



Kolkata Port Trust

कोलकाता पत्तन न्यास

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No. DH/RFQ-II

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Corrigendum to the Request for Proposal, Draft Concession Agreement and Tariff Notification in respect of the bidding process for development of Container Terminal at Diamond Harbour on DBFOT basis

1. Request for Proposal

- i. Clause 1.2.4 will read as follows:

A Bidder is required to deposit, along with its Bid, a bid security of Rs. 17.5 crores (Rupees seventeen crores fifty lacs only) (the "Bid Security"), refundable not later than 60 (Sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority, and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (Sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- ii. Clause 1.2.8 shall read as follows:

The Concessionaire may charge fees as notified by TAMP vide G No.255 dt 30.09.2013, available at the following web address

<http://www.tariffauthority.gov.in/htmldocs/ORDERS/KOLKATA/2013/SPLMEET30.08.2013/KOPT-G255-SPLMET30082013-ORDR-all.pdf>

AND

Addendum to the above notification, vide G No. 335 dt 26.12.2013, available at the following web address

<http://www.tariffauthority.gov.in/htmldocs/ORDERS/ADENDUM%2005.12.2013/KOPT-G335-5.12.2013-ADENDUM.pdf>

- iii. Clause 1.3 (5) shall read as follows:

Bid Due Date – 15:00hrs on 17th February, 2014

- iv. Clause 1.3 (6) shall read as follows:

Opening of Bids – 15:30hrs on 17th February, 2014

- v. Clause 2.1.7 shall read as follows:

The Bidder shall deposit a Bid Security of Rs. 17.5 Crores (Rupees Seventeen crores fifty lacs only) in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix-II.

vi. Clause 2.3.1 shall read as follows:

By submitting the Bid, the Bidder acknowledges that it was pre-qualified and shortlisted on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 3rd (third) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 51% (fifty one per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

vii. Clause 2.12.1 shall read as follows:

Bids should be submitted before 15:00 hours IST on the Bid Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.5.

viii. Clause 3.1.1 shall read as follows:

The Authority shall open the Bids at 15:30 hours on the Bid Due Date, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

ix. The format for Bank Guarantee for the Bid Security shall read as follows:

APPENDIX-II
Bank Guarantee for Bid Security
(Refer Clauses 2.1.7 and 2.20.1)

B.G. No.

Dated:

1 In consideration of you, Kolkata Port Trust, having its office at,(hereinafter referred to as the "Authority", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Development of Container Terminal at Diamond Harbour at Kolkata Port on Design, Build, Finance, Operate, Transfer (DBFOT) basis (hereinafter referred to as "the Project") pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby irrevocably, unconditionally

and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs.crores (Rupeesonly) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2 Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs.crores (Rupeesonly).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to

the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted Rscrores (Rupeesonly). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)].

14. Notwithstanding anything contained hereinabove:

(i) Our liability under this guarantee shall not exceed Rs. _____ (rupees _____ only)

(ii) This bank guarantee shall be valid upto _____

(iii) We shall be liable to pay amount or any part thereof under this bank guarantee only and only if we receive a written claim or demand on or before _____

Signed and Delivered by Bank

By the hand of Mr./Ms., its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

2. Draft Concession Agreement

- i. Article 3.2 shall read as follows:
The aforesaid Conditions Precedent shall be complied with within 270 (two hundred and seventy) Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.
- ii. Article 7.1(c) shall read as follows:

7.1. (c) Obligations of the Concessions Authority

In addition to any of its other obligations in this Agreement, the Concessions Authority shall arrange for and provide the following:

(a) Marine and Port Services

The Concessions Authority shall provide/ cause to be provided, to the Concessionaire, the following services:

- (a) Scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing schedule as determined by the Deputy Conservator Director, Marine Department of the Port depending on individual ship characteristics and tidal conditions;
- (b) Endeavour will be made to maintain a draft of about 9m ;
- (c) Waterside safety and safety of navigation;
- (d) Maintenance of the dredged draft alongside the berth at about 9m
- (e) Carry out dredging operations, if any that may be required from time to time to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;
- (f) Provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;
- (g) Provide for/put in place arrangements for provision of Supporting Project Infrastructure other than those covered under the Concession;

- (h) Assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site ;
 - (i) Evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators;
 - (j) The transshipment barges from / to Diamond Harbour Container Terminal will be given priority berthing at KDS and HDC, provided a minimum of 100 TEUs in and out to be carried by the barges.
- iii. Article 7.2(a) shall read as follows:
The power shall be received by the Concessionaire from West Bengal State Electricity Distribution Company Ltd. The take off point for electricity shall be from the nearest sub-station or as approved by West Bengal State Electricity Distribution Company Ltd.).
 - iv. Article 7.2(b) shall read as follows:
The water shall be received by the Concessionaire from Diamond Harbour Municipality. The take off point for water shall be the nearest available water line or as approved by Diamond Harbour Municipality. They will receive solid waste of terminal for disposal on payment of charges;
 - v. Appendix 1 shall read as follows:

Appendix 1

PROJECT SITE

1.1 Description of site

The Project Site to is located at 22° -10'-3.6" N/88°-12'-14.2"E.(Approx.) on the eastern bank of the River Ganges (Figure 3.1 of the Technical Feasibility Report) with the following boundaries

North- Partly NH117, partly private land, partly land belongs to Dept. of Light Houses and Light Ships, Ministry of Shipping, Govt. of India

East- Partly private land partly land belongs to Dept. of Light Houses and Light Ships, Ministry of Shipping, Govt. of India and partly by road.

South- partly by river Hooghly and partly by road

West- Partly by river Hooghly and partly private land

The site is upstream of Fish Harbour Jetty at the location of old fort in Sultanpur Mouza of Diamond Harbour block. The entire project area as per Technical Feasibility Report is 36.956 ha.

An indicative layout of the proposed terminal is given in DRG No. 2008018/LA-01 of the Technical Feasibility Report

- vi. Appendix 4.1(i)(1) shall read as follows:
Construction of three berths each having 300 Meters length and a width of 35.5 Meters. The total quay length of the 3 berths shall be 900 meters and they shall be constructed as per construction schedule mentioned in Appendix 5.
- vii. Appendix 8 (B) shall read as follows:

The following Permits will be made available by the Concessioneing Authority

1.	Environmental clearance
2.	Port limit notification
3.	TAMP approval
4.	PPPAC approval

- viii. Appendix 12, Tariffs shall read as under
The Concessionaire may charge fees as notified by TAMP vide G No.255 dt 30.09.2013, available at the following web address

<http://www.tariffauthority.gov.in/htmldocs/ORDERS/KOLKATA/2013/SPLMEET30.08.2013/KOPT-G255-SPLMET30082013-ORDR-all.pdf>

AND

Addendum to the above notification, available at the following web address

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- ix. Appendix 15, Performance Standard shall read as follows:

Annex-II

PERFORMANCE STANDARDS

Performance Standards

1. Gross Berth Output

The parameter deals with the productivity of the terminal (Gross Berth Output) for Container cargo. The capability of the terminal and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high

productivity. The berth day output measured in terms of TEUs per day depends on the number of cranes used which is dependent on the size of the vessel. Productivity norm of the crane is 25 moves per hour.

The Gross Berth Output shall be calculated as the total cargo in terms of TEUs handled (either loaded / unloaded) from the ship during a month divided by the time spent by the ship at the terminal i.e. number of working days at the berth.

The indicative norms for Gross Berth Output for different categories of cargo are as follows:

Cargo Category	Indicative Norms
Container	
(Mainline Vessel)	[25 moves per hour]
(Feeder Vessel)	[22 moves per hour]

Weightage in case of a shortfall in meeting the prescribed performance standard – [0.6]

2. Transit Storage Dwell Time:

The Transit Storage Dwell Time for a container shall mean the total time for which the container remains in the terminal. The Transit Storage Dwell Time for containers shall be calculated as an average and shall be the sum of the transit storage of each container handled during the month at that terminal divided by the number of containers. To further clarify, the date and time a container is discharged from the vessel till the said container leaves the out - gate of the Terminal, is the total transit storage time for import box. In case of export the time and date from which the container enters the terminal till the time and date it is loaded on to a vessel will be the storage time. The details of time of discharge, gate-in, gate-out and loading need to be maintained in respect of each container including ICD containers.

Unclaimed cargo or any cargo that has been detained by the customs or any Government Authority may be excluded.

Transit Storage Dwell Time	
-Import	
Container (at terminal)	3 days by road and 7 days by rail / barge
-Export	
Container (at terminal)	4 days by road and 7 days by rail / barge

Weightage in case of a shortfall in meeting the prescribed performance standard – [0.3]

3. Turn around Time for receipt / delivery operation:

The Turn around Time for receipt / delivery operation shall be the sum of time taken for loading / unloading of cargo divided by the number of trucks / trailers / rakes deployed, as the case may be, in a month. Further, in case the truck / trailer / rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those trucks / trailers / rakes.

	(i) Trailer for Containers(Single operation)	2 hours
	(ii) Trailer for Containers(double operation)	4 hours
	(i) Rake for ICD Containers(Single operation)	6 hours
	(ii) Rake for ICD Containers(double operation)	12 hours

Weightage in case of a shortfall in meeting the prescribed performance standard [0.1]

Performance Evaluation and calculation of liquidated damages:

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% (one per cent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten per cent) in the average performance which shall be assessed in the following manner.

Each Performance Standard is calculated as an average in the manner indicated above. The actual average performance vis-à-vis a standard will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of each performance standard will have a weightage assigned to it. The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of each of the performance standards. For example, if there is a shortfall in Gross Berth Output by $x\%$, Transit Storage Dwell Time by $y\%$ and Turn round time for receipt / delivery operations by $z\%$ and the weightage assigned to such shortfalls is 0.6, 0.3 and 0.1 respectively, then the overall shortfall in average performance will be $(0.6x + 0.3y + 0.1z)\%$.
