

## **TENDER DOCUMENT**

### **KOLKATA PORT TRUST HALDIA DOCK COMPLEX**

Office of the Sr Dy Manager (I&CF) ,  
Cluster -V, P.O.: - Haldia Township,  
Dist.: Purba Medinipur,  
Pin : 721607, West Bengal.  
Ph. No. 263389, FAX: 03224-252110  
E-mail id: [pdasgupta@kopt.in](mailto:pdasgupta@kopt.in)

E-Tender under single stage two part system (Part I: Techno-Commercial Bid and Part II: Price Bid) are invited from reliable, bonafide & experienced single entity or consortium with experience of managing, operating and maintaining full-fledged Dry Bulk Terminal(s) in a sea / riverine port(s), where it has provided all cargo handling services to the users at the Quayside, Storage Yard etc using Cranes and other support equipment for supply, Installation, Commissioning, Operation, Maintenance and Transfer of Floating Cargo Handling Facilities at upstream of 3<sup>rd</sup> Oil Jetty for handling Mini Bulk Carriers including construction of hardstand and road network as well as supply, operation & maintenance of required cargo handling equipment for shore handling at Haldia Dock Complex, Kolkata Port Trust as per Bill Of Quantity to Haldia Dock Complex.

Bid Document may be downloaded from MSTC website [www.mstcecommerce.com/eprochome/kopt](http://www.mstcecommerce.com/eprochome/kopt).  
Corrigenda or clarifications, if any, shall be hosted on the above mentioned websites only.

### **SCHEDULE OF TENDER (SOT)**

a TENDER NO.	SDM RZ 2015 to 16 of 01
b. MODE OF TENDER	e-Procurement System (Online Part I - Techno-Commercial Bid and Part II - Price Bid through <a href="http://www.mstcecommerce.com/eprochome/">www.mstcecommerce.com/eprochome/</a> ----- of MSTC Ltd. The intending bidders are required to submit their offer electronically through e-tendering portal. No physical tender is acceptable by Haldia Dock Complex.
c. E-Tender No.	<b><u>KoPT/Haldia Dock Complex/I&amp;CF Div/1/15-16/ET/1</u></b>
d. Date of NIT available to parties to download	02.04.2015
e. Pre-Bid Meeting starting date & Time	16.04.2015 at 11-00 hrs ( Pre bid meeting will be off line )
f. Pre . Bid Meeting closing date & Time	16.04.2015 at 17-00 hrs
g. i) Earnest Money Deposit	The intending bidders <b>should submit</b> Earnest Money of Rs. 46,27,630.00 ( <b>Rupees Forty Six Lakh Twenty Seven Thousand Six hundred and thirty only</b> ) to KoPT as per NIT.
ii) Bid Document fee	The intending bidders <b>should submit the tender cost of Rs. 10,000.00 (Rupees Ten Thousand only) (non-refundable) separately to KoPT as per NIT, otherwise their offer will be summarily rejected.</b>

iii) Transaction Fee	<b>Rs.16854.00</b> (Including Service Tax & other charges @12.36% on Service Charge) Payment of Transaction fee by NEFT/RTGS in favour of MSTC LIMITED (refer clause. No. 4 of Annexure -A )
h. Last date of submission of EMD & Bid Document fee at HDC  Last date of submission of Transaction fee through RTGS/NEFT in favour of MSTC Limited, Kolkata.	<b><u>Three working days before the last date of closing of online bidding for the e-tender.</u></b>
i. Date of Starting of e-Tender for submission of on line Techno-Commercial Bid and price Bid at <a href="http://www.mstcecommerce.com/eprochome/">www.mstcecommerce.com/eprochome/</a>	17.04.2015 at 9-00 hrs
j. Date of closing of online e-tender for submission of Techno-Commercial Bid & Price Bid.	12.05.2015 at 15-00 hrs
k. Date & time of opening of Part-I (i.e. Techno-Commercial Bid) Part-II Price Bid: Date of opening of Part II i.e. price bid shall be informed separately	12.05.2015 at 15-30 hrs

#### **List of Annexure**

Important Instructions to Bidders	:-	Annexure . A
Commercial Terms & Conditions	:-	Annexure -B
Notice Inviting Tender	:-	Annexure - C
Tender Document	:-	Annexure-D

**Important instructions for E-procurement**

This is an e-procurement event of HALDIA DOCK COMPLEX, the e-procurement service provider is MSTC Ltd., 225C, A.J.C. Bose Road, Kolkata-700 020.

You are requested to read the terms & conditions (**Annexure- B**) of this tender before submitting your online tender. Tenderers who do not comply with the conditions with documentary proof (wherever required) will not qualify in the Tender for opening of price bid.

1. **Process of E-tender :**

**A) Registration:** The process involves vendors registration with MSTC e-procurement portal which is free of cost. Only after registration, the vendor(s) can submit his/their bids electronically. Electronic Bidding for submission of Techno-Commercial Bid as well as Price Bid over the internet will be done. The Vendor should possess Class III signing type digital certificate. Vendors are to make their own arrangement for bidding from a P.C. connected with Internet. MSTC is not responsible for making such arrangement. (Bids will not be recorded without Digital Signature).

**SPECIAL NOTE: THE PRICE BID AND THE COMMERCIAL BID HAS TO BE SUBMITTED ONLINE AT [www.mstcecommerce.com/eprochome/](http://www.mstcecommerce.com/eprochome/)**

1). Vendors are required to register themselves online with [www.mstcecommerce.com](http://www.mstcecommerce.com) e-Procurement. Psu/Govt depts Register as Vendor Filling up details and creating own user id and password Submit.

2). Vendors will receive a system generated mail confirming their registration in their email which has been provided during filling the registration form.

In case of any clarification, please contact HDC/MSTC, (at least one working day before the scheduled time of the e- tender).

**Contact person (Haldia Dock Complex):**

1. Dealing Officer's name  
Designation:-  
Phone no.  
e-mail :-

2. P. Dasgupta  
Designation:- Sr Dy Manager (I&CF)  
Phone no. 03224 263389  
e-mail :- pdasgupta@kopt.in

**Contact person (MSTC Ltd):**

1. Mr. Arindam Bhattacharjee  
Deputy. Manager (E-commerce)  
MobileNo:09330102643  
Email-arindam@mstcindia.co.in

2) Mr. Sabyasachi Mukherjee  
Junior Manager (E-commerce)  
Mobile- 07278030407  
Email: smukherjee@mstcindia.co.in

Landline:03322901004

**B) System Requirement:**

- i) Windows 98 /XP-SP3 & above/Windows 7 Operating System / Windows 8 / updated version
- ii) IE-7 and above Internet browser.
- iii) Signing type digital signature
- iv) JRE 7 update 9 and above software to be downloaded and installed in the system.

To enable ALL active X controls and disable use pop up blocker under Tools Internet

	Options    custom level
2.	<p>(A) Part I Techno-Commercial bid will be opened electronically on specified date and time as given in the NIT. Bidder(s) can witness electronic opening of bid.</p> <p>(B) Part II Price bid will be opened electronically of only those bidder(s) whose Part I Techno-Commercial Bid is found to be Techno-Commercially acceptable by HDC. Such bidder(s) will be intimated date of opening of Part II Price bid, through valid email confirmed by them.</p>
3.	All entries in the tender should be entered in online Technical & Commercial Formats without any ambiguity.
4.	<p><b><u>Special Note towards Transaction fee:</u></b></p> <p>PAYMENT OF Transaction fee BY RTGS in favour of MSTC Limited .The Bank details, format etc for sending Transaction fee by RTGS to MSTC is detailed below :</p> <p>Bank Details        :    Axis Bank ,Shakespeare Sarani Branch  Account Details    :    Axis Bank A/c.No.005010200057840  IFSC Code No.      :    UTIB0000005.</p> <p>The vendors shall enter the transaction fee details by using the Transaction Fee Entry+ Link under My Menu+in the vendor login. The vendors have to select the particular tender in which they want to participate against the transaction fee by clicking on the tick box at the right and then Clicking on the Submit+ Button at the bottom of the page. Then the page appears where the vendors are required to fill up the transaction details, namely the UTR No, Date Of Transaction, and the Remitting Bank in the given fields and then click on the Confirm+Button</p> <p><b>NOTE :</b> The bidders should submit the transaction fee well in advance before the last date of submission of tender as they will be activated for bid submission only after receipt of transaction fee by MSTC.</p> <p><b>Contact Details :</b>  Fax No. : 033- 22831002  Email ids: <a href="mailto:sanjibpoddar@mstcindia.co.in">sanjibpoddar@mstcindia.co.in</a>, <a href="mailto:arindam@mstcindia.co.in">arindam@mstcindia.co.in</a>, <a href="mailto:rpradhan@mstcindia.co.in">rpradhan@mstcindia.co.in</a>, <a href="mailto:smukherjee@mstcindia.co.in">smukherjee@mstcindia.co.in</a>.</p> <p>Bidders may please note that the transaction fee should be deposited by debiting the account of the bidder only; transaction fee deposited from or by debiting any other party's account will not be accepted. Transaction fee is nonrefundable.</p> <p>In case of failure to access the payment towards Transaction fee for any reason, the vendor, in term, will not have the access to online e-tender.</p>
5.	<p>In case of failure to access the payment towards cost of tender document &amp; EMD for any reason, the vender, in term, will not have the access to on line e-tender and no correspondence in this respect will be entertained and HDC will not be responsible for any such lapses on this account. Bidder(s) are advised to make remittance of tender fee and EMD through separate DD well in advance and verify completion of transaction in respect of tender fee and EMD.</p> <p>Vendors are instructed to use <b>Upload Documents</b> link in My menu to upload documents in document library. Multiple documents can be uploaded. Maximum size of single document for upload is 5 MB.</p> <p>Once documents are uploaded in the library, vendors can attach documents through <b>Attach Document</b> link against the particular tender. For further assistance please follow instructions of</p>

	vendor guide.
6.	All notices and correspondence to the bidder(s) shall be sent by email only during the process till finalization of tender by HDC. Hence the bidders are required to ensure that their corporate email I.D. provided is valid and updated at the stage of registration of vendor with MSTC (i.e. Service Provider). Bidders are also requested to ensure validity of their DSC (Digital Signature Certificate).
7.	<p>(i) Please note that there is no provision to take out the list of parties downloading the tender document from the web site mentioned in NIT. As such, bidders are requested to see the web site once again before the due date of tender opening to ensure that they have not missed any corrigendum uploaded against the said tender after downloading the tender document. <b>The responsibility of downloading the related corrigenda, if any, will be that of the downloading parties.</b></p> <p>(ii) No separate intimation in respect of corrigendum to this NIT (if any) will be sent to tenderer (s) who have downloaded the documents from web site. Please see website <a href="http://www.mstcecommerce.com/eprochome/">www.mstcecommerce.com/eprochome/</a> of MSTC Ltd.</p>
8	E-tender cannot be accessed after the due date and time mentioned in NIT.
9.	<p><b><u>Bidding in e-tender &amp; Reverse auction:</u></b></p> <p>a. Bidder(s) need to submit necessary EMD, Tender fees (If ANY) and Transaction fees to be eligible to bid online in the e-tender. Tender fees and Transaction fees are non refundable. No interest will be paid on EMD. EMD of the unsuccessful bidder(s) will be refunded by MSTC.</p> <p>b. The process involves Electronic Bidding for submission of Techno Commercial Bid as well as Price Bid.</p> <p>c. The bidder(s) who have submitted the above fees can only submit their Techno Commercial Bids and Price Bid through internet in MSTC website <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a> e-procurement    Psu/ Govt depts    Login    My menu    Auction Floor Manager    live event    Selection of the live event    Techno Commercial Bid.</p> <p>d. The bidder should allow to run an application namely en Apple by accepting the risk and clicking on run. This exercise has to be done twice immediately after clicking on the Techno-Commercial bid. If this application is not run then the bidder will not be able to save/submit his bid.</p> <p>e. After filling the Techno-Commercial Bid, bidder should click <del>save</del> for recording their Techno-Commercial bid. Once the same is done, the Price Bid link becomes active and the same has to filled up and then bidder should click on <del>save</del> to record their price bid. Then once both the Techno-Commercial bid &amp; price bid has been saved, the bidder can click on the <del>Submit</del> button to register their bid</p> <p><b>NOTE:</b> - The Techno-Commercial Bid &amp; price bid cannot be revised once the submit button has been clicked by the bidder.</p> <p>a. In all cases, bidder should use their own ID and Password along with Digital Signature at the time of submission of their bid.</p> <p>b. During the entire e-tender process, the bidders will remain completely anonymous to one</p>

	<p>another and also to everybody else.</p> <p>c. The e-tender floor shall remain open from the pre-announced date &amp; time and for as much duration as mentioned above.</p> <p>d. All electronic bids submitted during the e-tender process shall be legally binding on the bidder. Any bid will be considered as the valid bid offered by that bidder and acceptance of the same by the Buyer will form a binding contract between Buyer and the Bidder for execution of supply. Such successful tenderer shall be called hereafter <b>SUPPLIER</b>.</p> <p>e. It is mandatory that all the bids are submitted with digital signature certificate otherwise the same will not be accepted by the system.</p> <p>f. Buyer reserves the right to cancel or reject or accept or withdraw or extend the tender in full or part as the case may be without assigning any reason thereof.</p> <p>g. No deviation of the terms and conditions of the tender document is acceptable. Submission of bid in the e-tender floor by any bidder confirms his acceptance of terms &amp; conditions for the tender.</p> <p>h. Unit of Measure (UOM) is indicated in the e-tender Floor. Rate to be quoted should be in Indian Rupee as per UOM indicated in the e-tender floor/tender document.</p>
10.	Any order resulting from this open e-tender shall be governed by the terms and conditions mentioned therein.
11.	No deviation to the technical and commercial terms & conditions are allowed.
12.	After submitting online bid, the bidder cannot access the tender, once it has been submitted with digital signature
13.	HDC has the right to cancel this e-tender without assigning any reason thereof.
14.	The online tender should be submitted strictly as per the terms and conditions and procedures laid down in the website <a href="http://www.mstcecommerce.com/eprochome/mstc">www.mstcecommerce.com/eprochome/mstc</a> of MSTC Ltd.
15.	The bidders must upload all the documents required as per terms of NIT. Any other document uploaded which is not required as per the terms of the NIT shall not be considered.
16.	The bid will be evaluated based on the filled-in technical & commercial formats.
17.	The documents uploaded by bidder(s) will be scrutinized. In case any of the information furnished by the bidder is found to be false during scrutiny, EMD of defaulting bidder(s) will be forfeited. Punitive action including suspension and banning of business can also be taken against defaulting bidders.
18.	Necessary addendum/ corrigendum (if any) of tender would only be hosted in the e-tendering portal of M.S.T.C.
19.	Micro & Small Enterprises (MSEs) registered with NSIC (under single point registration scheme) are exempted from depositing Cost of Tender Document and Earnest Money having valid NSIC Certificate for MSEs along with DIC's (DISTRICT INDUSTRIES CENTRE) Certificate.
20.	Micro & Small Enterprises (MSEs) registered with NSIC under Single Point Registration Scheme (SPRS) are eligible to get the benefits under new Public Procurement policies for MSEs as notified by Govt. of India, Ministry of Micro, Small & Medium Enterprises (MSME) vide Gazette

	Notification, dated 26.03.2012. When splitting of tender quantity is not possible purely on technical ground, trustees reserve the right not to negotiate price with MSE if their price is within the band of L1+15% in comparison with L1 price of non-MSE for consideration of award of order for 20% of tender quantity against any item as per new public procurement policy.
21.	If Micro & Small Enterprises (MSEs) registered with NSIC intends to participate in the tender, for the items they are not registered with NSIC, then they will have to deposit cost of Tender Document, full amount of Earnest Money as per NIT. Otherwise their offer for those items will not be considered.
22.	Copy of valid NSIC Certificate for MSEs along with DIC's (DISTRICT INDUSTRIES CENTRE) Certificate has to be submitted along with the bid.
23.	Due date of submission of tender will not be extended under any situation.

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Pin : 721607, West Bengal.  
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E-mail id: [pdasgupta@kopt.in](mailto:pdasgupta@kopt.in)

### Commercial Terms & Conditions

<u>SL NO</u>	<u>TERMS</u>	<u>RESPONSE</u>
1	Mere participation in e-tender will not mean that a particular bidder will be automatically considered qualified and their bids will be entertained. Such qualification will be reviewed at the time of evaluation of bids also.	AGREE
2	Price Bids (Part-II) of only those eligible bidders whose Part-I Bids are complete and in order shall be opened on time and date to be intimated later separately.	AGREE
3	Micro & Small Enterprises (MSEs) registered with NSIC (under single point registration scheme) are exempted from depositing Cost of Tender Document and Earnest Money having valid NSIC Certificate for MSEs along with DIC's (DISTRICT INDUSTRIES CENTRE) Certificate.	AGREE
4	Micro & Small Enterprises (MSEs) registered with NSIC under Single Point Registration Scheme (SPRS) are eligible to get the benefits under new Public Procurement policies for MSEs as notified by Govt. of India, Ministry of Micro, Small & Medium Enterprises (MSME) vide Gazette Notification, dated 26.03.2012.	AGREE
5	When splitting of tender quantity is not possible purely on technical ground, trustees reserve the right not to negotiate price with MSE if their price is within the band of L1+15% in comparison with L1 price of non-MSE for consideration of award of order for 20% of tender quantity against any item as per new public procurement policy.	AGREE
6	If Micro & Small Enterprises (MSEs) registered with NSIC intends to participate in the tender, for the items they are not registered with NSIC, then they will have to deposit cost of Tender Document, full amount of Earnest Money as per NIT. Otherwise their offer for those items will not be considered.	AGREE
7	Copy of valid NSIC Certificate for MSEs along with DIC's(DISTRICT INDUSTRIES CENTRE) Certificate has to be submitted along with the bid.	AGREE
8	<i>Due date of submission of tender will not be extended under any situation.</i>	AGREE
9	<b>EARNEST MONEY :</b> <b>As per NIT</b>	AGREE



10	<b><i>Micro &amp; Small Enterprises (MSEs) registered with NSIC (under single point registration scheme) are exempted from depositing Cost of Tender Document and Earnest Money.</i></b>	<b>AGREE</b>
11	<b><i>Tenders submitted without requisite Earnest Money are liable to be rejected excepting in case of Micro &amp; Small Enterprises (MSEs) registered with NSIC (under single point registration scheme) for items for which the tender is invited.</i></b>	<b>AGREE</b>
12	<b><u>SCOPE OF WORK :</u> As per Tender Document</b>	<b>AGREE</b>
13	<b>The Terms and Conditions of Tender shall be read in conjunction with the General Conditions of Contract, Specifications, Bill of Quantities and other documents forming part of this Contract wherever the Contract so requires.</b>	<b>AGREE</b>
14	<b>The several documents forming the Contract shall be taken, as mutually explanatory to one another and in case of any discrepancies; the Bill of Quantities shall prevail over the Specifications and the Terms and Conditions over the General Conditions of Contract of Ko.P.T, HDC. In case of any dispute, question or difference either during the execution of the Contract or any other time as to any matter or thing connected with or arising out of this Contract, the decision of the Sr Dy Manager (I&amp;CF) , Haldia Dock Complex, thereon shall be final and binding upon all parties.</b>	<b>AGREE</b>
15	<b>The Contract will include the Client's Bid Documents with the General Conditions of Contract and the Bidder's Offer as finally accepted by the Client, together with Addenda, if there be any. Trustees' General Conditions of contract is the integral part of the tender / contract. The above mentioned General Conditions of Contract may be inspected at the office of the undersigned on any working day before quoting for the Tender.</b>	<b>AGREE</b>
16	<b>The Trustees also reserve the right to obtain revised commercial bid to the extent and in areas required from the technically acceptable bidders before opening of the price bids.</b>	<b>AGREE</b>
17	<b>The Trustees are not bound to accept the lowest or any Tender and reserve the right to accept a tender in full or in part and / or reject a tender in full or in part without assigning any reason thereof.</b>	<b>AGREE</b>
18	<b>The contract shall be governed by all relevant Indian Acts applicable only within the jurisdiction of the High Court at KOLKATA.</b>	<b>AGREE</b>
19	<b>Intending bidders must take into account any cost or expense incurred by them in connection with the preparation and submission of their bids or for any other expenses incurred in connection with such bidding.</b>	<b>AGREE</b>
20	<b>Bidders are advised to visit the Central Store / site at Chiranjibpur, Haldia Dock Complex prior to submission of their bid. Bidder shall get himself thoroughly familiarized with the site conditions, existing road facilities for carrying materials etc. before submission of the tender. He may contact the Sr Dy Manager (I&amp;CF) or his authorized representative at his office at Haldia Township in this regard. Non compliance of the same will in no way relieve the successful bidder of any of his obligations in performing the work in accordance with this Bid Document within the quoted price.</b>	<b>AGREE</b>
21	<b>The bidder should sign the DECLARATION OF THE BIDDER to denote their mode of acceptance and to submit the same along with his offer.</b>	<b>AGREE</b>
22	<b><u>VALIDITY :</u> The tender shall remain open for acceptance for a period of 6</b>	<b>AGREE</b>

	months from the date of opening of techno-commercial bid. If before expiry of this validity period, the Bidder amends his quoted rates or tender, making them unacceptable to the Trustees and / or withdraws his tender, the Earnest Money deposited shall be liable to forfeiture at the option of the Trustees / sanctioning Authority.	
23	<b><u>NON- RESPONSIVE BIDDER :-</u></b> The offer/tender shall be treated as non-responsive, if :  6 months validity from the date of opening of techno-commercial bid is not accepted / agreed to as per tender condition.  Offer / tender is submitted with any deviation from the tender terms & conditions.	AGREE
24	<b><u>EARNEST MONEY AND SECURITY DEPOSIT :</u></b> As per tender Document	AGREE
25	Performance Guarantee : As per Tender document	AGREE
26	If the contract value aggregates to Rupees one lakh and above, the supplier may offer a Bank Guarantee in the Trustees' specified Pro-forma from any Scheduled/ Nationalized Bank of India having Branch at Haldia in lieu of Security Deposit as per Appendix-XII .	AGREE
27	In the event of the successful bidder failing to execute the order within the stipulated delivery period without sufficient reasons acceptable to the Trustees, the Security Deposit may be forfeited and the order be cancelled at the option of the Trustees'.	AGREE
28	<b><u>PRICES :</u></b> Rate to be quoted on line on per MT basis	AGREE
29	Consolidated rate in terms of per MT basis as per scope of work will have to be quoted .	AGREE
30	The Bidder shall state clearly his quoted rates both in figure & word .	AGREE
31	Orders may be placed in full to the lowest bidder.	AGREE
32	Price(s) to be quoted should remain firm over the contract period.	AGREE
33	All taxes & duties are deemed to be included in the quoted rate except service tax as applicable .	AGREE
34	<b><u>EVALUATION CRITERIA :</u></b> As per relevant clause of Tender document.	AGREE
35	Order to be placed in full.	AGREE
36	All taxes & duties are deemed to be included in the quoted rate except service tax as applicable.	AGREE
37	<b><u>PAYMENT:</u></b> As per Tender document	AGREE
38	Supply, installation, Commissioning of the handling facility; 9 months from the date of LOI.	AGREE
39	Location of handling facility : at the upstream of 3 <sup>rd</sup> oil jetty at HDC.	AGREE
40	The contractor shall have to complete the commissioning of the handling facility within 9 months from the date of LOI.	AGREE
41	Work is to carried out as per terms & condition of the contract document.	AGREE
42	Compensation/disincentive against failure to achieve MLP as: As per	AGREE

	<b>Tender document.</b>	
<b>43</b>	<b>Penalty for Non availability of equipment: As per tender document.</b>	<b>AGREE</b>
<b>44</b>	<b>Compensation (Liquidated damages for failure of supply ,installation &amp; commissioning of floating cargo handling facilities) : As per Tender document.</b>	<b>AGREE</b>
<b>45</b>	<b>Price adjustment clause: As per Tender document.</b>	<b>AGREE</b>
<b>46</b>	<b>Compensation against Termination of contract due to Force majeure: As per Tender Document.</b>	<b>AGREE</b>
<b>47</b>	<b>Compensation against Termination of contract due to Contractor event of default : As per Tender Document.</b>	<b>AGREE</b>
<b>48</b>	<b>Compensation against Termination of contract due to Employers event of default : As per Tender Document.</b>	<b>AGREE</b>
<b>49</b>	<b><u>Technical capacity : As stipulated in Tender document</u></b>	<b>AGREE</b>
<b>50</b>	<b><u>Financial capacity : As stipulated in Tender document</u></b>	<b>AGREE</b>
<b>51</b>	<b><u>DOCK PERMITS :</u> To be issued free of cost</b>	<b>AGREE</b>
<b>52</b>	<b><u>INDEPENDENT ENGINEER:</u> As per Tender document</b>	<b>AGREE</b>
<b>53</b>	<b>Transfer of project facility by contractor to employer after contract period :As per Tender document .</b>	<b>AGREE</b>
<b>54</b>	<b><u>JURISDICTION OF COURT :</u> The contract shall be governed by all relevant Indian Acts applicable within the jurisdiction of Kolkata/Haldia.</b>	<b>AGREE</b>
<b>55</b>	<b><u>PERSONAL PROTECTIVE EQUIPMENT (PPE):</u></b>	<b>AGREE</b>
	<b>Contractor and their workmen including driver &amp; helper must use PPE i.e. safety helmet etc. at the time of supply of materials inside the dock premises.</b>	

**NOTICE INVITING TENDER**

SDM/RZ/2015-16 /01/ 02

Dated: 01.04.2015

**KOLKATA PORT TRUST, HALDIA DOCK COMPLEX  
INVITES TENDER FOR  
Issue Letter of Tender Document  
For**

**"Supply, Installation, Commissioning, Operation, Maintenance and Transfer of Floating Cargo Handling Facilities at upstream of 3<sup>rd</sup> Oil Jetty for handling Mini Bulk Carriers including construction of hardstand and road network as well as supply, operation & maintenance of required cargo handling equipment for shore handling at Haldia Dock Complex, Kolkata Port Trust".**

**Tender No : SDM/RZ/2015-16 /01**

Earnest Money	Tender Document Preparation Cost	Date of Pre- Bid Meeting	Last date of reply to queries	Last Date and time submission of Tender
<b>Rs. 46,27,630.00</b> (Rupees Forty Six Lakh Twenty Seven Thousand Six Hundred and Thirty only).	<b>Rs. 10,000.00</b> (Rupees Ten Thousand only).	11: 00 Hrs. of April 16 <sup>th</sup> , 2015	April 23 <sup>rd</sup> , 2015	15 : 00 Hrs. of May 12 <sup>th</sup> , 2015

Details of the Tender & Tender Documents are available in web site of MSTC (mstcecommerce.com )

The Tender information/NIT is also available in the websites of <http://www.haldiadock.gov.in> or <http://www.kolkataporttrust.gov.in> while the Tender information/NIT along with Tender Document is available at Central Public Procurement Portal, Govt. of India ([www.eprocure.gov.in](http://www.eprocure.gov.in)).

**Tender Document shall neither be issued by post nor sold.**

**The Earnest money is to be deposited by vendors/contractors through E.C.S. to the Current Account as appended hereunder:**

- a) **Name of Bank & Branch:** United Bank of India, Haldia Dock Complex Branch,
- b) **Account No.:** 1604050000310,
- c) **IFS Code:** UTBI0HDCF75.

**Vendors/contractors participating in an e-tender are advised to deposit earnest money directly into the above mentioned bank account by RTGS/NEFT. Concerned vendors/contractors must ensure that the remitting bank positively enters their name and Tender no. in the 'Sender to Receiver' column at the time of making payment of earnest money by RTGS/NEFT.**

**Details of Earnest money remitted should be entered by the participating vendor/contractor in the space provided in the e-tender as indicated hereunder:**

- a) Name of remitting vendor/contractor:**
- b) Tender No. :**
- c) Amount remitted :**
- d) U.T.R No. :**

**P. Dasgupta,  
Sr. Deputy Manager,  
I&CF Division,  
Haldia Dock Complex,  
Kolkata Port Trust**

KOLKATA PORT TRUST  
HALDIA DOCK COMPLEX

**Tender No. SDM/RZ/2015-16 /01**

**TENDER FOR**

**"SUPPLY, INSTALLATION, COMMISSIONING, OPERATION, MAINTENANCE AND TRANSFER OF FLOATING CARGO HANDLING FACILITIES AT UPSTREAM OF 3<sup>RD</sup> OIL JETTY FOR HANDLING MINI BULK CARRIERS INCLUDING CONSTRUCTION OF HARDSTAND AND ROAD NETWORK AS WELL AS SUPPLY, OPERATION & MAINTENANCE OF REQUIRED CARGO HANDLING EQUIPMENT FOR SHORE HANDLING AT HALDIA DOCK COMPLEX, KOLKATA PORT TRUST".**

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## NOTICE INVITING TENDER

**SDM/RZ/2015-16 /01/ 02**

**Dated : 01.04.2015**

**KOLKATA PORT TRUST, HALDIA DOCK COMPLEX  
INVITES TENDER FOR  
Issue Letter of Tender Document  
For**

**"Supply, Installation, Commissioning, Operation, Maintenance and Transfer of Floating Cargo Handling Facilities at upstream of 3<sup>rd</sup> Oil Jetty for handling Mini Bulk Carriers including construction of hardstand and road network as well as supply, operation & maintenance of required cargo handling equipment for shore handling at Haldia Dock Complex, Kolkata Port Trust".**

**Tender No : SDM/RZ/2015-16 /01**

Earnest Money	Tender Document Preparation Cost	Date of Pre- Bid Meeting	Last date of reply to queries	Last Date and time submission of Tender
<b>Rs. 46,27,630.00</b> (Rupees Forty Six Lakh Twenty Seven Thousand Six Hundred and Thirty only).	<b>Rs. 10,000.00</b> (Rupees Ten Thousand only).	11: 00 Hrs. of April 16 <sup>th</sup> , 2015	April 23 rd., 2015	15 : 00 Hrs. of May 12 th., 2015

Details of the Tender & Tender Documents are available in web site of MSTC (mstcecommerce.com )

The Tender information/NIT is also available in the websites of <http://www.haldiadock.gov.in> or <http://www.kolkataporttrust.gov.in> while the Tender information/NIT along with Tender Document is available at Central Public Procurement Portal, Govt. of India ([www.eprocure.gov.in](http://www.eprocure.gov.in)) .

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**Details of Earnest money remitted should be entered by the participating vendor/contractor in the space provided in the e-tender as indicated hereunder:**

- a) Name of remitting vendor/contractor :**
- b) Tender No. :**
- c) Amount remitted :**
- d) U.T.R No. :**

**P. Dasgupta,  
Sr. Deputy Manager,  
I&CF Division,  
Haldia Dock Complex,  
Kolkata Port Trust**

## ABBREVIATIONS/DEFINATION

<b>Tender</b>	<b>:</b>	<b>e-tender</b>
<b>KoPT</b>	<b>:</b>	<b>Kolkata Port Trust</b>
<b>HDC</b>	<b>:</b>	<b>Haldia Dock Complex</b>
<b>MLP</b>	<b>:</b>	<b>Minimum Level of Performance</b>
<b>RR</b>	<b>:</b>	<b>Railway Receipt</b>
<b>TAMP</b>	<b>:</b>	<b>Tariff Authority for Major Ports</b>
<b>Sq.M.</b>	<b>:</b>	<b>Square Meter</b>
<b>OEM</b>	<b>:</b>	<b>Original Equipment Manufacturer</b>
<b>RPFC</b>	<b>:</b>	<b>Regional Provident Fund Commissioner</b>
<b>ESI</b>	<b>:</b>	<b>Employee State Insurance</b>
<b>SoR</b>	<b>:</b>	<b>Scale of Rates</b>
<b>Sh &amp; CH</b>	<b>:</b>	<b>Shipping &amp; Cargo Handling</b>
<b>JV</b>	<b>:</b>	<b>Joint Venture</b>
<b>JBA</b>	<b>:</b>	<b>Joint Bidding Agreement</b>
<b>MBC</b>	<b>:</b>	<b>Mini Bulk Carrier</b>
<b>GCB</b>	<b>:</b>	<b>General Cargo Berths of Haldia Dock Complex, along with the customs bonded back up area.</b>
<b>Applicant</b>	<b>:</b>	<b>Bidder</b>
<b>Contractor</b>	<b>:</b>	<b>Successful Bidder</b>
<b>Mini Bulk Carrier</b>	<b>:</b>	<b>Handy size vessel as per TAMP category indicated in TAMP guideline for fixation of upfront tariff, 2008.</b>

## **1. Scope of Work, Obligation and Related Information:**

### **1.1. a) Creation, Operation, Maintenance & Transfer of facilities:**

- i) Supply, Installation, Commissioning, Operation & Maintenance of Floating Cargo Handling Facilities consisting of pontoon, gangway, crane mounted on pontoon, conveyer system along with associated hopper at upstream of 3<sup>rd</sup> Oil Jetty for handling Mini Bulk Carriers (MBC) and transfer thereof.
- ii) Construction, of 4,000 Sq.M. of Paver Block topped Hardstand as per Section indicated in the enclosed Drawing at the immediate vicinity of the aforesaid facility (immediate back-up Hardstand) including security fencing, maintenance and Transfer thereof.
- iii) Construction of 1.350.00 km long and 10.5 M. wide Paver block topped road as per Section indicated in the enclosed Drawing connecting the immediate back up handstand with the G C Berth Storage Area and maintenance and Transfer thereof.
- iv) Supply, Installation, Commissioning, Operation & Maintenance of minimum 14 numbers of High Masts for illumination at the facilities as indicated at (i), (ii) & (iii) above and Transfer thereof .

### **1.1. b)** Supply, installation, operation and maintenance of different cargo handling equipment as well as undertaking all required onboard and onshore cargo handling operations as given below in an integrated manner upto delivery for import through Floating Jetty of Haldia Dock Complex, Kolkata Port Trust at the cost, charges, expenses, risk, manpower and arrangements of the successful Bidder:

- i) Unloading of cargo from the MBC at the Floating Jetty including operation of Payloader(s) inside the hatches of the MBC.
- ii) Transfer of cargo between the Floating Jetty and the immediate back-up hardstand by conveyer system.
- iii) Transfer of cargo between the immediate back-up hardstand and earmarked storage area(s) inside General Cargo Berth (GCB) including loading of dumpers at immediate back-up hardstand and unloading at GCB Storage area.
- iv) Storage/ stacking of dry bulk cargo at respective storage area(s) of the receivers, including heaping/high heaping of cargo, as well as all other required on shore operation.
- v) Aggregation / evacuation of cargo to / from storage area(s) by rail / road and other allied and associated services in consultation with KoPT and importer/exporter concerned.
- vii) Despatch related services of wagons /trucks / other road bound vehicles including cleaning of wagons prior to loading, closing of gates of wagon/truck by suitable pegs (to be supplied by the contractor) after loading, lime spraying (lime to be supplied by the contractor) on the wagon and all other allied works required to make the wagon ready for dispatch.

Note: Weighment of Wagon/Truck/ other road bound vehicles will not be within the scope of the work of the successful contractor.

### **1.1. c)** Apart from supply, operation & maintenance of different equipment, the on-board and onshore operations as will be required to be undertaken by the successful Bidder at his cost, charges, expenses, risk, manpower and arrangements, are as follows:

- i) Cleaning of rib/ frame and sweeping of cargo inside the hatches including sweeping of deck of the MBC, as required.
- ii) Cleaning of the Floating Jetty and conveyer system as would be required before arrival of any MBC to the satisfaction of KoPT, to avoid contamination of cargo.
- iii) To take all necessary action for ensuring that the cargo to be handled by the successful Bidder at the Floating Jetty do not fall into the water during unloading from the Mini Bulk Carrier or during aggregation / removal of cargo from the immediate back up hardstand.
- iv) Clearing of the railway tracks after loading of cargo handled at the Floating Jetty to the rakes to the satisfaction of KoPT. The railway tracks should be cleaned and spillage on roads / stacking area should be cleared / collected and stacked at the specified places to the satisfaction of KoPT.
- v) Removal of foreign materials like boulders, thermal coal, iron ore etc. from the wagons as well as cleaning of empty wagons placed at the railway sidings prior to loading of cargo by the contractor to avoid contamination of cargo.
- vi) Closing of the doors of the wagons with suitable wooden pegs (to be supplied by the contractor) for its security, spraying of lime (lime to be supplied by the contractor) on top of the cargo so loaded and other related activities.
- vii) Other associated works (other than those specifically mentioned above) which may be required to be done for undertaking various on-board and on shore operations.

Note: a) It will be the responsibility of the importers concerned to deploy their own manpower or any agency to supervise loading of wagons to ensure that the wagons are loaded upto the permissible limit to avoid the incident of imposition of panel charges by the competent authority as also the incident of undercharges if any.

b) The importers will also be required to deploy their own manpower or any competent agency to supervise loading of road borne vehicles like trucks etc. to ensure that these are loaded within the permissible limit to avoid incident of imposition of penal charges by the competent authority.

**1.1. (d)** The successful Bidder shall carry out the cargo handling operations on board the Mini Bulk Carrier at the Floating Jetty with the help of the equipment to be supplied & installed as well as manpower to be deployed under the provisions of the contract in close coordination with KoPT, Importer/ Importer/ their Representative and Master of the Mini Bulk Carrier.

**1.1. (e)** The successful Bidder shall carry out the cargo handling operations on shore at the immediate back-up hardstand of the Floating Jetty and GCB Storage Area with the help of the equipment to be supplied & installed as well as manpower to be deployed under the provisions of the contract in close coordination with KoPT as well as representatives of the Receiver / Shipper or their Agents.

**1.1. (f)** In case time taken for loading of rakes by the successful Bidder goes beyond the prevailing free time limit prescribed by Indian Railways, the successful Bidder shall be liable for payment of demurrage as per rules of Indian Railways prevailing from time to time to KoPT which KoPT in turn will pass on to Indian Railways.

**1.1. (g)** The successful Bidder shall supervise all the functions as mentioned at 1.1(a) to 1.1(f) above at its cost, charges, expenses, risk and manpower.

Note: The Bidder shall include charges for undertaking all the functions as given at 1.1 (a) to 1.1 (g) in the Schedule of Rates to be quoted by him on line.

## 1.2 Minimum requirement of equipment:

Sl. No.	Type of equipment	Minimum number of equipments.	Basic Purpose / utilization includes but not limited to.
1.	Pontoon (70 M. LOA & 25 M. beam with 3 M. depth) with a draught of 1.8 M.	1	For providing berthing facility to vessels/ crafts etc.
2.	Crane to be mounted on the Pontoon (About 600 MT per Hour Capacity).	1	Unloading of cargo from vessels/ crafts etc for transfer through conveyor
3.	Conveyer System (Compatible with crane operation).	1	Transference of cargo from MBC to immediate back up hardstand.
4.	Hopper with Vibro feeder to be mounted on Pontoon Jetty. (Compatible with crane operation).	1	To receive cargo from crane and to place the same on Conveyer belt.
5.	Mooring boat.	1	For assisting berthing of MBC the Floating Jetty.
6.	Dumpers (10 wheeler).	25	Transfer of cargo between the Immediate Storage Hardstand and final storage areas at GC Berth.
7.	Front end Loader/ Pay loaders i) 2.4 CBM Bucket capacity. ii) 5 CBM Bucket capacity.	1 9	Aggregation of cargo inside the hatch of MBC. Stacking/ Heaping/ high heaping of cargo / Loading of dumpers/ wagons, trucks etc. / Accumulation of cargo / other related activities.
8.	Bulldozer	1	Stacking and high heaping of cargo.
9.	Excavator	2	Wagon/ truck loading/ unloading, heaping and high heaping of cargo.

Note for Section-1.1 & 1.2

The detailed specification and parameters are given at Clause 8.3 where as the Location Plan with section of Hardstand & Road and concept plan are enclosed at Appendix- I & Appendix- IIB.

**1.3** (a) The successful Bidder, for the purpose of attaining the MLP may deploy more number of Pay Loaders, Dumpers, Front End Loaders, Bulldozers, Excavators etc. over and above the minimum number of each equipment detailed at item 1.2 above during the currency of the contract. Besides, the equipment to be deployed may have capacity higher than the minimum capacity mentioned at item 1.2 above. However, for deploying more number of equipment over and above, the minimum number detailed at item 1.2 above and / or for providing equipment of capacity higher than the minimum capacity mentioned at item 1.2 above, there will be no extra payment beyond the rates given on line.

(b) Likewise, the successful Bidder may also bring additional Pontoon, Crane, Conveyer System and Hopper if they consider it so necessary for fulfillment of their different obligations under the provisions of the contract, with prior permission of KoPT and subject to the condition that no extra payment will be made by KoPT for such additional equipment. Further, the said equipment, if brought additionally, will have to be peacefully removed by the successful bidder in case of Termination of the contract due to Force Majure/ Contractor's Event of Default/ Employer's event of default or afflux of time, at his entire risk, cost and arrangement.

- 1.4** The Bidder shall indicate the capacity, specification and make of equipment which he intends to deploy at the Floating Jetty as per Appendix- II. The said Appendix duly filled in shall be submitted along with the techno commercial part of the tender.
- 1.5** The cargo to be handled in the facility will comprise dry bulk cargo of all kinds. The cargo handling details of HDC for last 5 years is enclosed as Appendix-IV.
- 1.6** The sketch plans showing the storage area(s) of the cargo to be handled by the successful Bidder at Floating Jetty are at Appendix- IIA.

Note: The intending Bidders will be given the opportunity to inspect the site of work on the date and time mentioned at item-3.1 of the tender document to get an idea about the project site, location of the storage area(s) etc.

- 1.7**
  - a) The Pontoon, Conveyer System, Crane & Hopper to be supplied shall be new.
  - b) The Mooring Boat, Pay Loaders/ Front End Loaders, Dumpers, Bulldozers, Excavators may not be new but should be certified by the Independent Engineer as acceptable for the purpose of performing different operations and capable of achieving the performance standards envisaged under the contract by such equipment. In case of any replacement of the same during the tenure of the contract, the equipments to be supplied should be of same or higher specification and have valid certificate from the statutory authority concerned.
- 1.8**
  - (a) The Pontoon, Crane, Hopper and the Conveyer system shall be owned by the successful Bidder during the entire period of the contract.
  - (b) The other equipment may be either owned or taken on lease/ hire basis for the entire period of the contract by the successful Bidder. In case, the successful Bidder initially acquires the different equipment through lease/hire, he will be allowed by KoPT to subsequently own all the equipment if he prefers to discontinue leasing/hiring of equipment.
- 1.9** The successful Bidder shall have to achieve MLP in terms of per day output of MBC as detailed at item- 7.8 of the tender document, failing which penalty will be imposed as per details given at item- 7.21 (a) of the tender document.
- 1.10** The successful Bidder, in case required, shall replace Pontoon, Conveyer System, Crane & Hopper, which may outlive its useful economic life during the currency of the contract. The successful Bidder, in such case, shall produce Certificates issued by Chartered Engineers and/or other competent authorities nominated/accepted by KoPT for the purpose from time to time, conforming that all the equipment being so supplied by him have residual life. The residual life of the equipment to be supplied in replacement shall take care of the subsisting period of the contract which should also be certified by Chartered Engineers and/or other competent authorities as accepted by KoPT for the purpose.
- 1.11** The successful tender shall not without prior approval of KoPT, remove or replace the minimum number of different equipment to be installed / provided by him under the provisions of the contract. However, the successful Bidder will be at liberty without prior permission of KoPT to remove the additional equipment to be deployed by him over & above the minimum number of different equipment as & when he desires.
- 1.12** The successful Bidder shall have to maximize availability of the equipment to be provided under the contract, failing which penalty will be imposed as per provision of Clause-7.21(b) of the tender document.
- 1.13**
  - a) The successful Bidder shall employ qualified and skilled personnel for operation and maintenance of all the equipment to be installed / provided as also for undertaking other onboard & onshore operations under the contract. The successful Bidder shall ensure that all such personnel have valid Licenses / Certificates applicable under the law to operate & maintain the equipment concerned and for undertaking onboard & onshore operations.

- b) The successful Bidder shall indemnify KoPT from the possible future demand of the employees / workers employed by the successful Bidder that they be absorbed in KoPT. It will be the responsibility of the successful Bidder to find a solution for such demand if it arises.

#### **1.14 Insurance:**

##### **(i) Insurance Requirement:**

The Contractor shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- (a) builder's all risk insurance;
- (b) loss, damage or destruction of the Project Facilities and Services, at replacement value;
- (c) comprehensive third party liability insurance including injury or death to personnel of the Employer and others who may enter the Project Site or the Port's Assets;
- (d) workmen's compensation insurance;
- (e) marine cum storage cum erection insurance; and
- (f) any other insurance that may be necessary to protect the Contractor, its employees and its assets and the Employer, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

##### **(ii) Insurance Cover & Insurance Companies:**

The Contractor shall insure all insurable assets comprised in the Port's Assets and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice ("Insurance Cover").

##### **(iii) Evidence of Insurance Cover:**

The contractor shall pay the premium payable on such insurance policy(ies) so as to keep the policy (ies) in force and valid throughout the contract Period. They will be required to submit a certificate of compliance in this regard to be obtained from the INDEPENDENT ENGINEER in the first instant. Thereafter, in every year, they will be required to produce a certificate to be issued by a Chartered Accountant conforming compliance.

##### **(iv) Application of Insurance Proceeds:**

All moneys received under insurance policies shall be promptly applied by the Contractor towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Contractor shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

##### **(v) Validity of the Insurance Cover:**

The Contractor shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Contract Period and furnish copies of the same to the Employer. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to

Employer in writing. If at any time the Contractor fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Employer may at its option purchase and maintain such insurance and all sums incurred by the Contracting Authority therefore shall be reimbursed with interest @ SBI PLR plus 2% (two percent) per annum by the Contractor forthwith on demand, failing which the same shall be recovered by the Employer by exercising right of set off or otherwise.

- 1.15** The successful Bidder shall at its own cost and arrangement obtain and maintain all required statutory clearances and permissions as may be required by law for operation and maintenance of all the equipment to be supplied and for undertaking other onboard & onshore operations by him under provision of the contract.
- 1.16** The successful Bidder shall comply with the requirements of all the Acts, Laws, Statutes, Bylaws, Rules and Regulations for the purpose of fulfilling all the obligations of the contract which shall include but not limited to the Major Port Trust's Act, 1963, The Indian Contract Act, the Dock Workers (Safety, Health & Welfare) Regulations, 1987, Motor Vehicles Act, Minimum Wages Act, 1948, Contract Labour (Regulation and Abolition) Act, 1970 Industrial Dispute Act, 1947, Shops and Commercial Establishment Act, Factory Act, 1948, Workmen's Compensation Act, 1923, ESI Act, 1948, Payment of Wages Act, 1963, Bonus Act, Employees Provident Funds & Misc. Provisions Act, 1952 etc. and such other applicable Central/State Acts from time to time and take such steps as may be deemed necessary in this regard.
- 1.17** The successful Bidder shall at all times during the currency of the contract ensure highest standards of safety to the Mini Bulk Carriers, people working on board and shore as well as other infrastructure of KoPT or other parties. In case of any accident / damage to Mini Bulk Carriers / wagons/ trucks / lorries/ different cargo handling equipment /people / any other infrastructure belonging to KoPT or other parties / agencies, the successful Bidder shall be solely accountable to all liabilities and losses thereof.
- 1.18** If during cargo handling operations, any of the equipment to be operated by the successful Bidder damages any KoPT property, the successful Bidder shall pay to KoPT the required cost for repairing of the damaged property. Assessment of damages, expenses, costs etc. if any will be carried out jointly by Engineer to the contract and the successful Bidder. In case the successful Bidder damages property belonging to parties other than KoPT, assessment of damages, expenses, costs etc. if any will be carried out jointly by the Engineer to the contract, the successful Bidder and the affected party concerned. In case of any dispute, the matter will be referred to Chairman KoPT, whose decision will be final and binding.
- 1.19** The successful Bidder shall keep KoPT indemnified throughout the period of the Contract for any loss, damage and expenses whatsoever which KoPT may suffer or may have to suffer due to fault on the part of the successful Bidder in operating and maintaining the equipment and in discharging other obligations as per provisions of the contract. Assessment of damages, expenses, costs etc. if any, will be carried out jointly by the Engineer to the contract and the successful Bidder. In case the successful Bidder damages property belonging to parties other than KoPT, assessment of damages, expenses, costs etc. if any, will be carried out jointly by the Engineer to the contract, the successful Bidder and the affected party concerned. In case of any dispute, the matter will be referred to Chairman KoPT whose decision will be final and binding.
- 1.20** The successful Bidder shall maintain all the equipment to be installed / provided by him under the contract in accordance with good industry practice with the objective of maximizing their availability as also to meet the Minimum Level of Performance throughout the contractual period.
- 1.21** The successful Bidder shall at its own cost and arrangement promptly repair / replace or restore any of the equipment or any part thereof which may be lost, damaged or destroyed.



- 1.22** The successful Bidder shall not assign the contract to any other agency without approval of KoPT.
- 1.23 The successful Bidder shall allow KoPT to inspect all the equipment to be supplied by the successful Bidder under the provisions of the contract at all point of time and take such action as may be directed by KoPT with regard to any or all the equipment.
- 1.24** The successful Bidder shall be responsible for payment of taxes, duties, cess, assessment or any other charges which may be levied by any Central or State Govt. and/or any statutory authority/local authorities during the currency of the contract.
- 1.25** The successful Bidder shall submit the following reports on a daily basis to KoPT in duplicate:
- a) Mini Bulk Carrier wise details of unloading of cargo.
  - b) Details of loading of wagons and trucks from the storage area.
  - c) Mini Bulk Carrier wise position of cargo stored in the storage area.
  - d) Shift wise Dumpers, Payloaders, Bulldozers and other equipment deployed including their registration nos.
  - e) The time of berthing of Mini Bulk Carrier at the Jetty.
  - f) The time of unloading of last Payloader from the Mini Bulk Carrier to ascertain the work completion time of the Mini Bulk Carrier.
  - g) Other reports as directed by KoPT.

Note : All the above details may however, be separately ascertained by KoPT and in case of any difference, the details as will be ascertained by KoPT will be considered as final for the purpose of enforcing different clauses of the contract.

Apart from above, the successful Bidder shall provide other reports to KoPT from time to time as may be required by KoPT for ascertaining the performance and condition of each equipment to be supplied by the successful Bidder. The details of the report to be furnished by the successful Bidder and the periodicity thereof will be prescribed by KoPT to the successful Bidder subsequently.

- 1.26** The successful Bidder shall stack the cargo at the storage areas in the manner and upto a height as may be directed by consigner / consignee/their representatives subject to the overall operational parameters approved by KoPT. Care should be taken to ensure that the cargo do not obstruct the railway tracks while stacking or loading to facilitate placement and removal of wagons.
- 1.27** KoPT will provide general security to the entire dock area at HDC by Central Industrial Security Force (CISF) as in existence now. Localised security for all the equipment and other infrastructure to be set up or deployed by the successful Bidder including the security fenced area is to be arranged by the successful bidder at his entire risk and cost. This apart, the security of the cargo in custody of the successful Bidder will also be his responsibility.
- 1.28** Foreshore/ Land to be used for performance of the contract:
- a) The fore shore to be occupied by the floating jetty as well as the land area to be used for construction of back up Hardstand and connecting Road will be allotted to the successful bidder on license basis. Such allotment will be made at the rate provided in the prevailing Schedule of Rent of KoPT's land and buildings at Haldia as revised from time to time. The details of the existing rate of rent, rate of escalation etc. are given at Appendix- III.
  - b) Rent will be charged by KoPT for the space to be allotted to the successful Bidder for construction of workshop, store, office, parking place etc in connection with the contract at the rate provided in the prevailing Schedule of Rent of KoPT's land and buildings at Haldia as revised from time to time. The said area to be allotted to the contractor will be decided by KoPT on the basis of requisition of the contractor and availability after award of the work. In case any area (beyond what is allotted by the Employer) is encroached, compensation/encroachment charge as per Rent Schedule time being in force shall be payable by the contractor against the same.

c) The licenses granted as under sub Clause-(a) and (b) above will be co terminus with the contract.

d) The Contractor will also be required to pay Security Deposit as per the provisions of the Rent Schedule against allotment of the land.

- 1.29** KoPT will provide electricity and water to the successful Bidder as may be required on chargeable basis from its available sources. If required, the successful Bidder may have to lay their own water / electric line from nearest KoPT source upto their place of requirement for which KoPT will grant way leave license on chargeable basis as per its Schedule of Rent time being in force. The detail of existing rate of Way Leave License Fee is given at Appendix- III.
- 1.30** The successful Bidder will be allowed to install telephone(s) and other communication arrangements (Walkie Talkie etc.) within the dock area for communication purpose at their own cost and arrangement.
- 1.31** The successful Bidder shall have to obtain required permits for its employees, workmen, vehicles, etc. following the procedure of KoPT in vogue at HDC. The required permits will be given free of cost.
- 1.32** The movable equipment to be supplied and installed under the provisions of the contract would be primarily utilized in respect of cargo handled at the Floating Jetty as the case may be. However, when the said equipment is/are not in use or when the Floating Jetty is vacant and no Mini Bulk Carrier is/are expected there and subject to necessity being felt by KoPT during the currency of the contract, the successful Bidder may at the direction of KoPT have to relocate and operate these equipment at other berths under the same terms and conditions.
- 1.33** All the equipment which are not required to be transferred to the Employer as per the terms of the contract will have to be peacefully removed by the successful bidder in case of Termination of the contract due to Force Majure/ Contractor's Event of Default/ Employer's event of default or afflux of time, at his entire risk, cost and arrangement.
- 1.34** The successful Bidder shall ensure that the Pollution Control Level of exhaust smokes / fumes discharged from the engines of the equipment conform to the latest Pollution Control Norm of Central Pollution Control Board / State Pollution Control Board.
- 1.35** The successful Bidder will be allowed to fuel the equipment inside the dock area/Project area for which all necessary precautions as may be required will be taken by the successful Bidder. In case the successful Bidder so desires, he may be provided with a suitable plot of land by KoPT for installation of fuel tanks by them for the purpose of fueling the different equipment to be supplied by the successful Bidder. The successful Bidder in this regard, shall pay the prevailing scheduled rate of rent and also shall abide by all the terms and conditions of allotment including those to be stipulated by the statutory authorities.
- 1.36** KoPT will not realize any wharfage and demurrage from the successful Bidder in case the successful Bidder brings the Pontoon/crane/equipment by ships and unloads the same at HDC.

Besides, the vessel carrying the Crane and other equipment of the successful Bidder shall be accorded with highest calling priority and ousting berthing priority at HDC without any priority charges so that the vessel concerned can be berthed at the earlier opportunity upon arrival.

**1.37 Obligations of the Employer :**

**1.37.1** The conditions will be satisfied by the Employer:

- (i) procurement of the clearances required for the Project, as set out in Appendix-IIC.
- (ii) handing over physical possession of the Project Site and/or the port's Assets for the purposes of the Project.

### **1.37.2 Obligations of the Employer during Construction Phase:**

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Employer shall.

- (a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Contractor and on a best efforts basis assist the Contractor in obtaining all other Applicable Permits as may be required by the Contractor.
- (b) make available all records of sub-soil investigations carried out on its behalf in the Port's Assets, if requested by the Contractor. It is clarified that the Contractor shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under the Contract.
- (c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain necessary approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act.
- (e) subject to the Contractor/ Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Contractor or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

### **1.38 Other information:**

**1.38.1** KoPT will undertake scheduling of entry, berthing and sailing of Mini Bulk Carriers, pilotage, towage and other marine related services on which the successful Bidder will have no say.

**1.38.2** KoPT will not guarantee any minimum cargo for handling by the successful bidder. However, for the benefit of the Bidder, the past performance of handling cargo at Haldia Dock Complex is given at Appendix-IV. In case Bidders want additional information on past performance of Haldia Dock Complex, they may specifically request for the same in writing to Sr. Deputy Manager(I&CF), HDC at Township Maintenance Office, Cluster-V, Haldia Township, Haldia, Purba Medinipur, Pin – 721607, Email: pdasgupta@kopt.in prior to due date of submission of tender. The time needed for receipt of such details by the Bidder shall not in any way be considered for amending the due date and time of submission of tender.

**1.38.3** All charges for undertaking the different operations under the provisions of this contract with the help of the equipment and manpower of the successful Bidder shall be recovered by KoPT directly from the port users concerned. The successful Bidder shall be paid by KoPT according to the provisions detailed at item-7.19 of the tender document.

### **1.39 Ownership of Assets:**

#### **1.39.1 Land and Water Area:**

The ownership of the Project Site and Port's Assets shall always remain vested with the Employer. The rights of the Contractor in the Project Site and Port's Assets shall only be that of a bare licensee of such assets and the Contractor shall neither assign, transfer, sublet, create any charge or Encumbrance, nor shall the Contractor create or permit creation of any third party rights whatsoever, on whole or any part of the Port's Assets or Project Site. Further, any such rights of the Contractor shall always be subject to existing rights of way. It is expressly agreed that the Contractor's rights in the Project Site and/or the Port's Assets shall cease without the need for any action to be taken by the Employer upon the termination of this Agreement for any reason whatsoever.

### **1.39.2 Assets created or provided by the Contractor:**

The ownership of all infrastructure assets, buildings, structures, berths, wharfs, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Contractor at the Project Site and/or in the Port's Assets pursuant to this Agreement shall, until expiry of this Agreement or transfer to the Employer on Termination in accordance with this agreement, be with the Contractor. However, such ownership of permanent asset ,buildings etc. created / erected by the Contractor at the Project Site shall not be construed as and shall not confer any rights in the Project Site or other Port's Assets upon the Contractor, save as that of a bare licensee as provided for in this aagreement.

## **2.1 Eligible Applicant:**

**2.1.1** Any entity (either individually or in a consortium) fulfilling the eligibility criteria set forth below may apply.

**2.1.2** The term 'Applicant' used in this document would apply to either a Single Entity or a group of entities, i.e. a Consortium. Further, the Applicant 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 Application Seeking Document.

**2.1.3** The Applicant shall not have a conflict of interest that affects the Tendering Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Tendering Process, if:

The applicant, its Member or Associate (or any constituent thereof) and any other Applicant, 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 an Applicant, 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 Applicant, its Member or Associate, as the case may be) in the other Applicant, 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 2 (72) of the Companies Act 2013, 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:

**2.1.3 (i)** Where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and

**2.1.3(ii)** Subject always to sub-clause 2.1.3(i) 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 .1.3(ii) 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

**2.1.3 (iii)** A constituent of such Applicant is also a constituent of another Applicant; OR

**2.1.3 (iv)** Such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; OR

**2.1.3 (v)** Such Applicant, has the same legal representative for purposes of this license granting process as any other Applicant; OR

**2.1.3 (vi)** Such Applicant, or any Associate thereof has a relationship with another Applicant, 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 license granting process of either or each other.

2.2 An Applicant shall be liable for disqualification if any legal, financial or technical adviser of KoPT in relation to the license granting process is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the license granting process. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, 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 Document. 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 Applicant, 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 Letter of Award (LoA), the same shall have to be addressed and resolved by the Consortium, failing which the license if granted, 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 this document/license.

2.3 The Applicant(s) shall have valid documents as listed in various clauses of this document including those given in relevant clauses and submit the same in the manner provided under Cl. – 4.1 of this Application Seeking Document.

## **2.4 ELIGIBILITY CRITERIA BASED ON TECHNICAL, FINANCIAL EXPERIENCE:**

### **2.4.1 TECHNICAL CAPACITY –**

2.4.1 The Applicant (whether a single entity or a consortium) must have experience of managing, operating and maintaining full-fledged Dry Bulk Terminal(s) in a sea / riverine port(s), where it has provided all cargo handling services to the users at the Quayside, Storage Yard etc using Cranes and other support equipment and achieved the following in such full fledged terminal(s):-

- a) Achieved ship face handling of at least 2.04 MMT of cargo per annum in any of the year during last 7 years ending on 31.03.2014 in case of having experience of managing , operating and maintaining one full fledged terminal in a sea / riverine port.

Or

- b) Achieved ship face handling of at least 1.275 MMT of cargo per annum per terminal in any of the year during last 7 years ending on 31.03.2014 in case of having experience of managing , operating and maintaining two full fledged terminal(s) in a sea / riverine port(s).

Or

- c) Achieved ship face handling of at least 1.02 MMT per annum per terminal in any of the year during last 7 years ending on 31.03.2014 in case of having experience of managing, operating and maintaining three full fledged terminal(s) in a sea / riverine port(s).

In case, the Tenderer is a Consortium, the Technical capacity as Stated above can be fulfilled by any one member or all members of the Consortium.

#### **2.4.2 FINANCIAL CAPACITY –**

The Average Annual Financial Turn Over of the Tenderer (whether a single entity or a consortium) during the last three financial years ending on March 31.2014 should be at least Rs 22.11 crores.

Where the Tenderer is a Consortium, the Average Annual Financial Turn Over for the Consortium would be computed as arithmetic sum of Average Annual Financial Turn Over of the individual members forming the consortium subject to the condition that one of the consortium members shall have at least 50% of Average Annual Financial Turn over of the Consortium.

#### **2.4.3 Evidences demonstrating past experience**

Applicants shall enclose with its application, to be submitted as per the format at Appendix - V complete with its Annexes, the following:

(i) Certificate(s) from a Chartered Accountant/Certified Public Accountant or the concerned clients stating the technical experience gathered by the applicant ( separately for each eligible consortium member) during the past 5 years in respect of the projects specified in clause 2.4.1 above; and.

(ii) Certificate(s) from a Chartered Accountant/Certified Public Accountant specifying the Turnover of the Applicant during the last three financial years.

#### **2.5 Assessment of Eligibility**

2.5.1 The applicant shall give details of his past experience as per format at Annex. - II of Appendix – V and Turnover information as per Annex- III of Appendix – V.

2.5.2 In case of a Consortium, the combined Technical and financial experience of those members who have and shall have an equity share of at least 26% (twenty six per cent) each in the Special Purpose Vehicle (or SPV) shall be considered as eligible experience, provided that each such member shall, for a period of 2 (two) years from the date of commencement of operation of the facilities, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV.

2.5.3 The entity claiming the past experience/ financial eligibility 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.

2.5.4 Past experience of the 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.

2.5.5 The applicant shall submit a Power of Attorney as per format given at Annex – VI of Appendix – V, authorizing the signatory of the applicant to submit the application.

2.5.6 Where the 'Applicant' is a 'Consortium', it shall be required to form an appropriate 'Special Purpose Vehicle' or SPV, incorporated under the Indian Companies Act 2013, to set up the Facilities. It shall, in addition to forming the SPV, comply with the following additional requirements:

- (a) Members of the Consortium shall nominate one member as the 'Lead Member' who shall have an equity share holding of at least 26% of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Annex- VII of Appendix – V, signed by all the other members of the Consortium;
- (b) *The application shall contain the information required for each member of the Consortium as per Annex- I of Appendix –V.*
- (c) *The applicant shall include a brief description of the roles and responsibilities of individual members of the consortium, particularly with reference to technical and financial obligations, as per Annex- I of Appendix – V.*
- (d) *An individual (single entity) Applicant participating in the instant project shall not be a member of any other Consortium participating in the instant project; further, a member of a particular Consortium shall neither submit any application individually nor shall be a member of any other Consortium participating in the instant project;*
- (e) Members of the Consortium shall enter into a binding Joint Bidding Agreement (JBA) (substantiated in the form specified at Annex- VIII of Appendix –V, for the purpose of submitting application.
- (f) *Except as provided in this Document, including its Addenda, if any, there shall not be any amendment to the said JBA without the prior written consent of KoPT.*

2.5.7 The Single Entity participating in this project or all the members of the Consortium participating in this project must not have been debarred by the Central / State Government or any Entity controlled by them or any other legal authority for participating in any project / tender / contract / agreement of whatever kind. An undertaking in this regard shall be given by the applicant in the Covering Letter as per Appendix-VII.

2.5.8 An applicant 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 application seeking document, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the applicant, Consortium Member, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such applicant, Consortium Member as per letter format for prequalification in Appendix-V.

2.5.9 In computing the Technical Capacity and Financial Capacity of the Applicant / Consortium Members under Clause 2.4.1 & 2.4.2, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

Note: For purposes of this Tender, 'Associate' means, in relation to the Applicant/Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant /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 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.

## **2.6 Change in composition of the Consortium:**

- 2.6.1 Change in the composition of a Consortium will not be permitted by KoPT during the Qualification Stage.
- 2.6.2 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by KoPT during the Bid Stage, only where:
- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
  - (b) the Lead Member continues to be the Lead Member of the Consortium;
  - (c) the substitute is at least equal, in terms of Operational and Financial Criteria, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants; and
  - (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant / Member / Associate of any other Consortium bidding for this Project.
- 2.6.3 Approval for change in the composition of a Consortium shall be at the sole discretion of KoPT and must be approved by KoPT in writing.
- 2.6.4 The modified / reconstituted Consortium shall submit a revised Joint Bidding Agreement before the Bid Due Date.
- 2.6.5 Notwithstanding anything to the contrary contained in Clause 2.1.3, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.
- 2.7 The purchaser of the tender document must be the Bidder itself or a member of the Consortium submitting the tender.
- 2.8 The Bidder shall submit a Power of Attorney as per format given at Annex-VI of Appendix-V, authorizing the signatory of the Bidder to commit the tender.
- 2.9 Tender submitted by a Consortium shall comply with the following additional requirements:
- a) One of the members of the Consortium shall be authorized as being In Charge (Lead Member), and this authorization shall be evidenced by submitting a Power of Attorney duly signed by authorized signatories of the other consortium members as per format contained in Annex-VII of Appendix-V.
  - b) The Lead Member of the Consortium shall hold at least 26% of the paid up Equity Share Capital of the Joint Venture Company to be formed by the members of the Consortium and he will not reduce his share holding to below 26% during the entire period of the contract.
  - c) The tender shall contain the information required for each member of the Consortium as per Annex-I of Appendix-V including a description of the roles and responsibilities of individual members.
  - d) The tender shall be signed by the duly authorized signatory of the lead member and shall be legally binding on all the members of the Consortium. A Power of Attorney shall be submitted as per Annex-VI of Appendix-V authorizing the signatory of the Bidder to commit the tender.
  - e) Members of the Consortium shall enter into a Joint Bidding Agreement (JBA) for the purpose of participating in the instant tender and implementing the contract thereafter in case of becoming the successful Bidder. The JBA shall clearly outline the proposed roles and responsibilities of each member at each stage. The JBA shall also convey the intent to form a Joint Venture Company with specific object clause which shall enter into an Agreement with KoPT for carrying out all the responsibilities and obligations of the Agreement so entered upon. JBA shall also clearly contain a statement that all members of the Consortium shall be liable and responsible jointly and severally towards



- implementation and execution of all the provisions of the contract to be entered with KoPT. A copy of the JBA shall be submitted with the tender.
- f) A member of a particular Consortium shall not submit any tender individually nor shall be a member of any other Consortium participating in the instant tender. However, the Tender Document will be submitted through a letter as per Annex-V of Appendix-V.
- 2.10 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 any tender /contract / agreement of whatever kind. An undertaking in this regard shall be given by the Bidder in the Covering Letter as per Appendix-VII.
- 2.11 The Single Entity or Consortium member shall also not have been expelled from any project or contract nor have had any contract terminated for breach in the last 5 years. The period of 5 years shall end on the date of opening of the techno commercial part of the tender. An undertaking in this regard shall be given by the Bidder in the Covering Letter as per letter format for prequalification in Appendix-V.
- 2.12 If any Bidder after downloading the tender document makes any modification / alteration in the tender document, the tender submitted by the said Bidder will be rejected outright.

### **3. General information for the Bidder(s):**

#### **3.1 Inspection of project site and dock area.**

The Bidder shall be deemed to have inspected the project site and dock area including the available facilities and conditions prevailing thereon, before quoting the rates. No cost incurred by the Bidders in preparing their tender or attending inspection of the site will be reimbursed by KoPT.

An inspection of the project site and dock area will be arranged after the Pre-Bid Meeting. Interested Bidders may participate in the site inspection, if they so desire.

#### **3.2 Pre-Bid Meeting:**

- a) A pre-bid meeting will be held on 16<sup>th</sup>. April 2015 at the Conference Room of at Jawahar Tower Conference Room, Haldia Dock Complex (HDC), Haldia Township, Purba Medinipur, Pin – 721607.
- b) The intending Bidders are advised to formulate their queries relating to the scope of work, terms and conditions of tender etc. as well as other clarifications / details required by them from KoPT and forward the same by April 9<sup>th</sup>, 2015 to the office of Sr. Deputy Manager (I&CF), HDC at Township Maintenance Office, Cluster-V, Haldia Township, Haldia, Purba Medinipur, Pin – 721607 so that the same may be discussed / clarified in the pre bid meeting.
- c) All enquiries relating to (b) above shall be submitted in writing addressed to Sr. Deputy Manager(I&CF), HDC at Township Maintenance Office, Cluster-V, Haldia Township, Haldia, Purba Medinipur, Pin – 721607 during pre bid meeting, the queries received in advance would be clarified first followed by those raised during the meeting.
- d) KoPT shall furnish its response to all such queries including the description of the queries (without identifying the sources raising such queries) in the official website of KoPT as well as in CPPP portal and MSTC e portal including modification(s) / amendment(s), if any, to the terms of the tender, scope of the project etc. which the intending Bidders are to note for submitting their tender.
- e) Attending the pre bid meeting will be helpful for the intending Bidder(s) but is not mandatory. The Bidder are advised to also inform KoPT in advance about their intention to attend the pre bid meeting in writing.
- f) A maximum of two representatives of each intending Bidder will be allowed to participate on production of authority letter from the Bidder.

### **3.3 Tender Document Preparation Cost:**

The Tender document preparation charge is to be deposited by vendors/contractors through E.C.S. to the Current Account as appended hereunder:

- a) Name of Bank & Branch: United Bank of India, Haldia Dock Complex Branch,
- b) Account No.: 1604050000310,
- c) IFS Code: UTBI0HDCF75.

Vendors/contractors participating in an e-tender are advised to deposit earnest money directly into the above mentioned bank account by RTGS/NEFT. Concerned vendors/contractors must ensure that the remitting bank positively enters their name and Tender no. in the 'Sender to Receiver' column at the time of making payment of earnest money by RTGS/NEFT.

### **3.4 Earnest Money:**

- a) The Earnest money is to be deposited by vendors/contractors through E.C.S. to the Current Account as appended hereunder:
  - i) Name of Bank & Branch: United Bank of India, Haldia Dock Complex Branch,
  - ii) Account No.: 1604050000310,
  - iii) IFS Code: UTBI0HDCF75.
- b) Tenders submitted without Earnest Money shall be rejected outright without any reference to the Bidder whatsoever.
- c) The amount of Earnest Money will be refunded to the unsuccessful Bidders without interest after the selection of successful Bidder and in the case of successful Bidder; this amount will be adjusted against the Performance Guarantee.

### **3.5 Forfeiture of Earnest Money:**

The Earnest money is to be deposited by vendors/contractors through E.C.S. to the Current Account as appended hereunder:

- a) Name of Bank & Branch: United Bank of India, Haldia Dock Complex Branch,
- b) Account No.: 1604050000310,
- c) IFS Code: UTBI0HDCF75.

### **3.6 Due date and Time for Submission and Opening of Tender:-**

- (i) The tender should be submitted online through web site of MSTC (mstcecommerce.com) within due date and time as per NIT.
- ii) KoPT may at its sole discretion extend the Submission/Opening due date(s) by issuing a Corrigendum.

- iii) The 'Earnest Money' and 'Techno-Commercial Part' of the tender shall be opened at 15: 30 Hrs. of April 23<sup>rd</sup>, 2015.

Note: If the above day becomes a holiday, then the 'Earnest Money' & 'Techno Commercial Part' of the tender will be opened on the next working day.

- iv) The 'Price Part' of only techno-commercially qualified bidders, will be opened on a subsequent date, for which date & time will be intimated separately to the concerned Bidders only.

### **3.7 Substitution, Withdrawal of Tender:-**

The Bidder may substitute or withdraw its offer after submission, provided that written notice of the substitution, or withdrawal is received by KoPT before the due date and time of submission of offer i.e. 15: 00 Hrs. of April 23<sup>rd</sup>, 2015. or any extension thereof. No tender shall be substituted, or withdrawn by the Bidder after the Due Date and time of submission of tender or any extension thereof.

### **3.8 Amendment of Tender Document:-**

- i) At any time prior to the due date for submission of tender, KoPT may, for any reason, whether at its own initiative or in response to queries / clarifications raised by the Bidder(s) during pre bid meeting or otherwise modify the Tender Document by the issuance of Addenda in the official websites of HDC ([www.haldiadock.gov.in](http://www.haldiadock.gov.in)), KoPT ([www.kolkataporttrust.gov.in](http://www.kolkataporttrust.gov.in)), CPPP ([www.eprocure.gov.in](http://www.eprocure.gov.in) and MSTC ([mstcindia@mstcindia.co.in](mailto:mstcindia@mstcindia.co.in)).
- ii) In order to afford prospective Bidder(s) a reasonable time in which to take an Addendum into account, or for any other reason, KoPT may, at its discretion, extend the Submission Due Date through appropriate notification in the official websites of HDC ([www.haldiadock.gov.in](http://www.haldiadock.gov.in)), KoPT ([www.kolkataporttrust.gov.in](http://www.kolkataporttrust.gov.in)), CPPP ([www.eprocure.gov.in](http://www.eprocure.gov.in)) and MSTC ([www.mstcecommerce.com](http://www.mstcecommerce.com)).

### **3.9 Validity of Tender:-**

The tender shall remain valid for acceptance for a period of 6 months from the date of opening of Techno Commercial Part of the tender.

### **3.10 Extension of validity of Tender:-**

Prior to expiry of the original tender validity period, KoPT may request Bidders to extend the validity period for a specified additional period.

## **4. General Instruction to the Bidder:**

### **4.1 Preparation and Submission Procedure of Tender**

4.1.1 In case of a Consortium, the tender shall be submitted in the name of the Lead Member of the Consortium.

4.1.2 Language: The tender and all related correspondences and documents shall be written in English Language.

4.1.3 The tender is completed in all respects with all pages of the Tender Documents. An Addendum if any, shall have to be duly signed by the Tenderer as a token of acceptance along with all required Appendices of the Tender Document properly filled in and signed with seal shall be uploaded :

4.1.3.1 The Techno-commercial bid shall contain the following documents which are to be up loaded ;

- a) The details of E.M Deposit & Tender Document preparation cost shall be submitted by the Tenderer in separate format as per Appendix-VI.
- (b) Power of Attorney duly filled in and signed as per Annex-VI of Appendix-V and Annex-VII of Appendix-V (in case of Consortium only),
- (c) Profile of the Tenderer (or of each member in case of a Consortium) as per format at Annex-I of Appendix-V, duly filled in & signed,
- (d) Audited Annual Accounts for the last three completed financial years, supported by a Certificate from a Chartered Accountant, to show the Average Annual Financial Turnover (as per Annex-III of Appendix-V). The provisions of clause 2.4.3 may be noted in this regard.
- (e) Other required certificates & documents as indicated below [duly signed]:
- (i) Certified Copy of valid document of up-to-date payment of Professional Tax for Tenderer for his employees (for each member in case of a Consortium)
  - (ii) Certified Copy of PAN (for each member in case of a Consortium) & TAN (for each member in case of a Consortium)
  - (iii) Certified copy of 'Provident Fund Registration Certificate' (for each member in case of a Consortium) OR an Affidavit (by lead member in case of a Consortium) affirmed before a First Class Judicial Magistrate as per the Format given in Annex-IV(A) of Appendix-V (in case the Tenderer is not covered under Provident Fund Act or exempted from it)
  - (iv) Certified copy of valid Service Tax Registration No. / Code No. (for each member in case of a Consortium)
  - (v) Certified copy of Certificate of Incorporation, Memorandum & Article of Association of the Tenderer. In case of consortium, such should be submitted for all Consortium members, as applicable
  - (vi) Copies of the audited Annual Accounts for the last three financial years (for each member in case of a Consortium). The provisions of Clause 2.4.4 may be noted in this regard.
  - (vii) Certified copy of 'Employees State Insurance (ESI) Registration Certificate' (for each member in case of a Consortium) OR an Affidavit affirmed (by lead member in case of a Consortium) before a First Class Judicial Magistrate as per the Format given in Annex-IV (B) of Appendix-V (in case the Tenderer is not covered under ESI Act or exempted from it).
  - (viii) Documentary evidence that the Tenderer has an office in Kolkata for effective co-ordination with KoPT or otherwise at least a declaration to set up the same in the event of the LoI being issued infavour of the Tenderer

- (ix) Power of Attorney duly filled in and signed as per Annex-VI of Appendix-V and Annex –VII of Appendix-V (in case of Consortium only)
- (x) Profile of the tenderer, (of each member in case of a Consortium) as per format at Annex-I of Appendix-V, duly filled in & signed.
- (xi) Details of the eligible experience of technical capacity during a period of last 7 years ending on 31.03.2014 as per Annex-II of Appendix-V supported by a certificate issued by a Chartered Accountant / Certified Public Accountant along with letters / certificates from the Agencies / Authorities concerned where such experience had been gathered (strictly in a sea/reverine port terminal) during the period under consideration.
- (xii) Average Annual Financial Turnover for the last three completed financial years based on audited Annual Accounts (as per Appendix 21) supported by a Certificate from a Chartered Accountant / Certified Public Accountant. The provisions of Clause 2.4.3 may be noted in this regard.
- xiii) Joint Bidding Agreement (JBA) in case of Consortium as per format given at Annex- VIII of Appendix –V.
- xiv) Other document(s), which is/are required as per this tender and/or the Tenderer desires to submit (duly signed with seal).

**NOTE:**

- (a) The Successful Tenderer, if not covered under ESI Act, shall, additionally, indemnify KoPT against all damages and accidents of his labourer, on a Non-judicial Stamp Paper as per the Format given in Appendix V annex-IV(b)

4.1.3.2 The price bid shall be up loaded by the bidder on line ; ( The bidder shall quote the consolidated rate for fulfilling the scope of work in INR per MT basis)

The bidder shall upload all the appendixes except appendix IX(Price part ) under the cover of a Letter as per format given at Appendix VII , which should be superscripted with Name of Tenderer, Tender No. and Tender subject.

Mere submission of tender will not mean that the particular offer will be automatically considered qualified and the said tender will be entertained. Such qualification will be examined at the time of evaluation of offers.

**4.1.4. Integrity Pact:**

- (i) The Applicants shall have to submit the duly filled-in, signed and stamped (on each page) Integrity Pact in plain paper enclosed as Appendix-VIII along with the techno-commercial part of their offer, failing which their offer will not be considered any further.
- (ii) Name of the Independent External Monitors (IEM) for this permission granting process will be provided, if necessary, after the pre-bid meeting.

**4.2 Covering letter:**

The intending Bidder shall submit its tender with a covering letter strictly as per format given at Appendix-VII. Any deviation in the content of the covering letter as compared to this shall make the tender liable for rejection.

**4.3 KoPT's right to accept any tender or to reject any or all Tender(s)**

- a) Notwithstanding anything contained in this tender document, 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 and without assigning any reason thereof.

- b) KoPT reserves the right to reject / disqualify a tender, in case KoPT is satisfied that any bribe, commission, gift or advantage has been promised, offered or given by the Bidder itself or on behalf of the Bidder to any officer, employees or representative of the Trustees or to any person on his or their behalf to secure the tender or to influence the process of examination, evaluation etc. of the tender.
- c) KoPT also reserves the right to reject / disqualify a tender if it is satisfied that the Bidder or his representative has made false and misleading statement and / or have tried to influence KoPT in the process of examination, evaluation etc. of the tender.

## **5. Evaluation Criteria:**

### **5.1) Tests of Responsiveness:**

Prior to evaluation of Techno Commercial Part of the tender, KoPT will determine whether each offer is responsive to the requirements of the tender document. A tender shall be considered responsive if the tender:

- i) is received by the due date and time including extension thereof.
- ii) is signed, sealed and marked as stipulated in the tender document
- iii) is accompanied by the required covering letter.
- iv) is accompanied by the required Power of Attorney(s).
- v) contains all the pages of the tender document duly signed as stipulated in the tender document
- vi) contains all the documents, information, certificates etc as requested in the tender document.
- vii) contains information/details in Formats as specified in this tender document.
- viii) is accompanied by certificates of Chartered Accountant / Certified Public Accountant and Port Terminal(s) regarding eligible experience and financial capability, as applicable.
- ix) is accompanied by Joint Bidding Agreement (JBA) (for Consortium).
- x) does not show inconsistencies between the details submitted in the tender and the supporting documents.
- xi) has not proposed any deviation in the tender as compared to the terms & conditions, scope of work etc. as detailed in the tender document together with subsequent modifications(s) / amendment(s) thereof made through issuance of addenda.
- xii) does not have any other inconsistency(ies) in the tender submitted by the Bidder.

### **5.2) Clarifications:**

To assist in the process of evaluation of Tender, KoPT may, at its sole discretion, ask any Bidder to provide additional documents / details, seek clarifications in writing from any Bidder regarding its tender. The request for providing such additional details / documents and / or clarification and the response shall be in writing through post or by facsimile.

KoPT reserves the right to reject any tender which is non responsive.

### **5.3) Confidentiality**

Information required by KoPT from the Bidder(s) for the purpose of examination, evaluation etc. will be kept in confidence by KoPT and will not divulge any such information unless it is ordered to do so by any authority that has power under the law to require its release.

#### **5.4) Evaluation of TECHNO -COMMERCIAL BID :**

The techno commercial bids of the Bidders found responsive as per Clause- 5.1 above will be then evaluated as per eligibility criteria detailed at cl 2.4 of the tender document.

- Note:** (i) KoPT shall reserve the right to get the financial capability of the Bidder verified from the Annual Accounts of the Bidders (to be submitted with Techno Commercial Part) and in case some discrepancy is found, the details as will be ascertained by KoPT shall prevail for evaluation purpose.
- (ii) KoPT by its own means may also separately ascertain cargo handling experience of the Bidder from the Marine Port Terminals / Agencies/ Authorities concerned where the Bidder have acquired the eligible experience. In case, some discrepancies are found, the details as will be ascertained by KoPT shall prevail for evaluation purpose.
- (iii) Mere submission of tender documents shall not mean that a particular tender will be automatically considered qualified and their bid will be entertained. Such qualification will be examined at the time of evaluation of bids as detailed above.

#### **5.5) Evaluation of PRICE BID:**

Subject to fulfilling other terms & conditions contained in the tender document, financial evaluation of offers received from Applicant who have been techno-commercially qualified by KoPT following the procedure mentioned herein above will be based on minimum financial implication to KoPT to be computed for Floating Jetty on the basis of the unit rates to be quoted on line in the manner given below:-

<b>Sl. No.</b>	<b>Type of operation</b>	<b>Unit</b>	<b>Rate per ton as quoted by the Applicant (in Rs per MT) (Both in Figure &amp; word).</b>
<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
<b>1</b>	Consolidated rate for fulfilling the scope of work .	<b>Per MT</b>	

**\* No rates are to be quoted here.**

- The techno commercially qualified Bidder whose quoted rate of the table above will be the lowest shall be considered as the successful Bidder.
- In the event the lowest financial implications of two or more Bidders become same, KoPT shall invite fresh price bid from only those Bidders whose overall financial implications have been found to be the lowest. Such Bidders while submitting the fresh "PRICE BID" shall keep in mind that their fresh price offer shall have to be less than the offer earlier made by them for all items as per above table or else their offer may become liable for rejection.

**Note :**(i) The Bidders are to quote rates on line. The rate shall include all taxes, duties and cess and charges payable (but exclude the Service Tax & Applicable Cess thereon) for fulfilling the Scope of Work.

(ii) Service tax & Applicable Cess thereon will be paid at actual and should not be included in the quoted rate. For this, the successful bidder has to submit Service Tax Registration No /Code No. and other relevant document as may be asked by KoPT.

(iii) The rates to be quoted by the Bidder shall take into account opening/closing of hatches by the Crane for which no separate payment will be made.

(iv) KoPT at any stage, however, reserves the right to accept or reject any or all the offers without assigning any reason therefore whatsoever.

**6. General Conditions of Contract:**

- 6.1 'General Conditions of Contract, Forms and Agreements' as sanctioned by the Trustees for the Port of Kolkata under Resolution no. 92 of the 6<sup>th</sup> meeting held on 27<sup>th</sup> May, 1993 are given separately in Appendix-X of the tender document.
- 6.2 Only those clauses, Forms / Formats of Appendix-X, which are not covered elsewhere in this Tender Document, shall be applicable.
- 6.3 Also, for the sake of interpretation of the contents of the Appendices, the terms contained in the main tender document (other than Appendices) including the 'General Conditions of Contract, Forms and Agreements' shall prevail.

**7. Special Conditions of Contract:**

**7.1 Commissioning Schedule**

The successful Bidder shall complete, supply, installation and commissioning of all the equipment as well as complete construction of all required facilities conforming to the Scope of Work of the contract within a period of 9 months from the date of Letter of Intent (LoI).

**7.2 Acceptance of Letter of Intent (LoI):**

After finalization of the tender, KoPT shall place LoI to the successful Bidder. The successful Bidder shall henceforth be required to communicate acceptance to the terms and conditions of the contract and remit requisite Performance Guarantee within a period of 30 days from the date of LoI failing which the LoI will become liable for cancellation with forfeiture of Earnest Money. Pending execution of an Agreement (as per item 7.4), the LoI and its acceptance by the successful Bidder will be construed as an Agreement between KoPT and the successful Bidder for fulfilling the scope of work and obligation of the contract by the successful Bidder.

**7.3 Performance Guarantee:**



The successful Bidder shall deposit a sum equivalent to 10 % of the estimated annual payment to be made by KoPT at the accepted rate for estimated throughput of 2.55 MMT of cargo in Demand Draft / Banker's Cheque drawn in favour of Kolkata Port Trust, Haldia Dock Complex within a time frame as mentioned at item-7.2 above. Alternatively, the successful Bidder may submit Performance Guarantee in the form of an irrevocable – encashable at call Bank Guarantee drawn on Nationalized/Scheduled Bank of India having branch at Haldia or Kolkata within the time frame mentioned at item – 7.2 above in the format to be prescribed subsequently. The performance guarantee should be kept valid upto three months from the date of expiry of the contract. The Proforma of Performance BG Shall be as per Format given in **Appendix-XII**.

#### **7.4 Signing of Agreement:**

The successful Bidder at his expenses will enter into an Agreement with KoPT on a non judicial stamp paper of minimum of Rs 60.00 within a period of 45 days from the date of placement of LoI. The proforma for Agreement will be furnished by KoPT within 15 days from the date of placement of LoI which will basically contain the provisions as detailed in the Tender Document with all addenda issued thereof, all correspondences made between KoPT and successful Bidder, the schedule of rates of the successful Bidder accepted by KoPT for execution of the contract and all other documents relevant in the matter. The Proforma of Agreement is given in **Appendix –XIII**.

#### **7.5 Period of Contract:**

The contract shall be for a period of 15 years from the date of commissioning as certified by the Independent Engineer as per Cl. - 7.23 or nine months from the date of LOI, whichever is earlier.

#### **7.6 Minimum Guaranteed Throughput:**

KoPT will not commit any Minimum Guaranteed Throughput of cargo for the Floating Jetty.

#### **7.7 Time of Operations of the Jetty and the equipment:**

The on board as well as on shore operations at the Jetty including the storage areas, railway sidings etc. shall be undertaken by the successful Bidder with the help of the equipment to be installed / provided by him including the manpower round the clock on all the days in a year.

#### **7.8 Minimum Level of Performance (MLP):**

- a) The successful Bidder shall have to ensure handling of a minimum of 10,000 MT of cargo per day at Floating Jetty.
- b) The ship berth day output will be calculated Mini Bulk Carrier wise as per the following formula:

$$\left\{ \frac{\text{Total cargo unloaded from a Mini Bulk Carrier (in MT).}}{\text{Mini Bulk Carrier operation time (in hrs.)}} \right\} \times 24 \text{ hrs}$$

- c) MBC Operation time will be assessed in hours by KoPT and to be computed from the time of readiness of the MBC at the berth concerned as communicated by KoPT in writing to the contractor till completion time of loading / unloading of MBC.
- d) The time at which the last Crane cycle or the last Payloader and/ or gears will be unloaded from the MBC including deck sweeping will be considered as the completion time in case of unloading of cargo.
- e) In case of stoppage of work due to the following reasons not attributable to the contractor, the MBC operation time that would be lost due to such stoppage of work would be assessed by KoPT and the same would be deducted from the MBC operation time for the

purpose of computation of ship berth day output.

Sl. No.	Reasons of delay not attributable to the contractor
1	Problem of MBC not involving Crane and/or conveyer system, to be certified by any Master/Official of MBC/Port.
2	MBC's option.
3	Delay in opening of hatches.
4	Interim draft survey by the Surveyor as well as the Master of the MBC.
5	Ballasting / de-ballasting of MBCs.
6	Warping of MBCs
7	Detention due to double banking of other MBCs.
8	Any other delay not attributable to or beyond control of the contractor in any manner if so accepted by KoPT

**Note:-**

- (i) Benefit of non-attributable detention as above will be given only when the Crane and/ or conveyer system of the contractor remain(s) in commission.
- (ii) Detention less than ten minutes for each occasion as above will not be counted for the above purpose.
- iii) In addition to the reasons mentioned at Item-(e) above, there may be stoppage of work due to Force Majeure Conditions as set out at Cl.-7.22. In that event, the MBC operation time as would be lost due to such stoppage of work due to Force Majeure Conditions would be assessed by KoPT and the same would be deducted from the MBC operation time for the purpose of computation of ship berth day output.
- iv) In case of failure to achieve MLP for the dry bulk cargo, KoPT shall make payment at reduced rate in the manner detailed at Cl.-7.11(a) of the tender document.

**7.9 Availability of Equipment:**

The successful Bidder shall have to ensure that all the equipment to be supplied and installed by him is in commission during operation of the Mini Bulk Carriers. Non-availability of Crane/Connecting conveyer shall attract penalty in the manner detailed at Cl. - 7.21(b).

**7.10 Compensation (Liquidated Damages):**

The successful Bidder shall complete supply, installation, commissioning of floating cargo handling facilities at upstream of 3<sup>rd</sup> oil jetty for handling mini bulk carriers as well as construction of hardstand and road network, illumination facilities and supply of required cargo handling equipment for shore handling as per the provisions of the contract within the time schedule given at Item-7.1 above [or any extension thereof without (liquidated damage) granted by the Employer in writing] to the satisfaction of KoPT and obtain a Commissioning Certificate thereof from Independent Engineer. In the event of failure to do the same the successful Bidder shall pay KoPT as compensation (liquidated damages) the following amount:-

- i) Delay of First 60 days : Rs. 5,00,000.00 per day.
- ii) Delay from 61<sup>st</sup> day onwards : Rs. 10,00,000.00 per day.

In case the delay exceeds 90 days from the last date of the commissioning schedule, KoPT shall be at liberty to proceed for terminating the contract.

**7.11 (I) Event of Default:**

Event of Default means the Contractor Event of Default or the Employer Event of Default

or both as the context may admit or require.

**(a) The Contractor Event of Default**

The Contractor Event of Default means any of the following events unless such an event has occurred as a consequence of the Employer Event of Default or a Force Majeure Event:

- (i) the Contractor 's failure to perform or discharge any of its obligations in accordance with the provisions of the Contract;
- (ii) construction at the Project Site is abandoned for more than 45 (forty five) Days during the Construction Phase;
- (iii) the Date of Commissioning is delayed for more than 90 (Ninety) Days from the Scheduled date of commissioning of the project;
- (iv) any representation made or warranties given by the Contractor under this tender / contract is found to be false or misleading;
- (v) the Contractor passing a resolution for voluntary winding up;
- (vi) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Contractor by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (vii) levy of an execution or restraint on the Contractor 's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or restraint remaining in force for a period exceeding 90 ( ninety) Days;
- (viii) the Performance Guarantee is not maintained in terms of the provisions hereof;
- (ix) the Contractor abandons or expresses its intention to revoke/terminate the Contract without being entitled to do so as is expressly provided in the Contract;
- (x) amalgamation of the Contractor with any other company or reconstruction or transfer of the whole or part of the Contractor 's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of the contract
- (xi) the Contractor engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under the Contract and/or by law or which constitutes a breach of the Contract or breach of or an offence under any law, in the course of any activity undertaken pursuant to the Contract.
- (xii) if there is any change in control / ownership of the successful Bidder arising from sale, assignment, transfer without prior permission of KoPT.
- (xiii) the successful Bidder assigns or transfers the equipment to any third party without permission from KoPT.
- (xiv) if the successful Bidder fails to achieve Minimum Level of Performance for three months within a block period of 12 months from the date of commencement of actual operation at Floating Jetty.
- (xv) if the Crane and the conveyer system remain out of commission for a continuous period of 30 days.

**(b) The Employer Event of Default**

- (i) the Employer's failure to perform or discharge its obligations in accordance with

the provisions of the Contract unless such failure has occurred as a consequence of any Contractor Event of Default or a Force Majeure Event.

(ii) any representation made or warranties given by the Employer under the Contract is found to be false or misleading.

(iii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Port's Assets in any legal proceedings initiated against the Employer (unless such proceedings are initiated as a consequence of any Contractor Event of Default).

(iv) levy of an execution or restraint on the Port's Assets in any proceedings against the Employer (unless such proceedings are initiated as a consequence of any Contractor Event of Default) which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days.

## **(II) Parties Rights**

- (a) Upon the occurrence of the Contractor Event of Default, the Employer shall without prejudice to any other rights and remedies available to it under the Contract be entitled to terminate the Contract and encash the performance Bank Guarantee and retain the proceeds of the same.
- (b) Upon the occurrence of the Employer Event of Default, the Contractor shall without prejudice to any other rights and remedies available to it under the Contract be entitled to terminate the Contract.

Provided that before proceeding to terminate the Contract, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under the Contract and the circumstances in which the same has occurred.

## **(III) Consultation Notice**

Either Party exercising its right as mentioned under serial no-(ii) above shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("Consultation Notice").

## **(IV) Obligations during Remedial Period:**

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree ("Remedial Period"), the Parties shall continue to perform their respective obligations under the Contract which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

## **(V) Revocation of Consultation Notice:**

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the parties agree upon any of the measures set out (III) above, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

## **(VI) Termination due to Events of Default:**

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties have agreed upon any of the measures in Sl. No.-(III) above, the Party who has issued the Consultation Notice shall have the right to terminate the Contract, in which event, the provisions of Clause-7.12 shall, to the

extent expressly made applicable, apply.

## **(VII) Employer's Rights of Step-in:**

Upon a Termination Notice being issued due to a Contractor Event of Default, the Employer may, at its discretion:

- (a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith to the extent of the Pontoon Jetty fitted with crane, connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities. In doing so, the Employer will take possession and control of the said assets only to the extent of the minimum level prescribed under Clause-1.2.
- (b) prohibit the Contractor and any Person claiming through or under the Contractor from entering upon/dealing with the Project Facilities and Services;

### **7.12. Termination of contract:**

#### **7.12.1 Termination Procedure**

The Party entitled to terminate the contract either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("Termination Notice") to the other Party. The Termination Notice shall be of not less than 90 (ninety) Days and not ordinarily be more than 180 (one hundred and eighty) Days, ("Termination Period") and at the expiry of the Termination Period, the Contract shall stand terminated without any further notice.

#### **7.12.2 Obligations during Termination Period**

During Termination Period, the Parties shall, subject where applicable to the provisions of the contract continue to perform such of their respective obligations under the Contract which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

#### **7.12.3 Requisition**

Except where the Termination Notice is issued prior to commencement of construction, when the Contractor has no right hereunder and no compensation is payable by the Employer, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Contract Period, the Employer shall by a notice in writing ("Requisition") call upon the Contractor to furnish the following information to enable the Employer to estimate the likely compensation payable by the Employer to the Contractor and/or to finalise the items of Contractor's assets comprised in the Project Facilities and Services to be handed over to/taken over by the Employer and/or likely compensation recoverable from the contractor.

- (a) data or records [to be specified by Employer] regarding the operation and maintenance of the Project Facilities and Services;
- (b) specifications regarding the Contractor's assets comprised in the Project Facilities and Services; and
- (c) any other information or records [to be specified by Employer at its discretion] regarding Contractor, its business, the Project/Project Facilities and Services, assets and liabilities.

The Contractor shall within a period of 30 (thirty) Days of receipt of Requisition furnish the particulars called for by the Employer.

#### **7.12.4 Condition Survey:**

- (a) The Contractor agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Contract Period, as the case may be, it shall conduct or cause to be conducted under Employer's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Port's Assets to Project Site/Project Facilities and Services forthwith to the extent of the Pontoon Jetty fitted with crane and connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities only and ascertain the condition thereof, verifying compliance with the Contractor's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. In doing so, the Employer will take possession and control of the said assets only to the extent of the minimum level prescribed under Clause-1.2.
- (b) If, as a result of the condition survey, the Employer shall observe/notice that the Project Site and/or the Port's Assets and/or the Project Facilities and Services or any part thereof (to the extent of the Pontoon Jetty fitted with crane and connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities only) have/has not been operated and maintained in accordance with the requirements therefore under the Contract (normal wear and tear excepted) the Contractor shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date. In the event the Contractor fails to comply with the provisions of the Contract/ carry out condition survey and/or fails to take necessary steps to put the Project Site and/or Project Facilities and Services (to the extent of the Pontoon Jetty fitted with crane and connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities only) in good working condition, the Employer may itself cause to be conducted the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted and/or put the project facilities and services in good working condition. The Employer shall be compensated by the Contractor for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

#### **7.12.5 Consequences of Termination**

Without prejudice to any other consequences or requirements under the contract or under any law:

- (a) the Contractor shall transfer all the assets and rights (to the extent of the Pontoon Jetty fitted with crane and connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities) upon expiry of the Contract Period by efflux of time or termination of the contract due to a Force Majeure Event or on account of an Event of Default in accordance with Cl.-7.12.8 below. In doing so, the contractor shall transfer to the Employer possession and control of the said assets only to the extent of the minimum level prescribed under Clause-1.2.
- (b) the Employer shall be entitled to encash any subsisting bank guarantee(s) provided by the Contractor against any amounts owing to the Employer by the Contractor. Notwithstanding anything contained in the Contract, the Employer shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Contractor in connection with the Project, and the hardback of the Project Site/Port Assets/Project Facilities & Services by the Contractor to the Employer shall be free from any such obligation.

### **7.12.6 Compensation**

#### **(a) Termination due to Force Majeure Event or Employer's event of default:**

- (i) If the termination is due to Force Majeure event or Employer's event of default compensation payable to the Contractor shall be the higher of the Book Value or the Debt Due LESS any amount due to the Employer by the Contractor under the contract LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Estimated Cost of the Project as indicated at Appendix-XIV, after depreciation as per Clause-7.12.7 of the contract.

Provided, no compensation shall be payable to the Contractor if the Contractor fails to maintain Insurance Cover as per Tender Document.

#### **(b) Termination due to Contractor Event of Default**

If the termination is after the Date of Commercial Operation, due to a Contractor Event of Default, the compensation payable by the Employer to the Contractor shall be the lowest of:

- (i) the Book Value;
- (ii) 90% (ninety percent) of Debt Due;
- (iii) the Estimated Cost of the Project duly depreciated as per Clause- 7.12.7 of the contract.

Provided, no compensation shall be payable to the Contractor if the Contractor fails to maintain Insurance Cover as per Tender Document.

The tentative estimate of the works is enclosed at Annexure-XIV.

#### **(c) Compensation on Expiry of Contract Period**

In the event of expiry of Contract by efflux of time (the Contract having run its full course), the Contractor shall hand over/ transfer peaceful possession of the Project Site, Port's Assets and the Project Facilities to the extent of Pontoon Jetty fitted with crane and connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities, free of cost and Encumbrance. In doing so, the contractor shall transfer to the Employer possession and control of the said assets only to the extent of the minimum level prescribed under Clause-1.2, free of cost and Encumbrance.

- (d) No compensation is payable by the Employer in case of termination of the contract prior to commencement of construction of the Facility.

### **7.12.7 Rate of Depreciation:**

For the purpose of determination of depreciated estimated value (required in connection with computation of compensation payable to the contractor), the following rate of depreciation will be considered on Straight Line Method:

All types of Civil Assets (Hard stand, Road etc)	: 6.67 % p.a
All types of Mechanical (Crane, Hopper etc)	: 12.67 % p.a
All types of Electrical Assets (High Masts, Cables etc)	: 9.94 % p.a

### **7.12.8 Transfer Fee and Charges**

Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and Services consequent to the expiry or termination of the Contract

shall be borne by:

- (a) the Contractor in the event of expiry of Contract Period or termination due to a Contractor Event of Default;
- (b) the Employer in the event of termination due to an Employer Event of Default; and
- (c) by both parties equally in case of termination due to Change in Law or Force Majeure Event.

#### **7.12.9 Remedies Cumulative**

The exercise of right by either Party to terminate the Contract, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

#### **7.12.10 Withdrawal of all persons employed by the contractor:**

In the event of termination of the contract be it due to Force Majeure, or Contractor's event of default or Employer's event of default or due to efflux of time, the contractor will be obliged to withdraw all persons employed by him directly or indirectly including the persons employed by any agency engaged by him for performing any of the work, without causing any liability/obligation on the Employer for re-engagement of the said labour force and/or making any payment.

### **7.13 Expiry of Contract with efflux of time:**

#### **7.13.1 General Scope of Transfer/Payment**

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of the contract on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of the contract, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be as set out in the contract.

#### **7.13.2 Contractor's Obligations**

The Contractor shall;

(a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services to the extent of Pontoon Jetty fitted with crane and connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities, free of Encumbrance. In doing so, the contractor shall transfer to the Employer possession and control of the said assets only to the extent of the minimum level prescribed under Clause-1.2, free of cost and Encumbrance.

(b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Employer in accordance with the contract and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;

(c) hand over to the Employer all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;

(d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services to the extent of Pontoon Jetty fitted with crane and connecting walkways and associated conveyer system, immediate back up Hardstand, connecting road and illumination facilities;



(e) transfer or cause to be transferred to the Employer any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Employer and (iii) those the Employer has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Employer. For this purpose, the Contractor shall ensure that all Project Contracts are assignable in favor of the Employer without any further action on part of the respective counterparties. The Contractor shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Employer;

(f) at its cost, transfer to the Employer all such Applicable Permits which the Employer may require and which can be legally transferred. Provided if the termination is on account of Employer Event of Default the cost of such transfer shall be borne/ reimbursed by the Employer;

(g) at its cost, remove within 90 (ninety) days from expiry of the Contract Period, from the Project Site/Port's Assets, any moveable assets that are not taken over by or not to be transferred to the Employer in terms of the provisions of this Agreement.

### **7.13.3 Risk**

Until transfer in accordance with the contract, the Port's Assets and the Project Facilities and Services shall remain at the sole risk of the Contractor.

### **7.14 Amendment:**

In case of exigency or for operational requirements, the conditions of the contract may be amended with approval of Board of Trustees of KoPT and on obtaining consent of the successful Bidder subject to the condition that such amendments are in conformity with the prevailing policy of Govt. of India on the subject.

### **7.15 Illegality:**

If for any reason whatsoever any provision and condition of the contract is held to be void, illegal or invalid under present or future laws or regulations effective and applicable during the contract period, such provision shall be treated as fully separable and the remaining provision of the contract shall remain in full force. The other provisions of contract shall not be affected by such illegal or invalid provisions or by its severance from this contract.

### **7.16 Amicable Settlement:**

If any dispute or difference or claims of any kind arises between the successful Bidder and KoPT in connection with interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of the contract, or the rights, duties or liabilities of the parties under the contract, whether before or after termination of the contract, then the parties shall meet together promptly at the requests of any party in an effort to resolve such dispute, difference or claim by discussions between them.

### **7.17 Arbitration:**

#### **a) Arbitrators:**

Failing amicable settlement, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each party and the third to be appointed by the two arbitrators appointed by the parties. A party requiring arbitration shall appoint an Arbitrator in writing, inform the other party about such appointment and call upon the other party to appoint its Arbitrator within 60 days. If the other party fails to appoint its Arbitrator, the party appointing Arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996.

#### **b) Place of Arbitration:**

The place of arbitration shall be in Kolkata or Haldia, West Bengal, India.

#### **7.18 Governing Laws:**

This contract shall be governed by and construed in accordance with the prevailing laws of the Republic of India.

#### **7.19 Terms of Payment:**

- i) The successful Bidder shall quote rates **on line**, separately in figures and in words. The rate shall include all taxes and charges payable for construction, supply, installation, maintenance and operation of the Project Facilities as well as undertaking all required onboard & onshore operations excepting the Service Tax & applicable cess thereon.
- ii) Service tax & applicable cess thereon, as applicable, will be paid extra at actual. The successful bidder has to submit Service Tax Registration No. / Code No. and other relevant document as may be asked by KoPT. They will also be required to submit bills conforming to the requirement of Service Tax Rules to make it CENVATable.
- iii) The payment shall be made at the consolidated rates (per ton basis) quoted and accepted by KoPT as per the % set out under sub clause-(iv) and (v) herein below depending upon the operations done and quantity actually handled in such operations.
- iv) The payment shall be made at 90 % of the quoted rates accepted by KoPT for carrying out the entire operations excepting that of evacuation of cargo from the storage area(s) in case of deferred delivery of cargo from storage areas on the basis of draft survey quantity of each Mini Bulk Carrier.
- (v) The payment shall be made at 10 % of the consolidated rate (per ton basis) quoted and accepted by KoPT shall be payable for evacuation of cargo from the storage area(s) to rakes / trucks/ other road bound vehicles and other allied and associated services including transportation between the storage area and the rake / truck and other vehicle loading points requiring dumper deployment, on the basis of time to time declaration of the consignee regarding quantity of cargo taken delivery by them.
- (vi)
  - vi) The successful Bidder shall submit bills on monthly basis showing Mini Bulk Carrier wise operations done from unloading of cargo to dispatch by rail/road including productivity achieved in each Mini Bulk Carrier as per formula given at clause-7.8 of the tender document. For this, the successful Bidder shall submit a consolidated statement Mini Bulk Carrier wise showing –
    - a) Quantity unloaded from each Mini Bulk Carrier as per draft survey quantity.
    - b) The per day output achieved for each Mini Bulk Carrier handled by the successful Bidder at the jetty during the billing period computed as per formula given at clause-7.8 of the tender document.
    - c) Quantity transported between immediate back up Hardstand and storage area of GC Berth as per draft survey quantity.
    - d) The quantity stored in the storage area of receivers as per draft survey quantity.
  - vii) KoPT will release 75% of the payment provisionally within 21 days from the date of receipt of bills along with the statement as at item (vi) above. The remaining 25% will be released after deduction of compensation, penalties etc. as will be applicable under the provisions of the contract within next 21 days.

Note- The successful Bidder shall inter alia, raise bills as per rates applicable for the corresponding ship berth day output mentioned at clause-7.21 of the tender document for each Mini Bulk Carrier. In this regard, KoPT will provide a format to the successful Bidder for raising bills.

- viii) The draft survey quantity to be used for payment to contractor shall be ascertained by an authorized surveyor to be appointed by receiver/shipper. The receiver/shipper shall however ensure that the concerned surveyors are authorized by KoPT for undertaking such survey job.

**Note: - No interest / compensation will be paid in case of delay in payment.**

## **7.20 Price Adjustment Clause:**

### **Fuel Price Variation**

Adjustment for variation in fuel price shall be calculated as per the following methodology.

**Fuel Price Variation = 10% of accepted total unit rate x  $\frac{P(\text{new}) - P(\text{base})}{P(\text{base})}$**

P (new): Sale Price of High Speed Diesel (HSD) at IOC retail stations at Haldia on 1<sup>st</sup> day of respective month.

P (base): Sale Price of High Speed Diesel (HSD) at IOC retail stations at Haldia applicable on due date of submission of the bid.

### **General Price Variation**

Adjustment on account of variation of WPI shall be calculated as per the following methodology:

**General Price Variation = 10% of accepted total unit rate x  $\frac{WPI(\text{new}) - WPI(\text{base})}{WPI(\text{base})}$**

"WPI (base)" shall mean the monthly Wholesale Price Index for All Commodities as published by the Office of Economic Adviser, Ministry of Commerce and Industry, GoI on its official website applicable on due date of submission of the bid.

"WPI (new)" shall mean the average monthly Wholesale Price Index for All Commodities as published by the office of Economic Adviser, Ministry of Commerce and Industry, GoI on its official website applicable for the preceding financial year.

The adjustment on account of general price variation shall be allowed in the month of April every year considering the value of work done in the preceding financial year.

## **7.21 Compensation/Disincentives:**

### **a) Compensation/Disincentive against failure to achieve MLP:**

The adjustment of payments to be made against achievement or non achievement of MLP of 10,000.00 MT per day as set out in Cl.-7.8 will be done as per formula herein below:

<b>Berth day output actually achieved per Mini Bulk Carrier basis</b>	<b>Amount payable as percentage of 46 % of accepted rate in Scheduled of Rates (Appendix-IX)</b>
<b>9000-9999 MT</b>	<b>95%</b>
<b>8000-8999 MT</b>	<b>90%</b>

To calculate the reduction in ceiling rates as shown above, the base rate ( for MLP of 10,000.00 MT per day) was reduced to 95% for first thousand MT and for the 2nd thousand MT the rate was reduced to 90 % of the base rate. Likewise ceiling rates for performance below 8000 MT shall be calculated by reducing the base rate accordingly.

**b) Non availability of equipment:**

**Crane mounted on the pontoon and/or connecting conveyor system:**

In case the crane mounted on the pontoon and/or connecting conveyor system remains out of commission or not suitable for work, then the successful Bidder shall be required to pay penalty in the following manner:

Sl. No.	Number of days crane mounted on the pontoon and/or connecting conveyor system remains out of commission remaining out of commission in a calendar month.	Penalty (per day)
1	Upto 7 days.	Rs 5,00,000.00
2	From 8-15 days.	Rs 7,50,000.00
3	16 days and above.	Rs 10,00,000.00

**Note:**

- i) The successful Bidder shall give details of shift wise availability of crane mounted on the pontoon and connecting conveyor system every day to KoPT as per Cl.-1.25 of the tender document.
- ii) The non-availability of crane mounted on the pontoon and / or connecting conveyor will be assessed on hourly basis during Mini Bulk Carrier operation and the total hours of such non-availability during a month will be aggregated and converted into days for charging penalty.
- iii) The successful Bidder shall give details of availability of equipment every day to KoPT as per Cl.-1.26 of the tender document.

**7.22 Force Majeure Event:**

7.22.1 Force Majeure Event shall mean any event or circumstances or a combination of events and circumstances set out hereunder or the consequences thereof which materially and adversely affect the successful Bidder in due performance of its various obligations under the contract.

- a) Acts of God, rain, fog, storm, cyclone, hurricane, flood, or fire (to the extent originating from a source other than the equipment to be supplied, installed and operated by the successful Bidder).
- b) Strike, boycotts or other forms of labour unrest (excluding strike or boycotts by employees of the successful Bidder or by the employees of the agents/ representatives/ contractors/ sub-contractors engaged by the successful Bidder).
- c) An act of war, riot.

**Note:-**The Bandh, if originated from the source outside the control of the successful Bidder can be considered as a form of strike/ boycott/ other forms of labour unrest originating from a source other than from the successful Bidder or those engaged by him in due performance of its various obligations under the contract.

**7.22.2 Notice of Force Majeure Event**

- a) The successful Bidder shall give notice to KoPT in writing of the occurrence of the Force Majeure Event ["the Notice"] as soon as the same arises which in any event shall be within 24 hours from the time of occurrence.
- b) The notice shall inter-alia include full particulars of:
  - (i) the nature, time or occurrence and extent of the Force Majeure Event with evidence in respect thereof,

- (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the successful Bidder to perform its obligations under the contract.
- (iii) the measures which the successful Bidder has taken or proposes to take, to alleviate the impact of the Force Majeure Event , and
- (iv) any other relevant information.

**Note:** a) Intimation over email may be considered as notice provided the same is followed by an official letter signed by the authorized person of the successful Bidder within 24 hours from the time of sending the email.

- b) It will upto successful Bidder to submit evidences in support of occurrence of Force Majeure Event as per clause-7.22.2 of the Bidder document whose authenticity and applicability will be verified by KoPT in the event the Force Majeure Event concerned requires KoPT to excuse the successful Bidder in discharging its different obligations under the provisions of the contract. In this case, the decision of KoPT regarding authenticity and applicability of the evidences will be final and binding on the successful Bidder.

### **7.22.3 Period of Force Majeure:**

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the successful Bidder in respect of the Force Majeure Event until the earlier of:

- a) expiry of the period during which the successful Bidder is excused from performance of its obligations in accordance with item 7.22.4 :
- Or

- b) termination of the contract pursuant to item-7.22.7 hereof.

### **7.22.4 Performance Excused:**

The successful Bidder to the extent rendered unable to perform its obligations or part thereof under the contract as a consequence of the Force Majeure Event shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

**Note:-** The words "reasonably warranted" means that the performance of the successful Bidder which may be excused because of Force Majeure reasons shall be only up to the extent that has been rendered impossible because of the Force Majeure reason .

### **7.22.5 Resumption of Performance**

During the period of Force Majeure, the successful Bidder shall make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under the contract. The successful Bidder shall also make efforts to resume performance of its obligations under the contract as soon as possible and upon resumption shall notify KoPT of the same in writing.

### **7.22.6 Extension of time for performance of obligations:**

KoPT may grant extension of time to the successful Bidder for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the contract by KoPT.

### **7.22.7 Termination Due to Force Majeure Event:**

If the period of Force Majeure continues or is in the reasonable judgment of the parties is likely to continue beyond a period of 90 days, the parties may mutually decide to terminate the contract or continue the contract on mutually agreed revised terms.

## **7.23 Independent Engineer :**

### **7.23.1 Independent Engineer**

(a) The Employer shall engage an Independent Engineer to certify that the successful bidder has set up the Project Facilities as per the requirement specified in this contract and are capable of fulfilling the obligations of the contract. The successful bidder upon readiness of the project facilities in all respect shall obtain Completion Certificate from the Independent Engineer that the project facilities so set up are in conformity with the contract provisions.

(b) The Employer shall within 30 (thirty) Days of the date of the acceptance of LOI by the successful bidder forward to the successful bidder a list consisting of the names accompanied by their respective profile in brief of the persons proposed to be engaged as Independent Engineer. If within 15 (fifteen) Days of forwarding the list, the Employer does not receive any objection from the successful bidder with reasons thereof, the Employer shall call for a financial bid for such persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Licensee shall be considered by the Employer and persons against whom such objections are raised will at the discretion of the Employer, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.

(c) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Contract to the date of expiry of 6 (six) months from the Date of issuance of commission certificate. If necessary the Employer may extend the period of engagement of the Independent Engineer.

(d) The costs and expenses of the Independent Engineer shall be fully reimbursed by the contractor.

(e) If the Employer either on its own or on a report of the Contractor has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Employer may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding clause (b) above.

(f) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in the contract.

### **7.23.2 Responsibilities of Independent Engineer:**

#### **(a) 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 followings:

- (i) Review of the Designs and Drawings;
- (ii) Review, inspection and monitoring of Construction Works;
- (iii) Conducting Tests on completion of construction and issuing Commissioning Certificate.
- (iv) Determining, as required under the Agreement, the costs of any works or services and/or their reasonableness.
- (v) Assisting the Parties in resolution of disputes as regards the Designs & Drawings.
- (vi) Undertaking all other duties and functions as envisaged under the contract.

**(b) Review of Designs and Drawings:**

- (i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Contractor 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 Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards. In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Contractor shall promptly and without any undue delay revise and resubmit the Designs and Drawings and same would be reviewed as stipulated above with regards its compliance.
- (ii) The Independent Engineer shall review the detailed design, construction methodology, QA procedures and the procurement, engineering and construction time schedule sent to it by the Contractor and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Employer, if any while furnishing the comments.
- (iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.
- (iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Contractor, 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.
- (v) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.
- (vi) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Contractor 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 Contractor for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- (vii) 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 Contractor for its own quality assurance in accordance with Good Industry Practice.
- (viii) In the event that the Contractor carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Contractor 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.
- (ix) In the event that the Contractor fails to adhere to the Project Schedule and complete the Construction Works on the specified 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 Contractor 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 Contractor, the Independent Engineer shall review the same and send its comments to the Employer and the Contractor forthwith.

- (x) If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Contractor 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 Contracting Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- (xi) Upon remedial measures being taken by the Contractor 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 Employer.
- (xii) If suspension of Construction Works is for reasons not attributable to the Contractor, the Independent Engineer shall determine the extension of time for completion, to which the Contractor is reasonably entitled, and shall notify the Employer about the same for decision of the Employer.
- (xiii) The Independent Engineer shall carry out, or cause to be carried out, all the required Tests and issue a Commissioning Certificate, as the case may be, in accordance with the provisions of the Agreement.
- (xiv) The Independent Engineer shall verify the Insurance Policies procured as per the provisions of the tender and give necessary certificate of compliance.

## **8. Technical Specification of the Contract:**

- 8.1 A Floating Cargo Handling Jetty with Crane facility is proposed to be constructed at the upstream of up stream of 3<sup>rd</sup> Oil Jetty to handle Mini Bulk Carriers (MBC) of about 10,000-12,000 DWT carrying cargo like Coal etc. The project envisages unloading of cargo from MBC by means of a crane to be fitted over a floating pontoon and transferred by means of conveyor to immediate shore backup/ hardstand. As an integrated facility, from the shore, the cargo will be evacuated by dumper/payloader combination for subsequent storage at the plots of G.C. Berth including the extended dock area through same contract.
- 8.2 The scheme further envisages construction of hardstand and road from the shore up to transit storage area of cargo at the extended area of G.C. Berth by the successful contractor along with design, construction and setting up of the Floating Jetty Facility with all ancillary cargo handling equipments. Scheme details with features of different components of the scheme are furnished hereinafter seriatim. The scheme has been designed at the same location where a similar scheme was earlier envisaged but did not take off due to various reasons.



### 8.3 SCHEME DETAILS WITH MINIMUM REQUIRED SPECIFICATION

Sl. No.	Description of Component	Minimum requirement of Features
01	Pontoon:	<ul style="list-style-type: none"> <li>a) Size: 70 M. x 25 M. with 3 M. depth with draught of 1.8 M.</li> <li>b) Plate thickness: 12 mm. thick M.S Plates.</li> <li>c) Rubbing plate on top deck.</li> <li>d) Separate ballast tanks available with ballasting pumps.</li> <li>e) Fendering system with cone 4 nos. Cell fenders.</li> <li>f) Capable to withstand the load of central crane with adequate structural support in hold .Crane to be mounted at 7.5 M off centre at central location.</li> <li>g) To be moored with 4 nos. of 1 MT anchor on river side (2 nos. on each side) of pontoon while 2 nos. of chains will be placed at shore deadman.(As indicated in attached Drawing).</li> <li>h) To be fastened with 68 mm. dia. mooring chains &amp; associated Shackles.</li> </ul>
02	Crane:	<ul style="list-style-type: none"> <li>a) CBJ 300 of Liberre or equivalent.</li> <li>b) Capable to extend 28 M. extended boom.</li> <li>c) Capable to handle 19.8 MT per cycle with 22 CBM grab.</li> <li>d) Cycle time 2 min i.e. 30 cycles per Hour i.e. 600 MT per Hour.</li> <li>e) Crane bottom rider would be 6 M. high above the pontoon deck and the circular bearing to be attached over pontoon by the crane manufacturer.</li> </ul>
03	Walk way, Conveyor structure & hopper:	<ul style="list-style-type: none"> <li>a) Hopper would be 6 M. high from pontoon deck over the conveyor belt which shall run from pontoon to shore with 1.5 m wide walk ways on either side of conveyor gallery/walk way.</li> <li>b) Capacity of hopper would be adequate to handle 600 MT per hour. A vibrofeeder will be attached to bottom of the hopper for easing the cargo outlet operation from hopper to conveyor belt. The conveyor belt will be made of nylon fiber.</li> <li>c) The width of conveyor belt would be 1.2 M. with convolution and Conveyor will be adequate to carry 600 MT of cargo per hour at a belt speed of 2 M. per sec.</li> <li>d) The conveyer shall have required driver motor at drive end &amp; suitable gear box.</li> <li>e) Steel walk way structure of approximate length of 70 M. will run from shore up to pontoon and will rest on pontoon of roller. On intermediate support points yoke will be provided.</li> <li>f) There will be 2 nos. of supports between pontoon &amp; shore and the walk way will therefore be divided into three parts out of which 2 parts will be fixed and the end part will move up &amp; down with pontoon with tides and will rest on roller on pontoon side .</li> </ul>
4.	Pile support & dead man & bollards :	<ul style="list-style-type: none"> <li>a) 2 nos. of pile made dolphins (each deck comprising of 3 nos. of 600 mm. dia. piles) will be constructed on both sides of the incoming cargo barges on each of which 70 MT bollards to be provided for mooring the cargo barges. Each deck shall have access ladders for crews to mount on deck during berthing &amp; unberthing of cargo vessel.</li> <li>b) On shore there will be 4 nos. of 600 mm. dia. piles on the top each of which 50 MT bollards will be installed, for shore</li> </ul>

		<p>connection of the incoming cargo barge. The shore dead man connection of the resting pontoon also will be taken from shore points.</p> <p>c) Intermediate Supports: The 1<sup>st</sup> one containing 2 piles each of 600 mm. dia. with bed block supporting the fixed portion of walkway &amp; conveyor structure. The 2<sup>nd</sup> one containing 4 nos. of 600 mm. dia. piles with bed block containing the fixed portion and the yoke of movable walk way portion between support &amp; pontoon.</p>
5.	Hard stand, Road connectivity:	<p>Paver topped Hardstand: 100 m. x 40 m. at shore. (As per section indicated in attached Drawing).</p> <p>Road connectivity: 1350 m. Road network with 10.5 m. wide paver topped road. (As per section indicated in attached Drawing).</p>
6.	Illumination & Electrical Appliances :	The illumination of the road connectivity at Hardstand & Jetty and entire road network shall be done by provision of eighteen nos. of High masts.
7.	Handling Equipments : i)(a) Front End Loader (2.4 Cbm) –1 no (b) Payloader with 5 cbm grab.(9 nos) ii) 10 Wheeler dumpers (25 nos.) iii) Excavators (2 nos.) iv) Bull Dozers (1 no.)	Distance from immediate back up hard stand of Floating Jetty to transit storage will be about 1.5 KM.

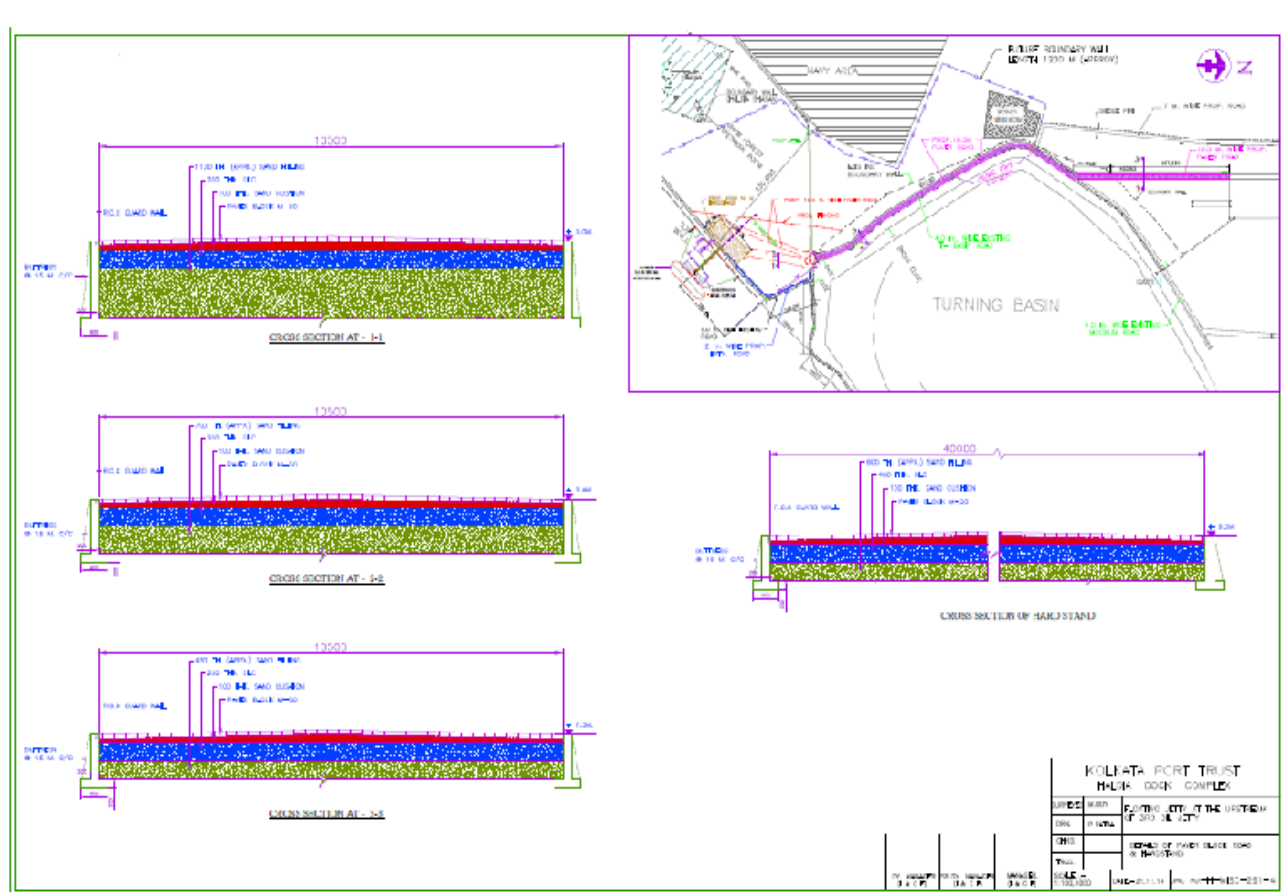
## 9. Priority of Contract Documents:

The several documents forming the Contract are to be taken as mutually explanatory to one another, but in case of ambiguity or discrepancies, the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon which will be final and binding on the Contractor.

Unless otherwise provided in the Contract, the stipulation in the various documents forming a part of the Contract are found to be in variation in any respect then, unless a different intention appears, the provision (s) of one will override others (but only to the extent these are at variance) in order of precedence as given in the list below i.e. a particular item in the list will take precedence over all those placed lower down the list:

1. Contract Agreement.
2. LoI
3. Letter of Acceptance.
4. Schedule of Rates.
5. Scope of work.
6. Technical Specification.
7. Special Conditions of Contract
8. Conditions of Tender.
9. Instruction to the Bidder
10. Any other documents forming part of the Contract
11. General Conditions of Contract

### Location Plan with Section of Hardstand & Road.



## Capacity, Specification &amp; make of Machinery &amp; Equipment.

Sl. No.	Type of Equipment	Manufacture's/Supplier's Name	Year of manufacture	Capacity	Other details / specifications	Number actually proposed to be deployed by the Bidder.
1.	Pontoon (70 M. LOA & 25 M. beam with 3 M. depth) with a draught of 1.8 M.					
2.	Crane to be mounted on the Pontoon (Approximately 600 MT per Hour Capacity).					
3.	Conveyer System on shore connecting walk way (Compatible with crane operation).					
4.	Hopper on pontoon (To be mounted over Conveyor System) (Compatible with crane operation).					
5.	Mooring boat.					
6.	Dumpers (10 wheeler).					
7.	Front end loaders/ Pay loaders i) 2.4 CBM Bucket capacity. ii) 5 CBM Bucket capacity.					
8.	Bulldozer					
9.	Excavator					

**Note :** The Bidder may indicate other equipment which he intends to additionally deploy, in the above table by inserting additional rows.

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

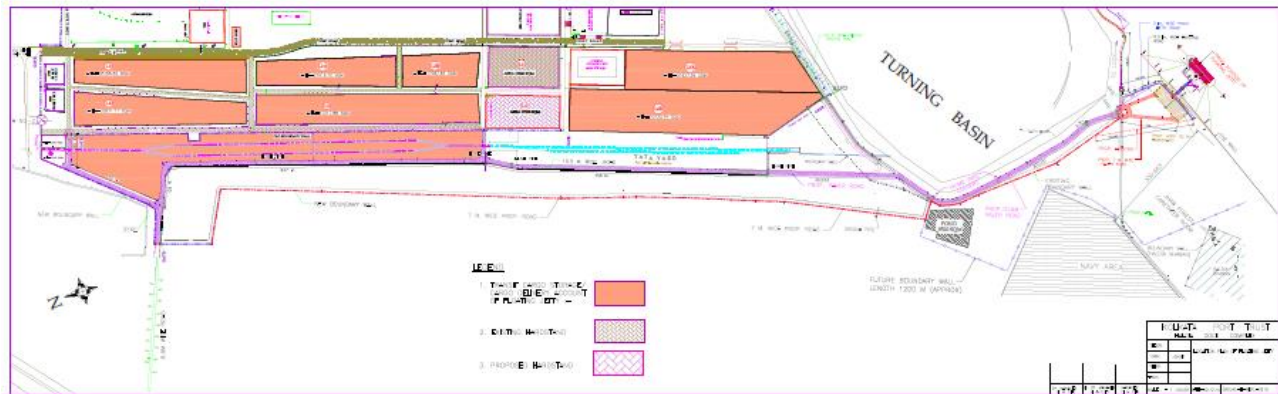
**Name:** .....

**Designation:** .....

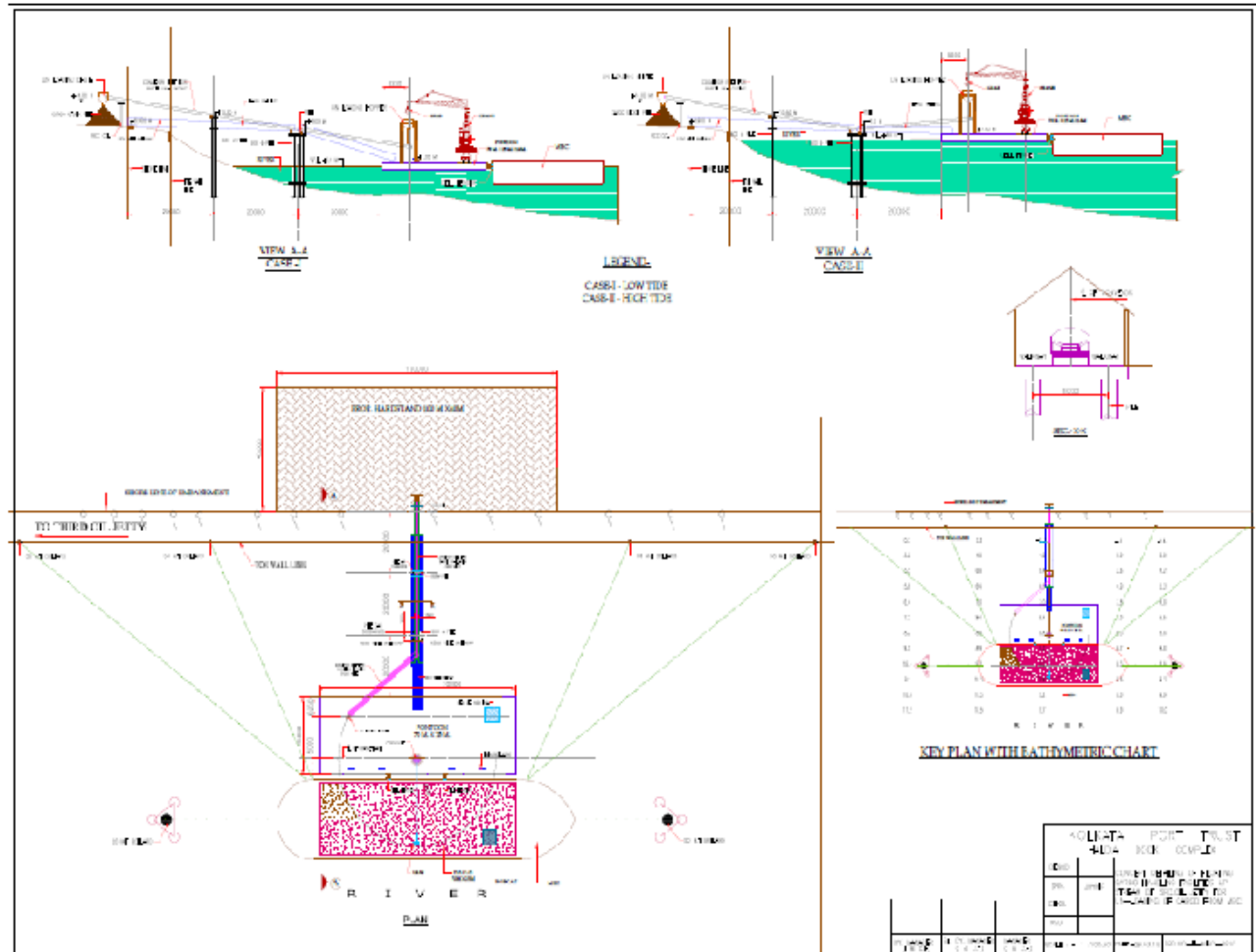
**Date :** .....

**Seal**

Plan of Floating Jetty along with Back up Storage area.



### Concept plan of Floating Jetty



**Obligation of Employer towards procurement of the clearances required for the Project**

- 1. Environment clearance for handling Bulk cargo at the proposed floating jetty.**

**SCHEDULE OF RENT FOR LAND, WAREHOUSES AND BUILDINGS OF  
KOLKATA PORT TRUST, HALDIA DOCK COMPLEX**

1. As per Order published by Tariff Authority for Major Ports bearing no TAMP/7/2010-KOPT Mumbai, 2 March 2011, published in Part - III Section 4 of the Gazette of India, Extraordinary (Available in Kopt website)
2. As per Order published by Tariff Authority for Major Ports bearing no G No. 52 New Delhi, 1 March 2012, published in Part - III Section 4 of the Gazette of India, Extraordinary (Available in Kopt website)
3. As per Order published by Tariff Authority for Major Ports bearing no G No. 15 New Delhi, 22 January 2013, published in Part - III Section 4 of the Gazette of India, Extraordinary (Available in Kopt website)



**Cargo Handling details of HDC during last 5 years.  
(IN 000' MT)**

COMMODITY	2009-10	2010-11	2011-12	2012-13	2013-14
CRUDE	4694	4408	2160	544	793
POL PRODUCTS	3717	5159	4422	4252	3779
THERMAL COAL (COASTAL EXPORT)	1489	2173	2346	1976	1598
COKING COAL	6059	6010	4939	4503	5350
NON COKING COAL (IMPORT)	1766	1818	3266	2247	2844
ALL TYPES OF COKE	204	33	276	926	573
LIME STONE	499	754	625	1227	1293
IRON ORE	7678	5952	3943	1715	2170
MANGANISE ORES	322	665	1099	1181	945
FERT & F.R.M	295	459	519	333	559
OTHER DAY & LIQUID CARGO	4587	4737	4803	6312	6378
CONTAINER	2068	2835	2619	2869	2223
TOTAL	33378	35005	31015	28084	28511

**Letter Comprising the Application for Pre-Qualification****Dated:****To**

**Haldia Dock Complex,  
Jawahar Tower,  
Haldia Township – 721 607,  
West Bengal, India.**

**Sub:** Application for pre-qualification for "Supply, Installation, Commissioning, Operation, Maintenance and Transfer of Floating Cargo Handling Facilities at upstream of 3<sup>rd</sup> Oil Jetty for handling Mini Bulk Carriers including construction of hardstand and road network as well as supply, operation & maintenance of required cargo handling equipment for shore handling at Haldia Dock Complex, Kolkata Port Trust"

Dear Sir,

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

2. I/ We acknowledge that KoPT will be relying on the information provided in the Application and the documents accompanying such Tender Document for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to VIII is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for setting up of the aforesaid Project.
4. I / We shall make available to KoPT any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I / We acknowledge the right of KoPT to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
- 6(a) I / We certify that in the last three years, we / any of the Consortium Members or our / their associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
- 6(b) I / We certify that, 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 application / contract / agreement of whatever kind
7. I / We declare that:
  - (a) I / We have examined and have no reservations to the Tender document, including any Addendum issued by KoPT.
  - (b) I / We do not have any conflict of interest in accordance with Clauses 2.1.3 and 2.2 of the Tender document; and

- (c) I / We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in relevant Clause of the Tender document, in respect of any tender or request for proposal issued by or any agreement entered into with KoPT or any other public sector enterprise or any government, Central or State; and
- (d) I / We hereby certify that we have taken steps to ensure that in conformity with the provisions of Relevant Section of the Tender document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I / We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Relevant Clause of the Tender document.
9. I / We believe that we / our Consortium / proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the Tender document and are / is qualified to submit a Bid.
10. I / We declare that we / any Member of the Consortium, our / its Associates are not a Member of a / any other Consortium applying for pre-qualification.
11. I / We certify that in regard to matters other than security and integrity of the country, we/any Member of the Consortium or any of our/their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I / We further certify that in regard to matters relating to security and integrity of the country, we/any Member of the Consortium or any of our/their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I / We further certify that no investigation by a regulatory authority is pending either against us/any Member of the Consortium or against our/their Associates or against our CEO or any of our Directors / Managers / employees.
14. I / We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Tender, we shall intimate KoPT of the same immediately.
15. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-V of the Tender document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Annexures VI and VII of Appendix V respectively of the Tender Document, are also enclosed.
16. I / We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Contract Agreement.
17. I / We hereby confirm that we are in compliance of/shall comply with the O&M requirements specified in Relevant Clause of this Tender Document.
18. I / We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by KoPT in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection / Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. I / We agree and undertake to abide by all the terms and conditions of the Tender document.

20. I / We certify that in terms of the Tender, my / our Net worth is Rs. .... (Rs. in words).
- {21. We agree and undertake to be jointly and severally liable for all the obligations of the Contractor under the Contract agreement till the expiry of Contract . in accordance with the Contract Agreement.}\$

In witness thereof, I / We submit this application under and in accordance with the terms of the Tender document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Applicant / Lead Member

**ANNEX.-I****Profile Of The Tenderer**

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 commencement of business.
  
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in connection with implementation of the tender.
  
3. Details of individual(s) of the tenderer (Lead Member in case of Consortium) who will serve as the point of contact/ communication with KoPT.
  - (a) Name :
  - (b) Designation :
  - (c) Company :
  - (d) Address :
  - (e) Telephone Number :  
(Land & Mobile)
  - (f) E-Mail Address :
  - (g) Fax Number :
  
4. Details of Authorized Signatory of the Tenderer:
  - Name :
  - Designation :
  - Company :
  - Address :
  - Telephone No. :  
(Land & Mobile)
  - Fax No. :
  - Email Address :
  
5. In case of a Consortium:
  - a. The information above (1-4) should be provided for all the members of the consortium.
  - b. information regarding role of each member should be provided as per table below:

Sl. No.	Name of Member	Role
1.		
2.		
3.		
4.		

Signature of Power of Attorney Holders.....

Name: .....

Designation: .....

Date : .....

Seal

## ANNEX-II

## Past Experience of the Applicant

Applicant should have experience of achieving ship face handling of at least 2.04 MMT of cargo per annum in any of the last 7 years ending on 31.03.2014 in case of having experience of managing , operating and maintaining one full fledged terminal in a sea / riverine port.

Or

Applicant should have experience of achieving ship face handling of at least 1.275 MMT of cargo per annum per terminal in any of the last 7 years ending on 31.03.2014 in case of having experience of managing , operating and maintaining two full fledged terminal(s) in a sea / riverine port(s).

Or

Applicant should have experience of achieving ship face handling of at least 1.02 MMT per annum per terminal in any of the last 7 years ending on 31.03.2014 in case of having experience of managing, operating and maintaining three full fledged terminal(s) in a sea / riverine port(s).

## Annual Throughput (in million tonnes)

	Details of location	April 2013- March, 2014	April 2012- March, 2013	April 2011 - March, 2012	April 2010 - March, 2011	April 2009 - March, 2010	April 2008 - March, 2009	April 2007 - March, 2008
Single Entity	Terminal 1							
	Terminal 2							
	Terminal 3							
Consortium Member 1	Terminal 1							
	Terminal 2							
	Terminal 3							
Consortium Member 2	Terminal 1							
	Terminal 2							
	Terminal 3							

Please add more rows depending upon Consortium Members and or Locations.

Instructions:

1. The single entity tenderer / each member of consortium should furnish its details in the appropriate column.
2. The description of each of the terminal shall have to be provided while giving the following details:
  - (a) Location of Terminal
  - (b) Contact details of the concerned Container Terminal(s)

**(i) Name of Contact Person(s)**

**(ii) Designation(s)**

**(iii) Address**

**(iv) Telephone/Mobile No.**

**(v) Fax**

**(vi) Email**

**3. To be certified according to provision of Item 2.4.3 of the Tender Document.**

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

Name: .....

Designation: .....

Date: .....

Seal:

CERTIFIED BY

Name of Chartered / Certified Accountant Firm .....

Registration Number & other details .....

Name of the Signatory.....

Signature .....

Designation .....

Date .....

Seal



## ANNEX.-III

## DETAILS OF FINANCIAL CAPABILITY OF THE TENDERER

(In Rs. Crore)

Applicant Type	Annual Financial Turn Over
	Average on last 3 years
Single entity Tenderer	
Consortium Member 1	
Consortium Member 2	
Consortium Member 3	
Consortium Member 4	

Please add more rows depending upon Consortium Members.

Instructions:

1. The Single Entity Tenderer/ each members of Consortium should submit its details in the appropriate column.
2. To be certified according to provision of items 2.4.3 of the Tender Document.

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

Name: .....

Designation: .....

Date : .....

Seal

CERTIFIED BY

Name of Chartered Accountant Firm .....

Registration No. & other details .....

Name of the Signatory .....

Signature .....

Designation .....

Date

## ANNEX. –IV (A)

## Provident Fund Registration Certificate

## On ₹ 10/- (Rupees Ten) Non Judicial Stamp Paper

BEFORE THE 1<sup>ST</sup> CLASS JUDICIAL MAGISTRATE AT \_\_\_\_\_

## Affidavit

I \_\_\_\_\_ son of \_\_\_\_\_ aged about \_\_\_\_\_ years, by faith \_\_\_\_\_ by occupation \_\_\_\_\_, residing at \_\_\_\_\_, do hereby solemnly affirm and declare as follows:

1. THAT I am the Proprietor/Partner/Director \_\_\_\_\_ having office at \_\_\_\_\_ and carrying on business on the same name and style.

(In case the above Deponent is an enlisted Contractor at Kolkata Port Trust, the same should be mentioned in the affidavit).

2. THAT my aforesaid Firm is exempted from Provident Fund Act and the said Firm has no valid Provident Fund Registration.

3. THAT the present affidavit is to be filed before the Kolkata Port Trust as per the clause no. \_\_\_\_\_ of the Tender vide Tender no. \_\_\_\_\_ issued by the Kolkata Port Trust in respect of the work (the work is to be mentioned).

THAT the statements made above are all true to the best of my knowledge and belief.

**Deponent**

**Identified by:** .....

## ANNEX. –IV (B)

## ESI Registration Certificate

On ₹ 10/- (Rupees Ten) Non-judicial Stamp Paper

BEFORE THE 1<sup>ST</sup> CLASS JUDICIAL MAGISTRATE AT \_\_\_\_\_

## Affidavit

I \_\_\_\_\_ son of \_\_\_\_\_ aged about \_\_\_\_\_ years, by faith \_\_\_\_\_ by occupation \_\_\_\_\_ residing at \_\_\_\_\_, do hereby solemnly affirm and declare as follows:

1. THAT I am the Proprietor/Partner/Director \_\_\_\_\_ having office at \_\_\_\_\_ and carrying on business on the same name and style.

(In case the above Deponent is an enlisted Contractor at Kolkata Port Trust, the same should be mentioned in the affidavit).

2. THAT my aforesaid Firm is exempted from Employees' State Insurance (E.S.I.) Act and the said Firm has no valid E.S.I. Registration.

3. THAT the present affidavit is to be filed before the Kolkata Port Trust as per the clause no. \_\_\_\_\_ of the Tender vide Tender no. \_\_\_\_\_ issued by the Kolkata Port Trust in respect of the work (the work is to be mentioned).

THAT the statements made above are all true to the best of my knowledge and belief.

Deponent

Identified by: .....

## ANNEX.-V

## Statement of Legal Capacity

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

Ref.

Date:

To

**P. Dasgupta,  
Sr. Deputy Manager,  
I&CF Division,  
Haldia Dock Complex,  
Kolkata Port Trust**

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the Authorised Signatory

For and on behalf of-----

***\*Please strike out whichever is not applicable.***

## ANNEX.- VI

## Format For Power Of Attorney For Signing Of Tender

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

Dated: \_\_\_\_\_

## POWER OF ATTORNEY

## To whomsoever it may concern

Mr. \_\_\_\_\_ [Name of the Person(s)], residing at \_\_\_\_\_ [Address of the person(s)], acting as \_\_\_\_\_ (Designation of the person and name of the firm), and whose signature is attested below, is hereby authorized on behalf of \_\_\_\_\_ [Name of the Tenderer (in case of a consortium, name of the lead member)] to sign the tender [(Tender No. ....and (Tender subject- ".....")]] and submit the same and is hereby further authorized to provide relevant information/ document and respond to the enquiry's etc. as may be required by Kolkata Port Trust (KoPT) in respect of the tender.

And I/ we hereby agree that all acts, deeds and things lawfully done by our said attorney shall be construed as acts, deeds and things done by us and I/ we undertake to ratify and confirm all and whatsoever that my / our said attorney shall lawfully do or cause to be done for me / us by virtue of the power hereby given.

(Attested signature of Mr. \_\_\_\_\_)

For \_\_\_\_\_ (Name of the Tenderer / Consortium Members with Seal)

Note –

**(In case of Consortium, representative of all members must sign)**

## ANNEX. -VII

## 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 Haldia Dock Complex, Kolkata Port Trust("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)

## ANNEX. – VIII

## 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, established under the Major Port Trusts Act-1963 and having Principal Office at 15, Strand Road, Kolkata-700001 (hereinafter referred to as the "KoPT" 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;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium ;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and}
- {(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

[**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, licence or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

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

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**  
**THIRD PART 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**  
**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.

## Particulars of "Tender Document Preparation Cost"&amp; "Earnest Money"

Particulars	Amount [in Rs.]	Particulars of Proof of Deposit.
I	II	III
<b>Tender Document Preparation Cost</b>	<b>10000.00-</b> <b>(Rupees Ten Thousand only )</b>	
<b>Earnest Money</b>	<b>Rs 46,27,630.00</b> <b>(Rupees Forty Six Lakhs Twenty Six Thousand Six Hundred and Thirty only)</b>	

(Receipt or Proof of Deposit of Earnest Money and Tender Document Preparation Cost is to be enclosed in the first sealed cover)

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

**Name: .....**

**Designation: .....**

**Date : .....**

**Seal**

## Covering Letter

Dated :

To,

**P. Dasgupta,  
Sr. Deputy Manager,  
I&CF Division,  
Haldia Dock Complex,  
Kolkata Port Trust**

Dear Sir,

1. I/we, \_\_\_\_\_ (Name of tenderer) having examined the Tender Document and understood its contents, hereby submit our tender for ..... at Haldia Dock Complex, 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 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.

Thanking you,

Yours faithfully,

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

Name: .....

Designation: .....

Date : .....

Seal

## INTEGRITY PACT

### Integrity Pact

#### Between

**Kolkata Port Trust (KoPT) hereinafter referred to as "The Principal".**

**And**

..... **hereinafter referred to as "The Bidder/Contractor"**

#### Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for ..... 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 principles 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 Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s), the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - c. The Principal will exclude 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 of any kind whatsoever during the tender process or during the execution of the contract.
  - b. The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contract, submission or non-submission 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 principles, 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 agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is 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 outlines 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 Annex-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 conforming 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 or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

### **Section 6- Equal treatment of all Bidders/Contractors/Sub-Contractors**

- (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 Sub-contractors.

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

### **Section 7- Criminal charges against violation Bidder(s)/Contractors/Subcontractor(s)**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or an employee or 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 – Pact Duration**

This Pact begins when both parties have legally signed it. It expires for the Contractors 12 months after the last payment under the contract, and for all other Bidders 6 months after 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, KoPT.

### **Section 9 – Other provision**

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal i.e. New Delhi.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not be made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the reminder 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)

\_\_\_\_\_  
(For & on behalf of Bidder/Contractor).

(Office Seal)

(Office Seal)

Place : Date :

Witness 1:

(Name & Address) .....

.....

.....

Witness 2:

(Name & Address) .....

**GENERAL CONDITIONS OF CONTRACT****1. DEFINITIONS**

1.0 In the contract, as here-in-after defined, the following words and expressions shall have the meaning here-in assigned to them, except where the context otherwise required.

1.1 "Employer" or "Board" or "Trustees" or "Kolkata Port Trust" or "KoPT" means the Board of Trustees for the Port of Kolkata, a body corporate under Section 3 of the Major Port Trusts Act, 1963, including their successors, representatives and assigns.

1.2 "Chairman" means the Chairman of the Board and includes the person appointed to act in his place under Sections 14 and 14A of the Major Port Trusts Act, 1963.

1.3 "Contractor" means the person or persons, Firm or Company whose tender/offer has been accepted by the Trustees and includes the Contractor's representatives, heirs, successor and assigns, if any permitted by the Board/Chairman.

1.4 "Engineer" means the Board's official as may be appointed from time to time by the employer, with written notification to the Contractor, to act as Engineer for the purpose of the contract.

1.5 "Engineer's Representative" means any subordinate Engineer or Assistant to the Engineer or any other official appointed from time to time by the Engineer to perform the duties set forth in Clauses 2.4 to 2.6 hereof.

1.6 "Work" means the Work to be executed in accordance with the Contract and includes authorised "Extra Work", "Excess Work" and "Temporary Work".

1.7 "Temporary Work" means all temporary work of every kind required in or about the execution, completion, operation or maintenance of the work and includes (without thereby limiting the foregoing definitions) all temporary erections, scaffolding, ladders, timbering, soaking vats, site offices, cement and other godowns, platforms and bins for stacking building materials, gantries, temporary tracks and roads, temporary culverts and mixing platforms.

1.8 "Extra Work" means those work required by the Engineer for completion of the Contract which were not specifically and separately included in the scope of work of the tender. "Excess Work" means the required quantities of work in excess of the provision made in the scope of work.

1.9 "Drawings" means the drawings referred to in the Tender and specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.

1.10 "Contract" means and includes the General and Special Conditions of Contract, Specifications, Drawings, Scope of work and related information, as detailed in the tender document the Tender/Offer, the letter of acceptance of the Tender/Offer, the Contract Agreement, if separately entered into and the Schedule of Rates and Price, if any, adopted by the Trustees at their discretion.

1.11 "Constructional Plant" means all appliances or things of whatsoever nature required in or about the execution, completion or maintenance of the work or temporary work and includes (without thereby limiting the foregoing definition) all machinery and tools but does not include materials or other things intended to form or forming part of the permanent work.

1.12 "Site" means the land(s) and other place(s), on, under, in or through which the works are to be executed or carried out and any other land(s) or place(s) provided by the Trustees for the purpose of the Contract.

1.13 "Contract Price" means the sum named in the letter of acceptance of the Tender/Offer of the Contractor, subject to such additions thereto and deductions there from as may be made by the Engineer under the provisions here-in-after contained.

1.14 "Month" means English Calendar Month.

1.15 "Excepted risks" are riot in so far as it is uninsurable, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) Civil War, rebellion, revolution, insurrection or military or usurped power or use or occupation by the Trustees of any portion of the work in respect of which a certificate of completion has been ensured of which are herein collectively referred to as the excepted risks).

1.16 Word importing the singular only, also includes the plural and vice-versa where the context so requires.

1.17 Unless otherwise stipulated the word "Cost" shall be deemed to include overhead costs of the contractor, whether on or off the site.

## 2.0 DUTIES & POWERS OF ENGINEER & ENGINEER'S REPRESENTATIVE

2.1 The Contractor shall execute, complete and maintain the work in terms of the contract to the entire satisfaction of the Engineer and shall comply with the Engineers' direction on any matter whatsoever.

2.2 The Contractor shall take instructions from the Engineer and subject to limitation of Clause 2.5 hereof, from the Engineer's Representative.

2.3 The Engineer shall have full power and authority:

(a) to supply to the contractor from time to time during the progress of the work such further drawings and instructions as shall be necessary for the purpose of proper and adequate execution and maintenance of the work and the contractor shall carry out and be bound by the same.

(b) to order for any variation, alteration and modification of the work and for extra works.

(c) to issue certificates as per contract.

(d) to settle the claims & disputes of the Contractor and Trustees, as the first referee.

2.4 The Engineer's Representative shall:

(i) watch and supervise the work,

(ii) test and examine any material to be used or workmanship employed in connection with the work,

(iii) have power to disapprove any material and workmanship not in accordance with the contract and the contractor shall comply with his direction in this regard,

- (iv) perform evaluation of work done by the contractor for the purpose of payment or otherwise,
- (v) order demolition of defectively done work for its reconstruction all by the Contractor at his own expense,
- (vi) have powers to issue alteration order not implying modification of design and extension of completion time of the work and
- (vii) have such other powers and authorities vested in the Engineer, which have been delegated to him in writing by the Engineer under intimation to the Contractor.

2.5 Provided always that the Engineer's Representative shall have no power:

- (a) to order any work involving delay or any extra payment by the Trustees,
- (b) to make variation of or in the work and,
- (c) to relieve the Contractor of any of his duties or obligations under the Contract.

## **2.6 Provided also as follows**

- (a) Failure of Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the reversal at the contractor's cost and the contractor shall have no claim to compensation for the loss sustained by him.
- (b) If the contractor shall be dissatisfied by reason of any decision of the Engineer's Representative, he shall be entitled to refer the matter to the Engineer who shall thereupon confirm, reverse or vary such decision.
- (c) Any written instructions or written approval given by the Engineer's Representative to the contractor, within the terms of delegation of power and authority vested in the Engineer to his Representative in writing shall bind the contractor and the Trustees as though it had been given by the Engineer, who may from time to time make such delegation.

## **3.0 THE TENDER/OFFER AND ITS PRE-REQUISITES**

3.1 The Contractor shall, before making out and submitting his tender/offer, be deemed to have inspected and examined the site, fully considered all factors, risks and contingencies, which will have direct and in direct impact on his expenses and profit from the work and shall be specifically deemed to have taken the following aspects into consideration.

- (a) The form and nature of the site and its surroundings including their sub surface, hydrological, tidal and climatic conditions, the means of access to the site and all other local conditions including the likely charges and costs for temporary way-leave, if any, required for the work.
- (b) The drawings, specifications, the nature and extent of work to be executed and the quality, quantity and availability of the required materials and labour for the work and the need to execute the work to the entire satisfaction of the Engineer, and also by complying with the General and Special Conditions of Contract.
- (c) The accommodation required for the workmen and site office, mobilization/ demobilization and storage of all plant, equipment and Construction materials.
- (d) The sources and means of procurement of water for drinking, washing and execution of work, and source and availability of electrical power, all at Contractor's cost.

(e) Payment of taxes and duties and compliance of all applicable statutes, ordinances and law together with the rules made there under, the rules, regulations and bye-laws of public bodies or any local or other authority by the Contractor, keeping the Trustees indemnified against penalties and liabilities of every kind arising from the Contractor's failure in such compliance.

(f) Payment of all kinds of stamp-duty for executing the agreement or for any legal instrument including Bank Guarantees and Indemnity Bonds.

3.2 The Contractor's tender shall be in ink on the Tender Forms supplied by the Trustees, unless stipulated otherwise in the Notice-Inviting the Tender and shall be faultless in figures and free from erasing. Corrections, if any, shall only be made by scoring out and initialing of the revised figure.

3.3 If required by the Engineer or the Trustees, the Contractors in their tender or subsequently, shall disclose the names of their owners/partners/Share Holders /members (of a consortium if so formed). The failure in this regard shall be treated as a breach and a contract, shall be liable to be cancelled.

### **3.4 Earnest Money**

(a) Earnest Money of un-accepted tender shall be refunded without any interest through A/c. Payee Cheque drawn on a Nationalised Bank of Kolkata / Haldia.

(b) Tender submitted without requisite Earnest Money may be liable to rejection.

(c) If before expiry of the validity period of his Tender/offer, the Bidder amends his quoted rates or tender/offer making them unacceptable to the Trustees and/or withdraws his tender/offer, the Earnest Money deposited shall be liable to forfeiture at the option of the Trustees.

(d) No interest shall be paid by the Trustees to the Bidder/Contractor on the amount of Earnest Money/Performance Guarantee held by the Trustees, at any stage.

(e) The Performance Guarantee/Earnest Money may be liable to forfeiture all the opinion of the Trustees if the Contractor fails to carry out the work or to perform/observe any of the conditions of the contract. The Trustees shall also be at liberty to deduct any of their dues from the Performance Guarantee, Earnest Money or from any sum due or to become due to the Contractor under any other contract.

## **4.0 THE CONTRACT & GENERAL OBLIGATIONS OF CONTRACTOR**

English language to be used.

4.1 (a) The contract documents shall be drawn-up in English language. (b) The contract shall be governed by all relevant Indian Acts as applicable only within the jurisdiction of the High Court at KOLKATA, India, including but not limited to the following Acts:-

1. The Indian Contract Act, 1872. 2. The Major Port Trust Act, 1963. 3. The Workmen's Compensation Act, 1923. 4. The Minimum Wages Act, 1948. 5. The Contract Labour (Regulation & Abolition) Act, 1970. 6. The Dock Workers' Act, 1948. 7. The Indian Arbitration Act (1940) (in the case of a definite Arbitration Agreement only).

4.2 After acceptance of his Tender/Offer and when called upon to do so by the Engineer or his representative, the Contractor shall, at his own expense, enter into and execute a Contract Agreement.

4.3 Several documents forming the contract are to be taken as mutually explanatory of one another. Should there be any discrepancy, ambiguity, omission or error in the various contract documents, the Engineer shall have the power to correct the same and his decision shall be final and binding on the parties to the Contract.

4.4. The Contractor shall not directly or indirectly transfer, assign or sublet the Contract or any part thereof without the written permission of the Engineer. Even if such permission be granted, the Contractor shall remain responsible (a) for the acts, defaults and neglect of any sub-contractor, his agents, servants or workmen as fully as if these were the acts, defaults or neglects of the Contractor himself or his agents, servants or workmen, and (b) for his full and entire responsibility of the contract

and for active superintendence of the work by him despite being sublet. provided always that the provision of labourers on a "piece rate" basis shall not be deemed to be sub letting under this clause.

4.5 Unless otherwise specified, the Contractor shall be deemed to have included in his Tender/Offer all his cost for supplying and providing all constructional plant, temporary work, materials both for temporary and permanent works, labour including supervision thereof, transporting to and from the site and in and about the work, including loading, unloading, fencing, watching, lighting, payment of fees, taxes and duties to the appropriate authorities and other things of every kind required for the construction, erection, completion and maintenance of the work.

4.6 The Contractor shall be solely responsible for the adequacy, stability and safety of all site operations and methods of construction, even if any prior approval thereto has been taken from the Engineer or his Representative. The Contractor shall not be responsible for the correctness of the design or specification of the Temporary and Permanent work formulated by the Engineer; but the contractor shall be fully responsible for the correct implementation thereof, as also for any design and specification prepared/proposed/used by the Contractor.

4.7 Whenever required by the Engineer or his Representative, the Contractor shall submit to him the details of his (a) programme for execution of the work, (b) proposed procedure and methods of work, (c) proposed deployment of plant, equipment, labour, materials and temporary works. The submission to and/or any approval by the Engineer or his Representative to any such programme or particulars, shall not relieve the Contractor of any of his obligations under the contract. If for any reason the contractor be unable to adhere to his earlier programme, he shall submit his revised programme for completion of work within the stipulated time whenever asked to do so.

4.8 Necessary and adequate supervision shall be provided by the Contractor during execution of the work and as long thereafter as the Engineer or his Representative shall consider necessary during the maintenance period. The Contractor or his competent and authorized agent or representative shall be constantly at site and instructions given to him by the Engineer or his Representative in writing shall be binding upon the Contractor subject to limitation in clause 2.5 hereof. The Contractor shall inform the Engineer or his Representative in writing about such representative/agent of him at site.

4.9 The Contractor shall employ in execution of the Contract only qualified, careful and experienced persons and the Engineer shall be at liberty to direct the Contractor to stop deployment of any of his staff, workmen or official at site and the Contractor shall within 48 hours comply with such instruction without any demur, whenever the Engineer shall feel that the deployment of the person concerned will not be conducive to the proper and timely completion of the work.

4.10 From the commencement of the works till issue of the completion certificate, the contractor shall take full responsibility for the care thereof. Save for the excepted risks, any damage, loss or injury to the work or any part thereof shall be made good by the Contractor at his own cost as per instruction and to the satisfaction of the Engineer, failing which the Engineer or his Representative may cause the same to be made good by any other agency and the expenses incurred and certified by the Engineer, shall be recoverable from the Contractor in whatever manner the Engineer shall deem proper. This Clause will not apply to that part of the work, which might have been taken over by the Trustees on partial completion of the work and in such case the Contractor's obligation will be limited to repairs and replacement for defects during the Maintenance period as per the directions of the Engineer as also for defects/damages if any caused to the work by the Contractor during such repairs and re-placement in the maintenance period.

4.11 The Contractor shall at his own cost protect, support and take all precautions in regard to the personnel or structure or services or properties belonging to the Trustees or not, which may be interfered with or affected or disturbed or endangered and shall indemnify and keep indemnified the Trustees against claim for injury, loss or damage caused by the Contractor in connection with the execution and maintenance of the work to the aforesaid properties, structures and services and/or to any person including the Contractor's workmen. Cost of Insurance Cover, if any, taken by the Contractor shall not be reimbursed by the Trustees, unless otherwise stipulated in the Contract.

4.12 The Contractor shall immediately inform the Engineer's Representatives if any fossil coins, articles of value or antiquity and structures and other remains or things of geological or archaeological importance be discovered at site which shall remain the property of the Trustees and protect them from being damaged by his workmen and arrange for disposal of them at the Trustees' expense as per the instruction of the Engineer's Representative.

4.13 The Contractor shall be deemed to have indemnified the Trustees against all claims, demands, actions and proceedings and all costs arising there from on account of

(a) Infringement of any patent right, design, trade-mark, or name or other protected right, in connection with the work or temporary work,

(b) Payment of all royalties, rent, toll charges, local taxes, other payments or compensation, if any, for getting all materials and equipment required for the work.

(c) Unauthorized obstruction or nuisance caused by the Contractor in respect of Public or Private road, railway tracks, footpaths, crane tracks, waterways, quays and other properties belonging to the Trustees or any other person.

(d) Damage/injury caused to any highway and bridge on account of the movement of Contractor's plants and materials in connection with the work.

(e) Pollution of waterway and damage caused to river, lock, sea-wall or other structure related to waterway, in transporting contractor's plants and materials.

(f) The Contractor's default in affording all reasonable facilities and accommodation as per the direction of the Engineer or his Representative to the workmen of the Trustees and other agencies employed by or with the permission and/or knowledge of the Trustees on or near the site of work.

4.14 The Contractor's quoted rates shall be deemed to have been inclusive of the following:

(a) Keeping the site free of unnecessary obstruction and removal from site of , constructional plant wreckage, rubbish, surplus earth or temporary works no longer required.

(b) Cleaning and removal from site all the surplus materials of every kind to leave the site clean and tidy after completion of the work, without which payment against final bill may be liable to be withheld.

(c) Precautionary measures to secure efficient protection of Docks, the River Hooghly and other waterways against pollution of whatever nature during execution and maintenance of the works and to prevent rubbish, refuse and other materials from being thrown into the water by the Contractor's men or those of his agency.

(d) Making arrangements for deployment of all labourers and workers, local or otherwise including payment for their wages, transport, accommodation, medical and all other statutory benefits and entry permits, wherever necessary.

(e) Making arrangements in or around the site, as per the requirements of local Municipals or other local authority or the Engineer or his Representative, for preventing (i) spread of any infectious disease like small pox, cholera, plague or malaria by taking effective actions for destruction of rats, mice, vermin, mosquitoes etc. and by maintaining healthy and sanitary condition, (ii) illegal storage and distribution of Drugs, Narcotics, Alcoholic liquor, Arms and Ammunitions, (iii) unlawful, riotous or disorderly conduct of the Contractor's or his Sub-Contractor's workmen, (iv) deployment of workmen of age less than 16 years.

4.15 Every direction or notice to be given to the Contractor shall be deemed to have been duly served on or received by the Contractor, if the same is posted or sent by hand to the address given in the tender or to the Contractor's Site Office or in case of Trustee's enlisted Contractor to the address as appearing in the Trustees' Register or to the Registered Office of the Contractor. The time mentioned in these conditions for doing any act after direction or notice shall be reckoned from the time of such posting or dispatch.

4.16 The Contractor and his subcontractor or their agents and men and any firm supplying , plant materials, and equipment shall not publish or caused to be published any photographs or description of the works without the prior authority of the Engineer in writing.

4.17 The Contractor shall, at the Trustees' cost to be decided by the Engineer, render all reasonable



facilities and Co-operation as per direction of the Engineer or his representative to any other Contractor engaged by the Trustees and their workmen, to the Trustees' own staff and to the men of other Public Body, on or near the site of work and in default, the contractor shall be liable to the Trustees for any delay or expense incurred by reason of such default.

4.18 The work has to be carried out by the Contractor causing the minimum of hindrance for any maritime traffic or surface traffic.

4.19 All constructional plants, temporary work and materials when brought to the site by the contractor, shall be deemed to be the property of the Trustees who will have a lien on the same until the satisfactory completion of the work and shall only be removed from the site in part or in full with the written permission of the Engineer or his Representative.

## **5.0 COMMENCEMENT, EXECUTION AND COMPLETION OF WORK**

5.1 The Contractor shall commence the work after of the receipt of Engineer's letter informing acceptance of the Contractor's tender/offer by the Trustees or within such preliminary time as mentioned by the contractor in the Form of Tender or the time accepted by the Trustees. The contractor shall then proceed with the work with due expedition and without delay, except as may be expressly sanctioned or ordered by the Engineer or his Representatives, time being deemed the essence of the contract on the part of the Contractor.

5.2 The Contractor shall provide and maintain a suitable office at or near the site, to which the Engineer's Representative may send communications and instructions for use of the Contractor.

5.3 Unless specified otherwise in the contract or prior permission of the Engineer has been taken, the contractor shall not execute the work beyond the working hours observed by the Engineer's Representative. If the progress of the work lags behind schedule or the work has been endangered by any act or neglect on the part of the contractor, then the Engineer or his Representative shall order and the contractor at his own expense shall work by day and by night and on Sundays and Public Holidays. Any failure of the Engineer or his Representative to pass such an order shall not relieve the contractor from any of his obligations. The Engineer's decision in this regard shall be Final, binding and conclusive.

5.4 Unless stipulated otherwise in the contract, all materials required for the work shall be procured and supplied by the contractor with the approval of the Engineer or his Representative and subject to subsequent testing as may be required by the Engineer or his Representative. The engineer shall exercise his sole discretion to accept any such materials.

5.5 Unless stipulated otherwise in the contract, all materials, workmanship and method of measurement shall be in accordance with the relevant Codes (Latest Revision) of the Bureau of Indian Standards and the written instructions of the Engineer or his Representative. Where no specific reference is available in the contract, the material and workmanship shall be of the best of their respective kinds to the satisfaction of the Engineer.

5.6 Unless stipulated otherwise in the contract, the cost of any test required by the Engineer or his representative in respect of materials and workmanship deployed on the work, shall be borne by the contractor.

5.7 Regarding the supply of any materials by the Trustees to the contractor in accordance with the contract, the following conditions shall apply:

(a) The contractor shall, at his own expense, arrange for transporting the materials from the Trustees' Stores, watching, storing and keeping them in his safe custody, furnishing of statement of consumption thereof in the manner required by the Engineer or his representative, return of surplus and empty container to the Trustees' Stores as per the direction of the Engineer or his Representative.

(b) Being the custodian of the Trustees' materials, the contractor shall remain solely responsible for

any such materials issued to him and for any loss or damage; thereof for any reason other than "Excepted Risks", the contractor shall compensate the Trustees' in the manner decided by the Engineer and shall at no stage remove or cause to be removed any such material from the site without his permission.

5.8 The Engineer or his Representative shall have the power to inspect any material and work at any time and to order at any time— (i) for removal from the site of any material which in his opinion is not in accordance with the contract or the instruction of the Engineer or his Representative, (ii) for the substitution of the proper and suitable materials, or (iii) the removal and proper re-execution of any work, which in respect of material and workmanship is not in accordance with the contract or the instructions of the Engineer. The Contractor shall comply with such order at his own expense and within the time specified in the order. If the contractor fails to comply, the Engineer shall be at liberty to dispose any such materials and re-do any work in the manner convenient to the Trustees by engaging any outside agency at the risk and expense of the contractor and after giving him a written prior notice of 7 days.

5.9 No work shall be covered up and put out of view by the contractor without approval of the Engineer or his Representative and whenever required by him, the contractor shall reinstate or make good any part or parts of the work thus affected to the satisfaction of the Engineer, all at the cost of the contractor.

5.10 On a written order of the Engineer or his Representative, the contractor shall delay or suspend the progress of the work till such time the written order to resume the execution is received by him. During such suspension the contractor shall protect and secure the work to the satisfaction of the Engineer or his Representative. All extra expenses in giving effect to such order shall be considered by the Trustees, unless such suspension is —

(a) otherwise provided for in the contract, or

(b) necessary by reason of some default on the part of the Contractor, or

(c) necessary by reason of climatic conditions on the site, or

(d) necessary for proper execution of the works or for the safety of the works or any part thereof. The Engineer shall settle and determine such extra payment, as shall, in the opinion of the Engineer, be fair and reasonable.

5.11 If at any time before or after commencement of the work the Trustees do not require the whole of the work tendered for, the Engineer shall notify the same to the contractor in writing and the contractor shall stop further works in compliance of the same. The Contractor shall not be entitled to any claim for compensation for underived profit or for such premature stoppage of work or on account of curtailment of the originally intended work by reason of alteration made by the Engineer in the original specifications, drawings, designs and instructions.

## **6. Recovery for wrong and overpayment.**

6.1 No Certificate of the Engineer or his Representative shall protect the Contractor against or prevent the Trustees from obtaining repayment from the Contractor, in case the Engineer or his Representative should over certify for payment or the Trustees should over-pay the Contractor on any account

6.2 No claim for interest shall be admissible to the Contractor at any stage and in respect of any money or balance or Bank Guarantee, which may be due to the Contractor from the Trustees, owing to dispute or otherwise or for any delay on the part of the Trustees in making interim or final payment or otherwise.

## **7.0 TERMINATION OF CONTRACT.**

7.1 Without being liable for any compensation to the Contractor, the Trustees may, in their absolute discretion, terminate the contract due to occurrence of any of the following reasons and decision of the Trustees in this respect, as communicated by the Engineer shall be final and conclusive:

i) The Contractor has abandoned the contract.

ii) In the opinion of the Engineer, either the progress of work is not satisfactory or the work is not likely to be completed within the agreed period on account of Contractor's lapses.

iii) The Contractor has failed to commence the work or has without any lawful excuse under these conditions, has kept the work suspended for at least 15 days despite receiving the Engineer's or his Representative's written notice to proceed with the work.

iv) The Contractor has failed to remove materials from site or to dismantle or demolish and replace work for 7 days after receiving from the Engineer or his Representative the written notice stating that the said materials or work are rejected by him.

v) The Contractor is not executing the works in accordance with the contract or is persistently or flagrantly neglecting to carry out his obligations under the contract.

vi) Any bribe, commission, gift or advantage is given, promised or offered by or on behalf of the contractor to any officer, servant or representative of the Trustees or to any person on his or their behalf in relation to the obtaining or to the execution of the contract.

vii) The Contractor is adjudged insolvent or enters into composition with his creditors or being a company goes into liquidation either compulsory or voluntarily.

7.1.1 Upon receipt of the letter of termination of work, which may be issued by the Engineer on behalf of the Trustees, the Contractor shall hand over the entire Trustees' tools, plant and materials issued to him at the place to be ascertained from the Engineer, within 7 days of receipt of such letter.

7.1.2 In all such cases of Termination of work, the Trustees shall have the power to execute the work through any other agency in accordance with the contract, at the Contractor's risk and expense.

## **8.0 MAINTENANCE**

8.1 On completion of execution of the work the Contractor shall maintain the same for a period, as may be specified in the Scope of work & Special Condition of the Contract. Any defect/fault, which may appear in the work during aforesaid maintenance period, arising, in the sole opinion of the Engineer or his representative, from materials or workmanship not in accordance with the contract or the instruction of the Engineer or his Representative, shall, upon the written notice of the Engineer or his Representative, be amended and made good by the Contractor at his own cost within seven days of the date of such notice, to the satisfaction of the Engineer or his Representative, failing which the Engineer or his Representative shall have the defects amended and made good through other agency at the Contractor's risk and cost and all expenses, consequent thereon or incidental thereto, shall be recoverable from the Contractor in any manner deemed suitable by the Engineer.

8.2 The Contract shall not be considered completed and the work shall not be treated as finally accepted by the Trustees, until a Final Completion Certificate shall have been signed and issued by the Engineer to the contractor after all obligations under the Contract including that in the maintenance period, if any, have been fulfilled by the Contractor. Previous entry on the works or taking possession, working or using thereof by the Trustees shall not relieve the Contractor of his obligations under the contract for full and final completion of the work.

## **9.0 Interpretation of Contract Documents, Dispute & Arbitrator:**

9.1 In all disputes, matters, claims, demands or questions arising out of or connected with the interpretation of the Contract including the meaning of Specifications, drawings, designs and instructions or as to the quality of workmanship or as to the materials used in the work or the execution of the work whether during the progress of the works or after the completion and whether before or after the determination, abandonment or breach of the contract the decision of the Engineer shall be final and binding on all parties to the contract and shall forthwith be given effect to by the Contractor.

9.2 If, the Contractor be dissatisfied with any such decision of the Engineer, he shall within 15 days

after receiving notice of such decision require that the matter shall be referred to Chairman, who shall thereupon consider and give a decision.

9.3 If, however, the contractor be still dissatisfied with the decision of the Chairman, he shall, within 15 days after receiving notice of such decision required that within 60 days from his written notice, the Chairman shall refer the matter to an Arbitrator of the panel of Arbitrators to be maintained by the Trustees for the purpose and any such reference shall be deemed to be a submission to arbitration within the meaning of Indian Arbitration & Conciliation Act, 1996 or any statutory modification thereof.

9.3.1. If the Arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another person from panel shall be appointed as Sole Arbitrator and he shall proceed from the stage at which it was left by his predecessor.

9.3.2. The Arbitrator shall be deemed to have entered on reference on the date he issues notice to both the parties fixing the date of first hearing.

9.3.3. The time limit within which the Arbitrator shall submit his award shall normally be 4 months as provided in Indian Arbitration & Conciliation Act, 1996 or any amendment thereof. The Arbitrator may, if found necessary, enlarge the time for making and publishing the award, with the consent of the parties.

9.3.4. The venue of the arbitration shall be either Kolkata or Haldia as may be fixed by the Arbitrator in his sole discretion. Upon every or any such reference the cost of any incidental to the reference and award respectively shall be in the discretion of the Arbitrator who may determine, the amount thereof or by whom and to whom and in what manner the same shall be borne and paid.

9.3.5. The Award of the Arbitrator shall be final and binding on all parties subject to the provisions of the Indian Arbitration & Conciliation Act 1996 or any amendment thereof. The Arbitrator shall give a separate award in respect of each item of disputes and respective claim referred to him by each party and give reasons for the award.

9.3.6. The Arbitrator shall consider the claims of all the parties to the contract — within only the parameters of scope and conditions of the contract in question.

9.3.7. Save as otherwise provided in the contract the provisions of the Arbitration & Conciliation Act 1996 and rules made there under, for the time being in force, shall apply to the arbitration proceedings under this Clause.

9.4 The Contractor shall not suspend or delay the work and proceed with the work with due diligence in accordance with Engineer's decision. The Engineer also shall not withhold any payment, which, according to him, is due or payable to the Contractor, on the ground that certain disputes have cropped up and are likely to be referred to arbitration.

9.5 Provided always as follows:

(a) Nothing of the provisions in paragraphs 9.3 to 9.3.7 hereinabove would apply in the cases of contracts, where tendered amount appearing in the letter of acceptance of the tender/offer is less than Rs. 40,00,000/-

(b) The Contractor shall have to raise disputes or differences of any kind whatsoever in relation to the execution of the work to the Engineer within 30 days from the date of occurrence of the cause of dispute and before the preparation of the final bill, giving detailed justifications, in the context of contract conditions.

(c) Contractor's dispute, if any, arising only during the maintenance period, if any, stipulated in the contract, must be submitted to the Engineer, with detailed justifications in the context of contract Conditions, before the final completion of the work.

No dispute or difference on any matter whatsoever pertaining to the contract can be raised by the contractor after the completion of the work.

(d) Contractor's claim/dispute raised beyond the time limits prescribed in sub-clauses 9.5(b) and 9.5(c) hereinabove shall not be entertained by the Engineer and/or by any Arbitrator subsequently.

(e) The Chairman/Trustees shall have the right to alter the panel of Arbitrators on their sole discretion by adding the names of new Arbitrators and/or by deleting the names of existing Arbitrators without any reference to the Contractor.

**THE BOARD OF TRUSTEES FOR THE PORT OF Kolkata**  
**-: FORM OF TENDER:-**

**CONTRACT NO.:** .....

**To**

.....  
 .....  
 .....  
 .....

I/We .....of  
 .....having examined the site of works,  
 inspected the Drawings and read the Specifications, General & Special Conditions of Contract and  
 Conditions of Tender, hereby tender and undertake to execute and complete all the works required to  
 be performed in accordance with the Specifications. Bill of Quantities, General & Special Conditions of  
 Contract and Drawings prepared by or on behalf of the Trustees and at the rates and prices set out in  
 the annexed Bill of Quantities within..... month/week from the date of order to  
 commence the work and in the event of our tender being accepted in full or in part, I/we also  
 undertake to enter into a Contract Agreement in the Form hereto annexed with such alterations or  
 additions thereto which may be necessary to give effect to the acceptance of the Tender and  
 incorporating such specification, Bill of Quantities, Drawings and Special & General Condition of  
 Contract and I/we hereby agree that until such Contract Agreement is executed the said Specifications,  
 Bill of Quantities, Conditions of Contract and the Tender, together with the acceptance thereof in  
 writing by or on behalf of the Trustees shall be the Contract.

THE TOTAL AMOUNT OF TENDER Rs. .... (Repeat in words)  
 .....

I/We require .....days/months preliminary time to arrange and procure the  
 materials required by the work from the date of acceptance of tender before I/we could commence the  
 work.

(\* This should be scored out in the case of Labour Contracts)

I/We have deposited with the Trustees' Financial Adviser & Chief Accounts Officer/ General Manager  
 (Finance), Haldia Dock Complex vide Receipt No. .... of  
 ..... as Earnest Money.

I/We agree that the period for which the tender shall remain open for acceptance shall not be less than  
 four months.

Signature of Tenderer  
 (Seal of the Tenderer)

Witness:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
 (In Block Letters)

Name of the  
 Tenderer: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ Address \_\_\_\_\_

Occupation: \_\_\_\_\_

Draft Proforma of Bank Guarantee ( Performance Bond ) in lieu of cash Security Deposit, to be issued by the KOLKATA / Haldia Branch, as the case may be, of any nationalised Bank of India on Non-Judicial Stamp Paper worth Rs. 50/- or as decided by the Engineer / Legal Adviser of the Trustees.

**To**  
**The Board of Trustees**  
**For the Port of Kolkata,**

**BANK GUARANTEE NO ..... DATE .....**

**Name of Issuing Bank .....**

**Name of Branch .....**

**Address .....**

In consideration of the Board of Trustees of the Port of Kolkata, a body corporate-duly constituted under the Major Port Trusts Act, 1963 (Act 38 of 1963), having agreed to exempt Shri / Messrs ..... a Proprietary / Partnership / Limited / Registered Company, having its Registered Office at ..... (hereinafter referred to as "The Contractor") from cash payment of Security Deposit / payment of Security Deposit through deduction from the Contractors' bills under the terms and conditions of a contract made between the Trustees and the Contractor for ..... (write the name of the work as per Work Order) in terms of the Work Order No. .... dated ..... (hereinafter referred to as "the said contract"), for the due fulfilment by the contractor of all the terms and conditions contained in the said contract, on submission of a Bank Guarantee for Rs. .... (Rupees .....), we, ..... Branch, Kolkata ..... / Haldia, do, on the advise of the contractor, hereby undertake to indemnify and keep indemnified the Trustees to the extent of the said sum of Rs. .... (Rupees ..... ) We, ..... Branch, Kolkata ..... / Haldia, further agree that if a written demand is made by the Trustees through any of its officials for honouring the Bank Guarantee constituted by these presents, We, ..... Branch, Kolkata ..... / Haldia, shall have no right to decline to cash the same for any reason whatsoever and shall cash the same and pay the sum so demanded to the Trustees within a week from the date of such demand by an A/c Payee Banker's Cheque drawn in favour of "Kolkata Port Trust", without any demur. Even it there be any dispute between the contractor and the Trustees, this would be no ground for us, ..... (Name of the Bank), ..... Branch, Kolkata ..... / Haldia, to decline to honour the Bank Guarantee in the manner aforesaid. The very fact that We, ..... Branch, Kolkata ..... / Haldia, decline or fail or neglect to honour the Bank Guarantee in the manner aforesaid shall constitute sufficient reason for the Trustees to enforce the Bank Guarantee unconditionally without any reference, whatsoever, to the contractor.

2. We, ..... Branch, Kolkata ..... / Haldia, further agree that a mere demand by the Trustees at anytime and in the manner aforesaid, is sufficient for us, ..... Branch, Kolkata ..... / Haldia, to pay the amount covered by this Bank Guarantee in full and in the manner aforesaid and within the time aforesaid without reference to the contractor and no protest by the contractor, made either directly or indirectly or through Court, can be valid ground for us, ..... Branch, Kolkata ..... / Haldia, to decline or fail or neglect to make payment to the Trustees in the manner and within the time aforesaid.



3. We, ..... Branch, Kolkata ..... / Haldia, further agree that the Bank Guarantee herein contained shall remain in full force and effect, during the period that is taken for the due performance of the said contract by the contractor and that it shall continue to be enforceable till all the dues of the Trustees under and / or by virtue of the terms and conditions of the said contract have been fully paid and its claim satisfied and/or discharged in full and/or till the Trustees certify that the terms and conditions of the said contract have been fully and properly observed/ fulfilled by the contractor and accordingly, the Trustees have discharged the Bank Guarantee, subject however, that this guarantee shall remain valid upto and inclusive of ..... day of ..... 20 ..... and subject all so that the provision that the Trustees shall have no right to demand payment against this guarantee after the expiry of 6 (six) calendar months from the expiry of the aforesaid validity period upto ..... or any extension thereof made by us ..... Branch, Kolkata ..... / Haldia, in further extending the said validity period of this Bank Guarantee on Non-Judicial Stamp Paper of appropriate value, as required/determined by the Trustees, only on a written request by the Trustees to the contractor for such extension of validity of this Bank Guarantee.

4. We, Branch, Kolkata ..... / Haldia, further agree that, without our consent and without affecting in any manner our obligations hereunder, the Trustees shall have the fullest liberty to vary from time to time any of the terms and conditions of the said contract to extend the time for full performance of the said contract including fulfilling all obligations under the said contract or to extend the time for full performance of the said contract including fulfilling all obligations under the said contract by the contractor or to postpone for any time or from time to time any of the powers exercisable by the Trustees against the contractor and to forebear or enforce any of terms and conditions relating to the said contract and We, ..... Branch, Kolkata ..... / Haldia, shall not be relieved from our liability by reason of any such variation or extension being granted to the contractor or for any fore-bearance, act or commission on the part of the Trustees or any indulgence by the Trustees to the contractor or by any such matter or thing of whatsoever nature, which under the law relating to sureties would, but for this provision, have effect of so relieving us, ..... Branch, Kolkata ..... / Haldia.

5. We, Branch, Kolkata ..... / Haldia, lastly undertake not to revoke this Bank Guarantee during its currency except with the previous consent of the Trustees in writing.

SIGNATURE .....  
NAME .....  
DESIGNATION .....  
(Duly constituted attorney for and on behalf of)  
BANK .....  
BRANCH .....  
KOLKATA ..... / HALDIA  
(OFFICIAL SEAL OF THE BANK)

**THE BOARD OF TRUSTEES FOR THE PORT OF KOLKATA  
FORM OF AGREEMENT**

THIS AGREEMENT made this ..... day of ..... 20 ..... between the Board of Trustees for the Port of KOLKATA, a body corporate constituted by the Major Port Trust Act, 1963 (hereinafter called "Trustees" which expression shall unless excluded by or repugnant to the context be deemed to include their successors in office) of the one part and ..... (hereinafter called "the Contractor, which expression shall unless excluded by or repugnant to the context be deemed to include its heirs, executors, administrators, representatives and assignees or successors in office) of the other part WHEREAS the Trustees are desirous that certain Works should be executed/constructed, viz ..... and have accepted a Tender / offer by the Contractor for the construction, completion and maintenance of such works NOW THIS AGREEMENT WITNESSETH as follows:

1. In this agreement words expressions shall have the same meanings as are respectively assigned to them in General Conditions Of Contract, hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement , viz :-
  - a. The said Tender/Offer & the acceptance of Tender/ Offer.
  - b. The Drawings.
  - c. The General Conditions Of Contract.
  - d. Special Conditions Of Contract (If any).
  - e. The Conditions Of Tender.
  - f. The Specifications.
  - g. The Bill Of Quantities.
  - h. All Trustees' Schedule of rates & prices (if any).
  - i. All correspondences by which the contract is added, amended, varied or modified in any way by mutual consent.
3. In consideration of the payments to be made by the Trustees to the Contractor as hereinafter mentioned, the contractor hereby covenant with the Trustees to execute ,complete and maintain the work in conformity in all respects with the provisions of Contract.
4. The Trustees hereby covenants to pay to the contractor in consideration of such execution construction, completion and maintenance of the works the Contract Prices at the times and in the manner prescribed by the contractor.

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed (or have set their respective hands and seals) the day and year first above written.

The **Seal** of \_\_\_\_\_ was hereunto affixed in the presence of :

Name :- \_\_\_\_\_

Address :- \_\_\_\_\_

OR

SIGNED SEALED AND DELIVERED

By the said \_\_\_\_\_

In the presence of :

Name :- \_\_\_\_\_

Address :- \_\_\_\_\_

The Common Seal of the Trustees was hereunto affixed in he presence of :

Name :- \_\_\_\_\_

Address :- \_\_\_\_\_

## ESTIMATE FOR THE WORK

Sl.No.	DESCRIPTION	COST IN LAKHS
<b>1</b>	<b>CIVIL ENGG ITEMS:</b>	
	A) 4000 SQ M OF HARDSTAND	215.68
	B) ROAD NET WORK	764.00
	C) PILE STRUCTURE & RCC SUPPORT WITH BOLLARDS	101.00
	D) OPERATION OFFICE, JETTY SECURITY OFFICE	10.00
	SUB TOTAL	1090.68
	ADD 5% CONTINGENCIES	54.53
	<b>TOTAL COST FOR CIVIL STRUCTURE</b>	<b>1145.21</b>
<b>2</b>	<b>PONTOON &amp; MOORING MATERAILS</b>	<b>2,247.20</b>
	ADD 5% CONTINGENCIES	112.36
	<b>TOTAL COST FOR PONTOON &amp; MOORING MATERAILS</b>	<b>2359.56</b>
<b>3.</b>	<b>CRANE &amp; ASSOCIATED MECHANICAL ITEMS :</b>	
	A) CBG - 300 CRANE FROM LIEBHERR WITH GRAB OF 22 CBM (TO BE MOUNTED ON PONTOON)	1,039.00
	B) CONVEYOR SYSTEM, WALK WAY & HOPPER	151.00
	C) STAND BY GEN SET (450 KVA) FOR CRANE MOVEMENT	10.00
	<b>SUB TOTAL</b>	<b>1200.00</b>
	ADD 5% CONTINGENCIES	60.00
	<b>TOTAL COST FOR CRANE &amp; MECHANICAL ITEMS</b>	<b>1260.00</b>
<b>4.</b>	<b>ELECTRICAL &amp; ILLUMINATION :</b>	
	A)ILLUMINATION AT JETTY COST INCLUDING CABLING ETC.	200.00
	B) ILLUMINATION AT ROAD PORTION COST INCLUDING CABLING ETC.	120.00
	SUB TOTAL	320.00
	ADD 5% CONTINGENCIES	16.00
	<b>TOTAL COST FOR ELECTRICAL &amp; ILLUMINATION</b>	<b>336.00</b>