

**Kolkata Port Trust**  
**HALDIA DOCK COMPLEX**

**Corrigenda & Addenda**

No. I & CF / IZ & R / T / 298 / 378

Dated: 19.07.2019

SUB : E-TENDER FOR "SETTING UP OF OFFSHORE LIQUID BULK TERMINAL WITH COMPOSITE FACILITY FOR CARGO HANDLING AND MOORING OPERATIONS THROUGH INSTALLATION OF BUOYS AND FLOATING PIPELINE NEAR 3<sup>RD</sup> OIL JETTY ON THE RIVER HOOGHLY FOR A PERIOD OF 5 (FIVE) YEARS AT HALDIA DOCK COMPLEX, KOLKATA PORT TRUST"

REF. E-TENDER NO.: KoPT/Haldia Dock Complex/I&CF Div/18/19-20/ET/35

N.I.T. NO. - I & CF / IZ & R / T / 298 / 365 dated 04.07.2019

Sl. No.	Page No. & Clause	Original terms as per tender document	Revised terms to be read as
1	Pg. No. SC-3, Cl. No. 3.0, point no. 12	The successful tenderer shall have arrangements for pigging the floating pipeline system as may be necessary for handling different veg oils. For movement of cargo, the pig shall be inserted at the vessel end and has to be removed at the Pig receiver end of Veg oil Pipeline at shore near HOJ-3.	The existing clause stands deleted.
2	Pg. No. SC-3, Cl. No. 3.0, point no. 19	The successful tenderer shall provide for the buoy lighting for the 4 buoys to be installed in the river as per the direction of the lighting officer of KoPT.	The successful tenderer shall provide for the buoy lighting for the 2 buoys to be installed in the river as per the direction of the lighting officer of KoPT.
3	Pg. No. SC-4, Cl. No. 3.0, point no. 24	The contractor shall transfer the entire facility unencumbered to KoPT at the end of the contract period free of cost.	The contractor shall transfer the entire facility unencumbered to KoPT at the end of the contract period free of cost except the mooring buoys, associated chain, anchor and will make the river free of any such encumbrance.
4	Pg. No. SC-3, Cl. No. 3.0, point no. 20.	The contractor has to provide fencing of about 40 m length, covering 100 sqm area, 3 m high with concertina.	The contractor has to provide fencing of about 40 m length, covering 100 sqm area, 3 m high with concertina. This land will be issued to him on license basis on application in which oil manifold will be placed and will be connected to the pipeline extension from 3 <sup>rd</sup> oil jetty. The contractor will also provide a porta cabin in this fenced area for staff residence during operation in this land.
5	Pg. No. SC-1, Cl. No. 3.0, point no. 2, 8 <sup>th</sup> & 9 <sup>th</sup> line	Subsequently, the contractor shall supply and install the bollards on the dead-man for shore anchoring of the vessel.	The line stands deleted. The line should be replaced by "the buoys shall be connected with the deadman by mooring chains".



**Following additional clauses are to be included in "Special Conditions of Contract" of the tender document.**

### **33. Signing of Agreement:**

The successful Bidder at his expenses will enter into an Agreement with KoPT on a non judicial stamp paper of minimum 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.

### **34. (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) the Contractor passing a resolution for voluntary winding up;
- (v) 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;
- (vi) 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;
- (vii) 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;
- (viii) 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.
- (ix) 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;
- (x) if there is any change in control/ ownership of the successful Bidder arising from sale, assignment, transfer without prior permission of KoPT.
- (xi) the successful bidder assigns or transfers the equipment to any third party without permission from KoPT.

#### **(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 a Force Majeure Event.

### **(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 forfeit the security deposit.





- (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 Part, 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, .

### **(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 SI. No.-(III) above, the Party who has issued the Consultation Notice shall have the right to terminate the Contract,

### **(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 prohibit the Contractor and any Person claiming through or under the Contractor from entering upon/dealing with the project facilities and services ;

## **35. Termination of Contract :**

### **(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.





## **(2) Requisition**

Except where the Termination Notice is issued prior to commencement of construction, when the Contractor has not 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 finalize 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.

## **(3) 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-....., after depreciation as per rate of depreciation given in he contract.

### **(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 rate of depreciation given in he contract.

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

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

## **(4) 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 (deadman etc.)	: 6.67 % p.a
All types of Mechanical (pipes etc.)	: 12.67 % p.a

## **(5) 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.

**(6) 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) 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.

**36. Expiry of Contract with efflux of time :**

**(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 transaction to be consummated and the formalities to be completed by the Parties on the Transfer date shall be as set out in the contract.

**(2) Contractor's Obligations**

The Contractor shall ;

- (a) hand over peaceful possession of the Project Site.
- (b) 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;
- (c) 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;
- (d) 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.

**(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.

**37. 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.

**38. 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

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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.

**39. 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.

**40. Arbitration :**

**a) Arbitration:**

Failing amicable settlement, the dispute or difference 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 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.

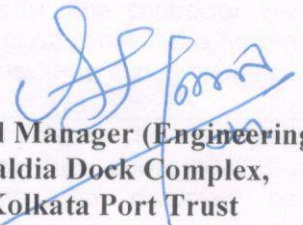
**41. Governing Laws:**

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

**42. Liquidated Damage in case of delay in commissioning of the project**

The successful bidder shall complete supply & installation of offshore mooring facility with buoys and floating pipeline within the time schedule given in Clause 10 of SC-6 of the tender document to the satisfaction of KoPT. In the event of failure to do the same, the successful bidder shall pay KoPT as compensation (Liquidated damage) Rs. 23111 per day subject to a maximum of 10% of the estimated capital cost of the work.

**Bidders are requested to submit this 'Corrigenda & Addenda' duly signed under office seal along with their Techno-Commercial i.e. Cover-I offer as an acknowledgement and acceptance.**

  
General Manager (Engineering)  
Haldia Dock Complex,  
Kolkata Port Trust