tenderer, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Tenderer, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Tenderer, its Member or Associate, as the case may be) in the other Tenderer, its Member or Associate is less than 5 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, or any of its subsequent amendment. For the purposes of this

Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows:

**iii)** 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

**iv)** Subject always to sub-clause (iii) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis ; provided, however, that no such shareholding shall be reckoned under this sub-clause.

**v)** if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary;

**OR**

**vi)** A constituent of such Tenderer is also a constituent of another Tenderer;

**OR**

**vii)** Such Tenderer, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Tenderer, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Tenderer, its Member or any Associate thereof;

**OR**

**viii)** Such Tenderer has the same legal representative for purposes of this Tender as any other Tenderer; **OR**

**ix)** Such Tenderer, or any Associate thereof has a relationship with another Tenderer, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Tender of either or each other.

**x)** A Tenderer shall be liable for disqualification if any legal, financial or technical adviser of Kolkata Port Trust in relation to the Tender is engaged by the Tenderer, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Tender. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Tenderer, its Member or Associate in the past but its assignment expired or was terminated 6

(six) months prior to the date of issue of this Tender. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the contract.

**Explanation:** In case a Tenderer is a Consortium, then the term Tenderer, as used above, shall include each Member of such Consortium.

**Note:** Notwithstanding anything to the contrary contained in this tender document, in the event of any member of any Consortium suffering from a Conflict of Interest, the offer of such consortium shall be treated as disqualified. However, in the event of similar situation arising / detected after placement of LOI, the same shall have to be addressed and resolved by the Consortium, failing which the contract, if entered into, shall be terminated.

In this regard, it must be borne in mind that suppression of such Conflict of Interest, if detected later, shall not absolve the Consortium of its responsibility and appropriate action shall be initiated in terms of the provision of the tender.

The Tenderer(s) shall have valid documents as listed in various clauses of this tender document and submit the same in the manner as stipulated.

## **A.2 Technical & Financial Capability.**

The tenderer (whether a single entity or a consortium) must satisfy pre-qualification criteria as stipulated in this tender document.

### **A.3 Assessment of eligibility:**

A.3.1 In case of a Consortium, the combined Technical and Financial Capability of those members who have and shall have share of at least 26% (twenty six per cent) each, should satisfy the above conditions of eligibility, provided that each such member shall, for the entire period of the contract, hold share not less than 26% (twenty six per cent).

A.3.2 The entity claiming the capability should have held, in the company owning the eligibility, a minimum of 26% equity during the entire period for which the eligible experience is being claimed.

A.3.3 Experience of any activity relating to an eligible activity shall not be claimed by more than one member of a consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

A.3.4 The Tenderer shall submit a Power of Attorney as per format given at **Annexure-III A** or **III B** as the case may be, authorizing the signatory of the Tenderer to submit the tender.

A.3.5 Where the 'Successful Tenderer' is a 'Consortium', it shall be required to comply with the following additional requirements:

- a) Members of the Consortium shall nominate one member as the 'Lead Member'. The nomination(s) shall be supported by a Power of Attorney, as per the format at **Annexure-III A/III B**, signed by all the other members of the Consortium;
- b) Members of the Consortium shall enter into a binding Joint Bidding Agreement (JBA) (substantiated in the form specified at **Annexure-IV** , for the purpose of submitting Tender. The JBA, to be submitted along with the Tender, shall, inter alia:
  - d) Clearly outline the proposed roles and responsibilities, if any, of each member; Commit the minimum stake to be held by each member;
  - e) Commit the minimum stake to be held by each member;
  - f) Include a statement to the effect that all members of the Consortium shall be liable and responsible jointly and severally for all obligations of Kolkata Port Trust in relation to the contract throughout the contract period.
  - g) Except as provided under the Tender Document, including its Addendum, if any, there shall not be any amendment to the said JBA without the prior written consent of Kolkata Port Trust.

A.3.6 The Single Entity participating in the tender or all the members of the Consortium participating in the tender must not have been debarred by the Central/State Government or any Entity controlled by them or any other legal authority for participating in the tender/contract/agreement of whatever kind. N undertaking in this regard shall be given by the Tenderer in the Covering Letter as per Annexure-I.

A.3.7 A Tenderer including any Consortium Member or Associate shall, in the last 3 (three) years ending on the day preceding to the day of issue of the tender, 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 Tenderer, Consortium member or Associate, as the case may be,

nor has been expelled from any project or contract terminated by any public entity for breach by such Tenderer, Consortium Member or Associate as per **Annexure-II**

A.3.8 In computing the Technical capability and Financial Capacity of the Tenderer/Consortium Members, The Technical Capability and Financial Capacity of their respective Associates would also be eligible hereunder.

NOTE: For purposes of this tender, 'Associate' means, in relation to the Tenderer/Consortium Member, a person who controls, is controlled by, or is under the common control with such Tenderer/Consortium Member. As used in this definition, the expression 'control' means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

#### **A.4 Change in composition of the Consortium**

A.4.1 Change in the composition of a Consortium shall not be permitted by Kolkata Port Trust either during the 'Techno-commercial Evaluation Stage' [i.e., from the 'date of issuance of Tender.' up to the 'date of notification of the techno-commercially valid tenders'] or during the 'Price-Evaluation Stage' [i.e., from the 'date of notification of the techno-commercially valid tenders' up to the 'date of placement of Letter of Intent (LoI)']. Changes in consortium may be considered after submission of draft DPR at the discretion of Kolkata Port Trust.

A.4.2 The reason for such change with proof, if applicable, shall be submitted along with the application. Request for change without any valid reason will not be entertained by Kolkata Port Trust.

A.4.3 The Lead Member continues to be the Lead Member of the Consortium;

A.4.4 In case of substitution, the substitute is at least equal, in terms of Technical & Financial Capability, to the Consortium Member who is sought to be substituted. In this regard, documents shall have to be furnished to establish that the proposed member is in possession of experience and having financial health at least equal to that of the substituted member during the period as stipulated in the pre-qualification criteria of the tender. (ii). In case of removal of any member without substitution, the remaining member(s) shall fulfil the pre-qualification criteria of the tender. (iii). In case of induction of any additional member(s), documents shall have to be furnished to establish experience and financial health of the proposed additional member.

A.4.5 The new Member(s) expressly adopt(s) the Tender already made on behalf of the Consortium as if it/they were a party to it originally, and is/are neither a Tenderer/Member/Associate of any other Consortium participating in this tender nor a single entity having participated in this tender.

A.4.6 Approval for change in the composition of a Consortium shall be at the sole discretion of Kolkata Port Trust and must be approved by Kolkata Port Trust in writing.

**Note:** If the Tenderer is a Consortium, then the entire Consortium may be disqualified / rejected. If such disqualification / rejection occurs after the tenders have been opened and the Lowest Tenderer gets disqualified / rejected, then the Authority reserves the right to take any such measure as may be deemed fit at the sole discretion of Kolkata Port Trust, including annulment of the Tendering Process.

In case the applicant is a Joint venture / consortium it is to be limited to three partners subject to each of them satisfying some part or all Minimum Eligibility Criteria. The Proposal shall be accompanied by a certified copy of legally binding Joint Venture agreement (format prescribed in Annex-II ) signed by all firms to the joint venture/consortium confirming the following:



## ANNEXE-I

### APPLICATION LETTER

(On the Letter head of the Bidder)

Date :

Kolkata Port Trust  
15, Strand Road,  
Kolkata-700001

**Subject:** Design, fabricate, supply , test and deliver of **one number** . Main Pontoon of size 30.0M x 9.25M x 1.60M (average depth) fitted with all fittings, fixtures and fenders all complete at approved location at Kolkata Dock System or at **Budge Budge Moorings** and one no. for Diamond Harbour Jetty” **Total two nos. Pontoons**

Sir,

- 1) I/we, \_\_\_\_\_ (Name of tenderer) having examined the Tender Document and understood its contents, hereby submit our tender for ..... at, Kolkata Port Trust.
- 2) All information provided in the tender including Addenda and in the Appendices are true and correct and all documents accompanying such tender are true copies of their respective originals.
- 3) I/We shall make available to Kolkata Port Trust (hereinafter referred to as KoPT) any additional information it may find necessary or require to supplement or authenticate the Tender
- 4) I/we acknowledge the right of KOPT to reject our tender without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
- 5) I/we also certify the following
  - a. I/we / any of the consortium member (as the case may be) have not been debarred by the Central/State Govt. or any entity controlled by them or any other legal authority for participating in any tender / contract / agreement of whatever kind
  - b. I/we certify that in the last three years, I/We/any of the consortium members or our / their associates have neither failed to perform on any

contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority/entity nor have had any contract terminated by any public authority / entity for breach on our part.

6) I/we declare that :

- a. I/we have examined and have no reservations to the Tender Document, including the Addenda and all corrigenda issued by KoPT thereon
- b. I/we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt, fraudulent or coercive practices to influence the evaluation process of the tender.

7) I/we understand that KoPT reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time without any liability or any obligation for such acceptance, rejection or annulment without assigning any reason thereof.

8) \_\_\_\_\_( Name of Tenderer) hereby undertakes that I/we will abide by the decision of KoPT in the matter of examination, evaluation and selection of successful tenderer and shall refrain from challenging or questioning any decision taken by KoPT in this regard.

9) We are enclosing our Proposal including Technical Proposal in one original plus one copy and Financial Proposal with the details as per the requirements of the Proposal Documents, for your evaluation

Thanking you,

Yours faithfully,

**Signature of Power of Attorney Holder(s).....**

**Name: .....**

\*\*\*\*\*

## ANNEXURE - II

### FORMAT IN CASE OF JOINT VENTURE/CONSORTIUM AGREEMENT

(To be submitted on stamp paper)

This Joint venture/consortium agreement is made at \_\_\_\_\_on \_\_\_\_\_day of\_\_\_\_\_2019 between M/s. \_\_\_\_\_ (please indicate the status viz. Proprietor, firm, Company) represented through its proprietor /partner or Director (hereinafter referred to as "first Party" ) and M/s. \_\_\_\_\_ (Please indicate the status viz. Proprietor, Firm, Company ) represented through its proprietor /partner or Director ( hereinafter referred to as "Second Party") WHEREAS the First party is engaged in the business of \_\_\_\_\_

AND WHEREAS THE Second Party is engaged in the business of \_\_\_\_\_

AND WHEREAS both the parties are desirous of entering into a joint venture /consortium for carrying on the work of KOLKATA PORT TRUST in connection with work of \_\_\_\_\_(please mention the work of the tender).

AND WHEREAS the First Party and Second Party have agreed to form joint venture/consortium for execution of subject works.

NOW THIS DEED WITNESSED AS UNDER:

a. That under this Joint Venture/consortium Agreement the work will be done jointly by the first party and second party in the name and style of M/s\_\_\_\_\_.

b. It is further agreed by the Joint Venture/consortium Partner that \_\_\_\_\_of M/s. \_\_\_\_\_has been nominated as Lead Partner for the execution of the works.

c. That all the parties shall be liable jointly, equally and severally for the satisfactory execution of the contract in all respect in accordance with terms and conditions of the contract and the lead partner shall be authorised to incur liabilities and receive instruction for and on behalf of any and all the partners and parties of the Joint Venture/consortium and the entire execution of the contract including payment shall be done exclusively with the lead partner.

d. THE PROPOSED PARTICIPATION SCOPE OF ACTIVITIES TO BE PERFORMED AND RESPONSIBILITIES OF EACH:

The proposed administrative arrangement, participation, scope of activities to be performed and responsibilities for the execution of the work of the each party shall be as under:

First Party:

Second Party:

e. The turnover and experience of each party is as under:

First Party:

Second Party:

f. Subject to Clause-4, the parties shall depute their experienced staff as required for the works and plants, equipment, machinery etc. as requires for execution of works, will be deployed by each Joint Venture/consortium partners for execution of the contract.

g. In the event of default by any partner in the execution of the part of the contract, the Lead Partner will have the authority to assign the work to any other party acceptable to the Kolkata Port Trust to ensure the satisfactory execution of that part of the contract.

h. The Registered Office of the Joint Venture/Lead Partner of the consortium shall be at \_\_\_\_\_

i. The Joint Venture/consortium shall regularly maintain in the ordinary course of business a true and correct account of all its incoming and outgoing and also of its assets and liabilities in proper books or account which shall ordinarily be kept at place of business and after Completion of above mentioned work all account shall be taken.

j. Opening and operation of Bank Account:

The Joint Venture/consortium shall open and maintain bank account(s) at \_\_\_\_\_ The Lead Partner as mentioned in Clause (2) above shall have the power to receive the payments on behalf of the Joint Venture/consortium and to give discharge on behalf of the Joint Venture/consortium.

IN WITNESS WHEREOF the Parties hereto have signed hereunder at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

Party of First Part

Party of Second Part

Witness:

1)

2)

### **Annexure-III (A)**

#### **POWER OF ATTORNEY**

Format For Power Of Attorney For Lead Member Of Consortium

(To be executed before Notary Public on a Non-Judicial Stamp Paper of at least Rs 10)

Dated: -----

TO WHOMSOEVER IT MAY CONCERN Mr.....(Name of the Person(s)), domiciled at ..... (Address), acting as.....(Designation and name of the company), and whose signature is attested below, is hereby appointed as the Lead member and authorised on behalf of ----- (Name of the applicant) to provide information and respond to enquiries etc. as may be required by the Employer for the project of (Project title).....and is hereby further authorised to sign and file relevant documents in respect of the above.

(Attested signature of Mr.....) For..... (Name & designation of the member of joint venture/Consortium)

- Individual power of attorney for signing the joint venture/Consortium shall be submitted in the above format separately by each applicant.

### **Annexure-III (B)**

#### Format For Power Of Attorney For Lead Member Of Consortium

(To be executed before Notary Public on a Non-Judicial Stamp Paper of at least Rs 10 )

#### POWER OF ATTORNEY

Whereas KoPT("the Authority") has invited tenders from interested parties for " ..... " (Tender No. ....).

Whereas, ....., ....., ..... And ..... (collectively the " Consortium") being members of the Consortium are interested in bidding for the Tender in accordance with the terms and conditions of the Tender Document and other connected documents in respect of the said tender, and

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

#### **NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS**

We, M/s. .... having our registered office at ....., M/s..... having our registered office at ....., M/s. .... having our registered office at ....., and M/s. .... having our registered office at ....., [the respective names and addresses of the registered office] (hereinafter collectively referred to as the "Principals") do hereby designate, nominate, constitute, appoint and authorize M/s. .... having its registered office at ....., being one of the members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorize the Attorney to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Contract, during the execution of the contract, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid(s) for the tender, including but not limited to signing and submission of all applications, bids and other documents and writings,

participate in Pre Bid and other conferences/meetings, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of bid(s) of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid(s) for the tender and/or upon award thereof till the Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things 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 / Consortium.

IN WITNESS HEREOF WE HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS .....  
DAY OF .....20\*\*

For .....

.....

(Name & Title)

For .....

.....

(Name & Title)

For .....

.....

(Name & Title)

Witnesses:

1.

2.

.....

(To be executed by all the members of the Consortium)

## ANNEXURE-IV

### Joint Bidding Agreement

*(To be executed on Non-Judicial Stamp Paper of at least Rs. 60/-)*

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

#### AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at ..... (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

#### AND

2. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at ..... (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

#### AND

3. {..... Limited, a company incorporated under the Companies Act, 1956 and having its registered office at ..... (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

#### AND

4. {..... Limited, a company incorporated under the Companies Act, 1956 and having its registered office at ..... (hereinafter referred to as the "**Fourth Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

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

#### WHEREAS,

- A. [KOLKATA PORT TRUST, having Principal Office at 15, Strand Road, Kolkata-700001 (hereinafter referred to as the "**KOLKATA PORT TRUST**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited offers by its Request through NIT No. .... dated .....(the "**TENDER DOCUMENT**") for selection of successful tenderer for the contract as proposed in the said tender document.



- B. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the tender document and other documents in respect of the work, and
- C. It is a necessary condition under the tender document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Offer.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

- 2.1. The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Tendering Process for the Work.
- 2.2. The Parties hereby undertake to participate in the Tendering Process only through this Consortium and not individually and/ or through any other consortium constituted for this work, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the successful tenderer and awarded the contract, it shall incorporate a special purpose vehicle (the "**SPV**") under the Indian Companies Act 1956 for entering into an Agreement with the KoPT and for performing all its obligations as the successful tenderer in terms of the Agreement for the Project.

**4. Role of the Parties**

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

- a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the tendering process and till all the obligations of the SPV shall become effective;
- (a) Party of the Second Part shall be {the Technical Member of the Consortium ;}
- (b) {Party of the Third Part shall be the Financial Member of the Consortium; and}
- (c) {Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

**[Note: Status of the members in (b), (c) and (d) are only illustrative.  
More / less parties may form the Consortium and changes may be  
made accordingly to the JBA]**

## **5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the work and in accordance with the terms of the tender document till completion of the contract.

## **6. Shareholding in the SPV**

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

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

- 6.2. The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till completion of two years from the date of commencement of the contract, be held by the Parties of the First, {Second and Third} Part whose experience and net-worth have been reckoned for the purposes of pre-qualification in terms of the tender document.
- 6.3. The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times till completion of two years from the date of commencement of the contract.
- 6.4. The Parties undertake that they shall comply with all the requirements as stipulated in the tender document vide N.I.T. No. .... dated .....

## **7. Representation of the Parties**

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

- a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power to enter into this Agreement with KoPT;
- b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and

KoPT to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- i. Require any consent or approval not already obtained;
  - ii. Violate any Applicable Law presently in effect and having applicability to it;
  - iii. Violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - iv. Violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - v. Create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

## **8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the contract is achieved under and in accordance with the terms of the tender, in case the contract is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the work or does not get selected for award of the contract, the Agreement will stand terminated in case the Tenderer is not pre-qualified or upon return of the Earnest Money by the KoPT to the Bidder, as the case may be.

## **9. Miscellaneous**

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SECOND PART by

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

FOURTH PART by

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

**Notes:**

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executants (s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
  2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and KoPT to execute this Agreement on behalf of the Consortium Member.
  3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.
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