

Addendum to the NIT for "Implementation of ERP at Kolkata Port"

Ref : NIT NO. Plg/165/ERP/2015/9988 dated 30-Apr-2015

Addendum regarding incorporation of additional clauses / modification of certain existing clauses for including the provisions for 'Joint Venture Agreement' in the ERP Tender Document

Clause No./Para No., Heading, Page No. with remarks (if any)	Original Content	Revised Content

3.2 Consortium

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In case the bidder is a consortium of two or more parties, the criteria for Consortium, Lead Member and other partners are as indicated in sections 3.2.1, 3.2.2 and 3.2.3 respectively. All correspondences till formation of SPV will be made with the Lead Member. The profile of each member should be provided as per Appendix VII. Under the consortium, the lead member shall not demit its shareholding during the contract period. The information as per table below should be annexed with the profile.

In case the bidder is a consortium of two or more parties, the criteria for Consortium, Lead Member / Lead Partner and other partners are as indicated in clauses 3.2.1, 3.2.2 and 3.2.3, respectively. The consortium, if successful, may execute the contract by either forming an SPV, incorporated under the Indian Companies Act, 2013, or enter into a Joint Venture Agreement (as per Annexure-XII). The Lead Member / Lead Partner of the Joint Venture will execute an agreement (as per Clause 6.3 of this tender document) with KoPT.

In case the selected consortium opts for SPV, all correspondences will be made with the Lead Member / Lead Partner of the consortium till formation of SPV. In case the selected consortium opts for Joint Venture Agreement, all correspondences will be made with the Lead Member/Lead Partner only from the time of issuing Lol till completion of the contract. Under the SPV, the Lead Member / Lead Partner shall not demit its shareholding during the contract period.

The consortium members must mention in the covering letter (vide Appendix-II) at the time of submission of offer whether they will form an SPV or opt for the Joint Venture Agreement (JVA), if they are selected.

The profile of each member should be provided as per Appendix VII. The information as per table below should be annexed with the profile.

3.5 Special Purpose Vehicle (SPV)

Where the 'Successful Tenderer' is a 'Consortium', it shall be required to form an appropriate 'Special Purpose Vehicle' (SPV), incorporated under the Indian Companies Act, 2013, to execute the Contract Agreement and execute the contract. 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 Appendix -V, signed by all the other members of the Consortium;
- (b) The Tender shall contain the information required for each member of the Consortium as per Appendix - VII.
- (c) The Tender shall include a brief description of the roles and responsibilities of individual members, particularly with reference to technical and financial obligations;
- (d) An individual (single entity) Tenderer participating in the instant tender shall not be a member of any other Consortium participating in the instant tender ;

3.5 Special Purpose Vehicle (SPV)/Joint Venture Agreement (JVA)

3.5.1 Where the 'Successful Tenderer' is a 'Consortium' and opts to form an SPV, it shall have to 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 Appendix -V, signed by all the other members of the Consortium;
- (b) The Tender shall contain the information required for each member of the Consortium as per Appendix - VII.
- (c) The Tender shall include a brief description of the roles and responsibilities of individual members, particularly with reference to technical and financial obligations;
- (d) An individual (single entity) Tenderer participating in the instant tender shall not be a member of any other Consortium participating in the instant tender ; Further, a member of a particular Consortium shall neither submit any tender individually nor shall be a member of any other Consortium participating in the instant tender ;
- (e) Members of the Consortium shall enter into a

	<p>Further, a member of a particular Consortium shall neither submit any tender individually nor shall be a member of any other Consortium participating in the instant tender ;</p> <p>(e) Members of the Consortium shall enter into a binding Joint Bidding Agreement (JBA), substantially in the form specified at Appendix - VI, for the purpose of submitting Tender. The JBA, to be submitted along with the Tender, shall, inter alia:</p> <p>(i) Convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this tender, which would enter into the Contract Agreement and subsequently perform all the obligations of KoPT in terms of the said agreement, in case the Contract is awarded to the Consortium;</p> <p>(ii) Clearly outline the proposed roles and responsibilities, if any, of each member;</p> <p>(iii) Commit the minimum equity stake to be held by each member;</p> <p>(iv) Commit that each of the members, whose experience will be evaluated for the purposes of this Tender, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such</p>	<p>binding Joint Bidding Agreement (JBA), substantially in the form specified at Appendix - VI, for the purpose of submitting Tender. The JBA, to be submitted along with the Tender, shall, inter alia:</p> <p>(i) Convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this tender, which would enter into the Contract Agreement and subsequently perform all the obligations of KoPT in terms of the said agreement, in case the Contract is awarded to the Consortium;</p> <p>(ii) Clearly outline the proposed roles and responsibilities, if any, of each member;</p> <p>(iii) Commit the minimum equity stake to be held by each member;</p> <p>(iv) Commit that each of the members, whose experience will be evaluated for the purposes of this Tender, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commencement of ERP implementation under the contract, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV ;</p> <p>(v) Members of the Consortium undertake that they shall collectively hold at least 51% (fifty</p>
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	<p>member shall, for a period of 2 (two) years from the date of commencement of ERP implementation under the contract, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV ;</p> <p>(v) Members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the completion of two years from the date of commencement of the contract and</p> <p>(vi) Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of KoPT in relation to the contract throughout the contract period.</p> <p>In computing the Technical Capacity and Financial Capacity of the Tenderer/Consortium Members under Clause 3.2, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.</p> <p>For purposes of this Tender, 'Associate' means, in relation to the Tenderer/Consortium Member, a person who controls, is controlled by, or is under the common control with such Tenderer/Consortium Member. As used in this definition, the expression 'control'</p>	<p>one per cent) of the subscribed and paid up equity of the SPV at all times until the completion of two years from the date of commencement of the contract and</p> <p>(vi) Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of KoPT in relation to the contract throughout the contract period.</p> <p>In computing the Technical Capacity and Financial Capacity of the Tenderer/Consortium Members under Clause 3.2, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.</p> <p>For purposes of this Tender, 'Associate' means, in relation to the Tenderer/Consortium Member, a person who controls, is controlled by, or is under the common control with such Tenderer/Consortium Member. As used in this definition, the expression 'control' means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty 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.</p> <p>(f) Except as provided under the Tender</p>
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	<p>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.</p> <p>(f) Except as provided under the Tender Document, including its Addendum, if any, there shall not be any amendment to the said JBA without the prior written consent of KoPT.</p> <p>(g) The SPV must be formed within 45 days (Forty five days) from the date of issuance of LOI.</p>	<p>Document, including its Addendum, if any, there shall not be any amendment to the said JBA without the prior written consent of KoPT.</p> <p>(g) The SPV must be formed within 45 days (Forty five days) from the date of issuance of LOI.</p>
<p>3.5.2 New clause added to the tender document.</p>	<p>Nil</p>	<p>3.5.2 In case SPV is not proposed to be formed by the selected consortium, the members of the consortium shall enter into a Joint Venture Agreement (JVA) and the lead partner/lead member of the consortium will remain lead member/lead partner of the Joint Venture Agreement (JVA) and it (the lead partner/lead member) will execute a contract with KoPT within 45 days of receiving the letter of intent (LOI), as mentioned in para 6.3 of this tender document and comply with the following additional requirements :</p> <p>a) All Joint Venture agreements / Consortium agreements / technical collaboration agreements shall</p>

		<p>ensure that all parties of the Joint Venture are individually and jointly responsible for the tender conditions and such agreements are legally valid.</p> <p>b) Joint Venture should be in the nature of legally acceptable agreements and such agreements should be notarized.</p> <p>c) Such Joint Venture agreement should clearly set out and contain explicitly the scope and responsibilities of all the partners in the Joint Venture in terms of their respective financial and technical commitments/contributions. However, the partners of the Joint Venture shall be equally, severally and jointly responsible for the satisfactory performance of the contract as per the scope of the tender.</p> <p>d) One of the members of the Joint Venture shall be authorized as being the lead partner/ lead member and this authority shall be evidenced by a power of attorney duly signed by the authorized signatories of the Joint Venture/ lead Consortium.</p> <p>e) The lead partner/lead member of the Joint Venture shall be authorized to incur liabilities and receive instructions for and on behalf of any and all the partners. The entire execution of the contract, including payment shall be carried out exclusively through the lead partner.</p> <p>f) The scope and responsibilities of all the partners, in terms of financial and technical commitment/contribution, should be exclusively mentioned and the partners should be severally & jointly responsible for the satisfactory performance of the contract as per the scope of this bidding document.</p> <p>g) Only the lead member/lead partner of the Joint Venture will receive instruction/communication from KoPT. All invoices / bills etc. are to be raised by the lead partner/lead member of the Joint Venture and</p>
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		<p>KoPT will make payments in INR to the lead partner/member.</p> <p>h) The validity of the Joint Venture agreement entered upon on the award of letter of intent (LOI) by the port should continue for the entire period of the project / contract (including AMC/ATS period) as specified in the tender. All such agreements shall be irrevocable for the above periods.</p> <p>i) It is clarified that an unsuccessful bidder or Joint Venture shall not be permitted to join a successful Joint Venture whose bid is accepted at a later date.</p> <p>(j) Change/substitution of the composition of the Joint Venture after execution of the Joint Venture Agreement (JVA) is normally not permitted. However, in the event of default of any partner in the execution of their part of the contract, the lead partner/lead member may substitute that partner by another party/partner, for execution of that part of the contract, provided the substitute member is qualified according to the criteria mentioned in clauses 3.2.1 and 3.2.3, 3.5.2(i) above, subject to the approval of the competent authority of KoPT. The said party shall also be jointly, as well as severally liable with the remaining partner(s) so far as the unfinished part of the contract is concerned. Further, after substitution, at least one of the members among all firms must have relevant experience in POMS-like systems as per para 16 of Clause 3.2.1 above. In case of removal of any member without substitution, the remaining member(s) shall fulfill the pre-qualification criteria of the tender. No change/substitution of the Lead Member/Lead Partner is allowed under any circumstances.</p>
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<p>3.6. Change in composition of the Consortium 3.6.1(a), Page 50</p>	<p>(a) The request for change should be made to KoPT at least 20 (twenty days) before the last date of formation of SPV and the reason for such change with proof, if applicable, shall be submitted along with the application.</p>	<p>(a) The request for change should be made to KoPT at least 20 (twenty days) before the last date of formation of SPV (in case the consortium opts for SPV) and the reason for such change with proof, if applicable, shall be submitted along with the application.</p>
<p>Appendix - II, Pages 85-86</p> <p>(New para No 8 added)</p>	<p>Nil</p>	<p>Following new para is added after para 7</p> <p>8. <i>We,(Name of Tenderer) hereby undertake that, if selected, we will form an SPV / execute a Joint Venture Agreement (Strike off /delete which is not applicable) for execution of the scope of work mentioned in the tender document.</i></p>
<p>Appendix VI, Para 3, Page 93</p>	<p>3. Covenants</p> <p>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 2013 for entering into a Agreement with the KoPT and for performing all its obligations as the Contractor in terms of the Agreement for the tender.</p>	<p>3. Covenants</p> <p>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 2013 or enter into a Joint Venture Agreement (JVA) for entering into an Agreement with the KoPT and for performing all its obligations as the Contractor in terms of the Agreement for the tender.</p>

Appendix VI, Para 6, Page 94	6. Shareholding in the SPV	6. Shareholding in the SPV (Not applicable for Joint Venture Agreement)
Annexure-XII (New Format added in connection with Joint Venture Agreement (JVA) referred to in clause 3.2 above)	Nil	As given below

Appendix-XII

FORMAT IN CASE OF JOINT VENTURE AGREEMENT (To be submitted on stamp paper)

This Joint Venture Agreement is made at _____ on ___ day of _____ 2015 between M/s. _____ (Please indicate the status viz. Proprietor, Firm, Company) represented through its proprietor / partner or Director (hereinafter referred to as "First Party") and M/s. _____ (Please indicate the status viz. Proprietor, Firm, Company) represented through its proprietor / partner or Director (hereinafter referred to as "Second Party") WHEREAS the First Party is engaged in the business of _____ AND WHEREAS the Second Party is engaged in the business of _____ AND WHEREAS both the parties are desirous of entering into a joint venture for carrying on the work of Kolkata Port Trust in connection with work of _____ (Please mention the work of the tender). AND WHEREAS the First Party and Second Party have agreed to form joint venture for execution of subject works.

NOW THIS DEED WITNESSED AS UNDER:

1. That under this Joint Venture Agreement the work will be done jointly by the First Party and Second Party in the name and style of M/s. _____.

2. It is further agreed by the Joint Venture Partner that _____ of M/s. _____ has been nominated as Lead Partner for the execution of the works.

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

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

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

First Party:

Second Party:

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

First Party:

Second Party:

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

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

8. The Registered Office of the Joint Venture / Lead Member /Lead Partner of the consortium shall be at _____.

9. The Joint Venture shall regularly maintain in the ordinary course of business a true and correct account of all its incoming and outgoing and also of its assets and liabilities in proper books of accounts which shall ordinarily be kept at place of business and after completion of abovementioned work all account shall be taken.

10. Opening and operation of Bank Account:

The Joint Venture shall open and maintain bank account(s) at _____.

_____ The Lead Member /Lead Partner as mentioned in Clause (2) above shall have the power to receive the payments on behalf of the Joint Venture and to give discharge on behalf of the Joint Venture.

IN WITNESS WHEREOF the Parties hereto have signed hereunder at _____ on this ____ day of _____.

Party of First Part

Party of Second Part

WITNESS:

i)

ii)

(N.B. – If the number of parties / consortium members are more than 2, then the format may be amended accordingly).