



SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(Formerly KOLKATA PORT TRUST)

श्यामाप्रसाद मुखर्जी पत्तन, कोलकाता (पूर्व में कोलकाता पोर्ट ट्रस्ट)
(AN AUTONOMOUS BODY UNDER THE MINISTRY OF PORTS, SHIPPING
AND WATERWAYS, GOVERNMENT OF INDIA)

(भारतसरकारके बंदरगाह, जहाजरानी और जलमार्ग मंत्रालय के तहत एक स्वायत्त निकाय)

KOLKATA DOCK SYSTEM

कोलकाताडॉकसिस्टम

Civil Engineering Department

सिविल इंजीनियरिंग विभाग

Request for Proposal (RFP)

श्यामा प्रसाद मुखर्जी पोर्ट, कोलकाता में डिजाइन, निर्माण, वित्त, प्रचालन और स्थानांतरण (डीबीएफओटी) आधार पर पीपीपी मोड के माध्यम से "किडरपुर डॉक्स (केपीडी-1 पश्चिम) का कायाकल्प" परियोजना के लिए स्वतंत्र अभियंता (आईई)

INDEPENDENT ENGINEER (IE) FOR THE PROJECT "REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA"

Request for Proposal - Contents

I. Online Bid Reference

II. Notice Inviting Online Tender

III. Instructions for Online Bid Submissions

IV. Sections:

Section 1: Introduction

Section 2: Instructions to Applicants

Section 3: Criteria for Evaluation

Section 4: Fraud and corrupt practices

Section 5: Pre-Proposal Conference

Section 6: Miscellaneous

Section 7: Terms of Reference & Excerpts from MCA

Section 8: E-Payment

Section 9: Site information and Project information

Section 10: Port assets and Drawings

V. Schedules:

1. Form of Agreement

Annex-1: Terms of Reference

Annex-2: Deployment of Personnel

Annex-3: Estimate of Personnel Costs (deleted)

Annex-4: Approved Sub-Consultant(s)

Annex-5: Cost of Services

Annex-6: Payment Schedule

Annex-7: Bank Guarantee for Performance Security

2. Guidance Note on Conflict of Interest

VI. Appendices:

Appendix-I: Technical Proposal

Form 1: Bid submission Letter (On the letter head of the bidding firm)

Form 2: Particulars of the Applicant

Form 3: Statement of Legal Capacity

Form 4: Power of Attorney

Form 5: Financial Capacity of Applicant

Form 6: Abstract of Eligible Assignments of Applicant

Form 6a: Eligible Assignments of the Applicant

Form 7: Particulars of Key Personnel

Form 7a: Abstract of Eligible Assignments of Key Personnel

Form 7b: Eligible Assignments of Key Personnel

Form 7c: CV of Key Personnel

Form 8: Proposed Methodology and Work Plan

Form 9: Deployment of Personnel

Form 10: Proposal for Sub-Consultant(s)

Form 11: Draft Integrity Pact

Appendix-II: Financial Proposal

Form 1: Covering Letter

Form 2: Financial Proposal

Appendix-III: General Condition of Contract (GCC)

Disclaimer

The information contained in this Request for Proposal document ("RFP") or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisers, is provided to Applicants on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicants is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein. The Authority, its employees and advisers make no representation or warranty and shall have no liability to any person including any Applicant under any law, statute, rules or regulations or tort, principles of restitution or enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in anyway in this Selection Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Consultancy and the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery

fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

TENDER NO.: SMPK/KDS/CIV/T/2738/10 dated 15th February, 2023

SYAMA PRASAD MOOKERJEE PORT, KOLKATA

(Formerly KOLKATA PORT TRUST)

Civil Engineering Department

ONLINE BID REFERENCE

Tender No: - SMPK/KDS/CIV /T/2738/10 dt.15th February 2023

Name of work: **INDEPENDENT ENGINEER (IE) FOR THE PROJECT**
“REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE
ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT
SYAMA PRASAD MOOKERJEE PORT, KOLKATA”

a. TENDER NO.	SMPK/KDS/CIV /T/2738/10 dt.15 th February 2023
b. MODE OF TENDER	<p>e-Procurement System (Online Two-Part Techno-Commercial Bid and Price Bid through Envida Portal https://kopt.enivida.in) The intending bidders are required to submit their offers electronically through e-tendering portal.</p> <p>No physical tender is acceptable by SYAMA PRASAD MOOKERJEE PORT, KOLKATA</p>
c. i) Estimated Cost of Work / Services	Rs. 95,66,000/- (Rupees ninety-five lakhs sixty-six thousand only)
ii) Earnest Money Deposit (EMD)	Rs. 1,91,320/- (Rupees one lakh ninety-one thousand three hundred twenty only)
iii) Tender Document fee (Non-refundable)	Rs.1770/- (Rupees one thousand seven hundred and seventy only) including 18% GST) The intending bidders should submit the EMD and Tender document fee to SMPK as mentioned in this tender document.

iv) रेलटेल टेंडर प्रोसेसिंग शुल्क/ Railtel Tender Processing Fee (Non-refundable) Mode of Payment: - E-payment Only through Debit / Credit Card or Net Banking.	TPF - 0.1% of estimate cost (Minimum 750/- Maximum 7500/-+GST Registration Charges Rs.2000/- + Applicable GST per year.
d. Date of NIT available to parties to download	17.02.2023 to 09.03.2023 (up to 12:00 hrs.)
e. Pre-proposal conference- Date & Time	27.02.2023 15.00 hrs.
f. Last date of submission of EMD & Tender Document fee at Syama Prasad Mookerjee Port, Kolkata	13.03.2023 (Up to 15:00 hrs.)
g. Date of Starting of e-Tender for submission of online Techno-Commercial Bid and Price Bid at Envida Portal	17.02.2023 (From 14:00 hrs. onwards)
h. Date of closing of online e-tender for submission of Techno-Commercial Bid & Price Bid.	09.03.2023 (Up to 15:00 hrs.)
i. ई-निविदा को खुलने की तिथि और समय / Date & time of opening of Techno-Commercial Bid	10.03.2023 (After 15:00 hrs.)
j. Duration of the Work.	24 months or 6 months from the date of commercial operations of the project by the Concessionaire, whichever is later.

ध्यान दे / Note: In the event of any unforeseen closure of work / holiday on any of the above days, the same will be opened / held on the next working day without any further notice.

मुख्य अभियन्ता / **Chief Engineer**
सिविल इंजीनियरिंग विभाग / **Civil Engineering Department**
श्यामा प्रसाद मुखर्जी पत्तन, कोलकाता / **SYAMA PRASAD MOOKERJEE PORT, KOLKATA**
निविदा आमंत्रण प्राधिकारी / **Tender Inviting Authority**

TENDER NO.: SMPK/KDS/CIV/T/2738/10 dated 15th February, 2023

SYAMA PRASAD MOOKERJEE PORT, KOLKATA (Formerly KOLKATA PORT TRUST)

श्यामा प्रसाद मुखर्जी पत्तन, कोलकाता (पूर्व में कोलकाता पोर्ट ट्रस्ट)

Civil Engineering Department

सिविल इंजीनियरिंग विभाग

NOTICE INVITING ONLINE TENDER

निविदा संख्या /Tender No: SMPK/KDS/CIV /T/2738/10 dt.15th February 2023

INDEPENDENT ENGINEER (IE) FOR THE PROJECT “REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA”

- 1.1 Online tenders through e-procurement mode are invited by Syama Prasad Mookerjee Port, Kolkata (SMPK) from reputed Consultants as Independent Engineer (IE) for the project “REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA” under **two cover** systems. The estimated cost of the Project being taken up by the Concessionaire is **Rs. 95.66 Crores** (Rupees ninety-five crores sixty-six lakhs only) in Phase-I with a time period of 18 (eighteen) months for commercial operations.
- 1.2 The tender document through e-procurement mode can be downloaded from SMPK’s official website and through e-procurement portal link from the date indicated in Online Bid Reference.
- 1.3 One set of tender document consists of two volumes (Volumes-I & II). **Volume-I (Technical Bid)** comprise of all technical & commercial offer documents including drawings and **Volume-II (Financial Bid)** comprise of Price bid documents.
- 1.4 The complete tender document including drawings can be downloaded from SMPK website: <https://smportkolkata.shipping.gov.in> and <https://kopt.enivida.in> and submit as tender offer through <https://kopt.enivida.in> on or before the due date and time of submission.
- 1.5 The EMD of **Rs. 1,91,320/- (Rupees one lakh ninety-one thousand three hundred twenty only)** shall be paid as described in the Tender Document.
 - The proof of EMD shall be uploaded as a scanned copy of the instrument through e-procurement mode under the Tender Document – Technical Bid while submitting tender electronically in the e-procurement portal. The original EMD must reach SMPK before opening of Technical Bid as per the date and time given in this tender. Mere uploading of EMD document in the portal and non-submission of the original EMD at the address given below before the Technical Bid opening date & time will lead to rejection of bids.

The Chief Engineer,

Civil Engineering Department,

Kolkata dock system,

Syama Prasad Mookerjee Port, Kolkata

15, Strand road, Kolkata- 700001

- The tender (offer) shall have to be submitted by the Tenderer only through e-procurement mode as explained in the Tender Document.

- 1.6 The offer (both Techno-Commercial & Price) must be valid for a minimum of **180 days** from the last date of online submission of offer; otherwise, the offer shall be rejected as non-responsive.
- 1.7 The bids will be ranked according to the **combined score** of technical and financial Proposals. The bidder whose combined score is the highest subject to the provisions in **Clause 3.2** below shall be declared as the successful bidder.
- 1.8 The prospective Tenderer shall submit queries if any to the below mentioned address, in connection with this tender well in advance, so that the queries can be clarified. The bidders queries will be clarified through e-procurement portal and notification in this regard will be issued through <https://kopt.enivida.in>.

The Chief Engineer
Civil Engineering Department,
Kolkata Dock System,
Syama Prasad Mookerjee Port, Kolkata
15, Strand road, Kolkata- 700001,
Phone No. - 033 2230-3451; Extension: 398,399,400
E-mail id: cs.rao@kolkataporttrust.gov.in
sk.halder@kolkataporttrust.gov.in
& ce@kolkataporttrust.gov.in

- 1.9 The due date of online submission of offers will be as indicated in the Online Bid Reference, unless otherwise notified. In the event of changes in the schedules, the SE (Contract), Civil Engineering Department, SMPK notifies the same only through e-procurement portal link.
- 1.10 If the offers are not received according to the instructions detailed here above, they shall be liable for rejection.

मुख्य अभियन्ता / **Chief Engineer**

सिविल इंजीनियरिंग विभाग / **Civil Engineering Department**

श्यामा प्रसाद मुखर्जी पत्तन, कोलकाता / **SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

निविदा आमंत्रण प्राधिकारी / **Tender Inviting Authority**

TENDER NO.: SMPK/KDS/CIV/T/2738/10 dated 15th February, 2023

SYAMA PRASAD MOOKERJEE PORT, KOLKATA (Formerly KOLKATA PORT TRUST)

श्यामा प्रसाद मुखर्जी पत्तन, कोलकाता (पूर्व में कोलकाता पोर्ट ट्रस्ट)

Civil Engineering Department

सिविल इंजीनियरिंग विभाग

NOTICE INVITING ONLINE TENDER

निविदा संख्या /Tender No: SMPK/KDS/CIV /T/2738/10 dt.15th February 2023

INDEPENDENT ENGINEER (IE) FOR THE PROJECT “REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA”

I. INSTRUCTIONS FOR ONLINE BID SUBMISSION

The Proposal in the prescribed format shall be submitted online at <https://kopt.enivida.in> as per the RFP document. No proposal will be accepted in hard copy, fax, e-mail or any other such means. The Applicant must be registered with e-tender website <https://kopt.enivida.in>. Also, the intending bidders should submit the tender cost of **Rs.1,770/- (Rupees one thousand seven hundred and seventy only)**, including @18% GST

And

Bid Security/ (Earnest Money):

A bid Security of **Rs. 1,91,320/- (Rupees one lakh ninety-one thousand three hundred twenty only)**

Shall be paid through DD/Banker's Cheque in favour of Syama Prasad Mookerjee Port, Kolkata on any Scheduled / Nationalised Bank payable at Kolkata

Or

Payable through **RTGS / NEFT/ Bank Transfer etc.**, to be transferred on

A/C: Syama Prasad Mookerjee Port, Kolkata

A/c No: 067502000000491

IFSC: IOBA0000675

Bank Name: Indian Overseas Bank

Branch Name: STRAND ROAD Branch otherwise their offer will be summarily rejected.

• **Railtel Tender Processing Fee** (Non-refundable) Mode of Payment: - E-payment Only through Debit/Credit Card or Net Banking.

TPF- 0.1% of estimate cost (Minimum 750/- Maximum 7500/-+GST Registration Charges Rs.2000/- + Applicable GST per year)

II. COVER – I DETAILS: TECHNICAL BID

This shall contain the following:

Appendix-1

- i) Bid submission Letter (On the letter head of the bidding firm) (Form-1)
- ii) Particulars of the Applicant (Form – 2)
- iii) Statement of Legal Capacity (Form – 3)
- iv) Power of Attorney (Form-4)
- v) Financial Capacity of Applicant (Form – 5)
- vi) Abstract of Eligible Assignments of Applicant (Form – 6)
- vii) Eligible Assignments of the Applicant (Form – 6a)
- viii) Particulars of Key Personnel (Form – 7)
- ix) Abstract of Eligible Assignments of Key Personnel (Form – 7a)
- x) Eligible Assignments of Key Personnel (Form – 7b)
- xi) CV of Key Personnel (Form – 7c)
- xii) Proposed Methodology and Work Plan (Form – 8)
- xiii) Deployment of Personnel (Form – 9)
- xiv) Proposal for Sub-Consultant(s) (Form -10)
- xv) Scanned copy of DD / Banker's Cheque / Pay Order / Online Receipt towards EMD shall be uploaded.

The original Demand Draft / Banker's Cheque / Pay Order / Online Receipt towards EMD must reach SMPK in the specified form, before opening of Technical Bid as per the date and time given in this tender.

COVER – II DETAILS: FINANCIAL BID – PRICE SCHEDULE

Price should be quoted in a spread sheet file (.xls format) available in e-procurement Portal only. Any indication of 'Quoted price' in the online technical bid documents shall lead to rejection of the bid outright.

For evaluation purpose the uploaded offer documents only will be treated as authentic and final. No hard copy of the financial bid shall be submitted. **The financial bid as in Appendix-II submitted through e-procurement mode only will be considered for the purpose of evaluation.**

Bidder should not submit their own excel sheet or any other format which will not be accepted by SMPK for evaluation.

III. DETERMINATION OF RESPONSIVENESS OF BIDS:

1. A proposal shall be considered responsive if,

- a) **Online copy** of the proposal is received before the proposed due date and Time as in Online Bid Reference.
- b) It is Digitally Signed.
- c) It contains the information and documents as required in the Tender Document.
- d) Contains EMD for the tender.
- e) It contains information in formats specified in the Tender Document.
- f) It mentions the validity period as set out in the document.
- g) It provides the information in reasonable detail. The Port reserves the right to determine whether the information has been provided in reasonable detail.
- h) There are no significant inconsistencies between the proposal and the supporting documents.
- i) The Technical qualification conforms to as specified in the qualification criteria of General Rules and directions for the guidance of the Tenderer.
- j) A Tender that is substantially responsive in one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one (1) which affects in any substantial way, the scope, quality, or performance of the Tenderer or (2) which limits in any substantial way, inconsistent with the Tender document, or (3) whose rectification would affect unfairly the competitive position of other Qualified Applicant presenting substantially responsive bids.
- k) SMPK reserves the right to reject any tender which in its opinion is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Port in respect of such Tenders.
- l) SMPK would have the right to review the Technical Qualification and seek clarifications wherever necessary.

2. Deadline for Submission of Bids

- a) Bids must be uploaded in the e-procurement portal <https://kopt.enivida.in> not later than the time and date indicated in the Online Bid Reference.
- b) The employer may extend the deadline for submission of the bid by issuing an amendment in accordance with clause 2.11, in which case all rights and obligations of the employer and the bidders previously subject to the original deadline will then be subject to the new deadline.
- c) The bid document being downloaded from web site and uploaded through e-Tender portal <https://kopt.enivida.in>, the bidder shall give an undertaking that no change have been made in document.

- d) Apart from the e-tender, additionally one copy of the completed tender shall be submitted in a separate sealed envelope superscripting as “Technical bid” for INDEPENDENT ENGINEER (IE) FOR THE PROJECT “REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA”.
- e) For technical and financial bid evaluation purpose, only e-tender will be considered.

3. Modification and Withdrawal of Bids:

- a) The bidders may modify, substitute or withdraw their tender after submission by giving notice in writing before the deadline prescribed in clause 2.19 through e-Procurement Mode.
- b) No bid shall be modified after the deadline for submission of bids.

4. Since the tender involves **selection based on pre-qualification criteria and minimum score in each of the parameters, the Chief Engineer, SMPK or his authorized officials will examine and seek clarification if any and list out the firms, which are found technically suitable and Cover-II Price Bid of such tenders only will be opened and EMD will be returned to the disqualified tenderers.**

- a) The date and time will be intimated to tenderers whose offers are found suitable and Cover-II of such tenderers will be opened on the specified date and time.
- b) The Fax / E-Mail offers will be treated as defective, invalid and rejected. Only detailed complete offers received through online soft copy, prior to closing time and date of the tenders will be taken as valid.

5. Applicant registered in MSME / NSIC:

For Micro & Small Enterprises (MSEs) registered with NSIC & or MSME:

- a) Micro & Small Enterprises (MSEs) registered with NSIC (under single point registration scheme) or MSME are exempted from depositing Cost of Tender Document.
- b) If Micro & Small Enterprises (MSEs) registered with NSIC or MSME 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, as per NIT. Otherwise their offer will not be considered.
- c) Copy of valid NSIC Certificate for MSEs has to be submitted along with bid.
- d) Tenderers submitted without requisite Earnest Money are liable to be rejected excepting in case of Micro & Small Enterprises (MSEs) registered with NSIC (under single point registration scheme) or MSME for items for which the tender is invited.

मुख्य अभियन्ता / **Chief Engineer**

सिविल इंजीनियरिंग विभाग / **Civil Engineering Department**

श्यामा प्रसाद मुखर्जी पत्तन, कोलकाता / **SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

निविदा आमंत्रण प्राधिकारी / **Tender Inviting Authority**

SECTION-1

INTRODUCTION

1.1 Background

1.1.1 Syama Prasad Mookerjee Port, Kolkata (Formerly Known as Kolkata Port Trust) of Kolkata, the first Major Port in India, is a riverine port. It serves a vast hinterland comprising the States of West Bengal, Bihar, Uttar Pradesh, Madhya Pradesh, Punjab, Haryana, Rajasthan, Assam, other North Eastern States and the two neighbouring landlocked countries viz. Nepal and Bhutan. The Port has two Docks viz. Kidderpore Dock (KPD) and Netaji Subhas Dock (NSD). Kidderpore Dock (KPD) is the older one with 17 Multi-purpose berths and 1 berth for passenger-cum-cargo vessels, 6 Buoys / Moorings and 3 Dry Docks while Netaji Subhas Dock (NSD) is a relatively new one with 1 heavy lift berth, 10 berths including 4 dedicated Container Berths, 1 Liquid Cargo Berth, 4 multi-purpose berths, 2 Buoys / Moorings and 2 Dry Docks. Both the docks of Syama Prasad Mookerjee Port, Kolkata (SMP) ("the Authority") operate under lock gate system. The Kolkata Dock System (KDS) is situated at Latitude 22° 32' N, Longitude: 88° 18' E in the city of Kolkata.

Presently most of the traffic is handled at NSD and minimum traffic is handled at KPD. In order to unlock the complete potential of KPD, Authority has initiated the project of "Rejuvenation of KPD" proposed to be executed through Public-Private- Partnership (PPP) mode. KPD is split into two parts: KPD-I and KPD-II separated by a bascule bridge. KPD-I has 10 berths while KPD-II has eight berths. Authority has now decided to undertake development and operation / maintenance of the western side berths of KPD-I in two phases viz. berths 2, 4 and 6 in Phase-I and berths 8,10 and 12 in Phase-II for handling containers and other cargo (viz. pulses & fertilizer / limestone).

Syama Prasad Mookerjee Port, Kolkata (the "**Authority**") is engaged in the development of the port and as part of this endeavour, the Authority has signed Concession Agreement with a Concessionaire to undertake "Rejuvenation of Kidderpore Docks (KPD-1 WEST) through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) Basis at Syama Prasad Mookerjee Port, Kolkata" (the "Project") in two phases. The indicative cost of the Project are Rs.95.66 Crores (Rupees Ninety-Five Crores and Sixty-Six Lakhs Only) for Phase-I and Rs. 86.15 Crores (Rupees Eighty-Six Crores and Fifteen Lakhs only) for Phase-II.

1.1.2 The Authority has decided to invite bids from reputed and experienced Engineering Consultancy firms to be engaged as Independent Engineer for providing the services specified in this RFP document. The Project was awarded on DBFOT basis to a private entity (the "**Concessionaire**") selected through a competitive bidding process. The Project would be implemented in accordance with the terms and conditions stated in the Concession Agreement between the Authority and the Concessionaire (the "**Concession Agreement**").

1.1.3 The Independent Engineer shall provide the services in accordance with the Terms of Reference specified in Section 7 of this RFP.

1.1.4 Scope of Concessionaire: -

The Concessionaire is required to implement the project "REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA" with all related facilities for starting commercial operation, construct his own offices and required other buildings, provide for required electrical and IT systems etc. In addition, the Concessionaire shall ensure compliance to Quality, Environmental, Safety and ISPS standards. Operation and maintenance of the facilities proposed throughout the concession period including attending to

repairs and replacements of the infrastructure / facilities as may be needed during the concession period and handing over of the entire infrastructure facilities and equipment to the Concessioneing authority in satisfactory working condition at the time of handing over of the project at the end of the concession period or earlier, if so occasioned.

1.1.5 **Excerpts from the Concession Agreement:**

The Excerpts from the Concession Agreement regarding project site and project requirements, forming part of the Concession Agreement as entered with the concessionaire are enclosed as Annexure I & II and Section 7.

1.2 Request for Proposal

The Authority invites Proposals (the “Proposals”) for selection of an Independent Engineer (the “Consultant”) who shall provide Engineering Consultancy Services towards the implementation of the Project. The Consultant shall review designs & drawings, construction methodology and monthly progress reports furnished by Concessionaire and undertake other activities in conformity with the TOR (collectively the “Consultancy”) stipulated at Section 7 of this RFP.

The Authority intends to select the Consultant through an open competitive bidding in accordance with the procedure set out herein.

1.3 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Authority and the Project site, sending written queries to the Authority, and attending a Pre-Proposal Conference on the date and time specified in the online bid reference.

1.4. Brief description of the Selection Process

The Authority has adopted a **two-stage** selection process (collectively the “**Selection Process**”) in evaluating the Proposals comprising technical and financial bids to be submitted as indicated in Notice Inviting online Tender. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. Based on technical evaluation, a list of short-listed / Technically Qualified applicants shall be prepared as specified in Clause 3.2. In the second stage, a financial evaluation will be carried out as per Clause 3.3.

1.5. Currency conversion rate and payment

1.5.1. For the purposes of technical evaluation of Applicants, **Rs. 80 per US\$** shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to US\$ as on the date **60 (sixty) days** prior to the Proposal Due Date, and the amount so derived in US\$ shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

1.5.2. All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP. The Consultant may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Consultant.

1.6. Pre-Proposal visit to the Site and inspection of data

Prospective applicants may visit the Site and review the available data at any time prior to Proposal Due Date. For this purpose, they will provide at least two days' notice to the nodal officer indicated below:

The Chief Engineer
Civil Engineering Department,
Kolkata dock system,
Syama Prasad Mookerjee Port, Kolkata
15, Strand road, Kolkata- 700001
Phone No. - 033 2230-3451; Extension: 398,399,400
E-mail id: cs.rao@kolkataporttrust.gov.in
sk.halder@kolkataporttrust.gov.in
& ce@kolkataporttrust.gov.in

1.7. Communications

All communications should be addressed to: As mentioned in clause 1.6 above

1.8. Pre-Proposal Conference

The date, time and venue of Pre-Proposal Conference shall be:

Date: 27.02.2023(Monday)
Time: 15.00 hrs.
Venue: Conference Room,
2nd Floor,
Civil Engineering Department,
Kolkata dock system,
Syama Prasad Mookerjee Port, Kolkata
15, Strand road, Kolkata- 700001

SECTION-2**INSTRUCTIONS TO BIDDERS & GENERAL TERMS AND CONDITIONS****A. GENERAL****2.1 Scope of Proposal**

2.1.1 Detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Consultancy are specified in this RFP. In case an applicant firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it may participate in the Selection Process either individually (the “**Sole Firm**”) or as lead member of a consortium of firms (the “**Lead Member**”) in response to this invitation. The term applicant (the “**Applicant**”) means the Sole Firm or the Lead Member, as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2 Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by the Authority through the Selection Process specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the Authority’s decisions are without any right of appeal whatsoever.

2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this Part-2 of the RFP. The **Technical proposal** shall be submitted in the form at **Appendix-I** and the **Financial Proposal** shall be submitted in the form at **Appendix-II**. Upon selection, the Applicant shall be required to enter into an agreement with the Authority in the form specified at Schedule-2.

2.1.4 Key Personnel

The Consultancy Team shall consist of the following key personnel (the “**Key Personnel**”) who shall discharge their respective responsibilities as specified below:

Key Personnel	Responsibilities
1. Team Leader / Project Manager	He will lead, co-ordinate and supervise the multidisciplinary team for providing services according to the TOR.
2. Civil Engineer cum Resident Engineer	He will be responsible for the Civil / Marine works related to the Project.
3. Sr. Engineer (Mechanical)	He will be responsible for the Mechanical works of the Project.
4. Electrical / Instrumentation Engineer	He will be responsible for the Electrical and Instrumentation part of the entire Project.
5. Environmental / Health & Safety Engineer	He will be responsible for the Safety of the entire project as per Standard Safety norms and Environmental issues related to the project.

6. Finance Expert	He will be responsible for financial issues related to the project.
7. Legal Expert	He will be responsible for legal issues related to the project.

2.2 Conditions of Eligibility of Applicants

2.2.1 Applicants must read carefully the minimum conditions of eligibility (the “**Conditions of Eligibility**”) provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility will be considered for evaluation.

2.2.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfil the following:

(A) **Technical Capacity:** The Applicant shall have, over the past 7 (Seven) years (ending 31.03.2022) preceding the PDD, undertaken a minimum of **3 (three)** Eligible Assignments as specified in Clause 3.1.4.

(B) **Financial Capacity:** The Applicant shall have received a minimum income of **Rs. 28.70 Lakhs (Rupees twenty-eight lakhs and seventy thousand only)** per annum on an average towards professional fees during each of the **3 (three)** financial years (**2019-20, 2020-21 and 2021-22**). For the purpose of evaluation, Applicants having comparatively larger revenues from professional fees shall be given added weightage. For the avoidance of doubt, professional fees hereunder refer to fees received by the Applicant for providing advisory or consultancy services to its clients.

(C) **Availability of Key Personnel:** The Applicant shall offer and make available all Key Personnel meeting the requirements specified in sub-clause (D) below.

(D) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Professional Experience	Experience on Eligible Assignments
1. Team Leader / Project Manager	B.E. (Civil) or equivalent with experience in Structural Engineering	Minimum 10 Years	Three (3) completed “Eligible Assignments” as per Clause 3.1.4 with no reference to the cost of the project.
2. Civil Engineer cum Resident Engineer	B.E (Civil) or equivalent	Minimum 7 Years	Two (2) completed “Eligible Assignments” as per Clause 3.1.4 with no reference to the cost of the project.
3. Sr. Engineer (Mechanical)	B.E (Mechanical) or equivalent	Minimum 7 Years	Two (2) completed “Eligible Assignments” as per Clause 3.1.4 with no reference to the cost of the project.

4. Electrical / Instrumentation Engineer	B.E(Electrical / Instrumentation) or equivalent	Minimum 7 Years	Two (2) completed “Eligible Assignments” as per Clause 3.1.4 with no reference to the cost of the project.
5. Environmental / Health & Safety Engineer	M.Sc. (Env) / M. Tech (Env) or equivalent	Minimum 7 Years	Two (2) completed “Eligible Assignments” as per Clause 3.1.4 with no reference to the cost of the project.
6. Finance Expert	Member of Institute of Chartered Accountants of India / Cost Accountants of India / PGDBM or MBA (Finance).	Minimum 7 Years of which 3 years in Infrastructure / BOT / PPP projects	Should have done at least two (2) assignments in Infrastructure Sector Including Port & Shipping Sector covering topics such as Capital Projects, PPP / BOT projects etc.
7. Legal Expert	Degree of LLB from an Accredited University	Minimum 7 Years of which 3 years in Infrastructure / BOT / PPP projects	Should have done at least two (2) assignments in Infrastructure Sector Including Port & Shipping Sector covering topics such as Capital Projects, PPP / BOT projects etc.

2.2.3 The Applicant shall enclose with its Proposal, certificate(s) **[UDIN Mandatory]** from its Statutory Auditors¹ stating its total revenues from professional fees during each of the past three financial years and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Applicant does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Applicant.

2.2.4 The Applicant should submit a Power of Attorney as per the format at Form-4 of Appendix-I; provided, however, that such Power of Attorney would not be required if the Application is signed by a partner of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.

2.2.5 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.

2.2.6 An Applicant or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.

2.2.7 While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making due provision for incorporation of the requested information.

1- No separate annual financial statements should be submitted.

2.3 Conflict of Interest

2.3.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the “**Conflict of Interest**”). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, *inter alia*, the time, cost and effort of the Authority including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

2.3.2 The Authority requires that the Consultant provides professional, objective, and impartial advice and at all times hold the Authority's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority.

2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-2. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:

- (a) The Applicant, its consortium member (the “**Member**”) or Associate (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the director indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding more

than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) 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 (bb) subject always to sub-clause (aa) above, where a person does not exercise control over 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 (bb) if the shareholding of such person in the intermediary is less than **26%** (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

(b) a constituent of such Applicant is also a constituent of another Applicant;

or

(c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or

(d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or

(e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Application of either or each of the other Applicant; or

(f) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or

(g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing

consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or

(h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (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 or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of **more than 5% (five per cent)** of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is **less than 5% (five per cent)** of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of **more than 50% (fifty percent)** of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of **5 (five) years** from the completion of this assignment or to consulting assignments granted by banks / lenders at any time; provided further that this restriction shall not apply to consultancy / advisory services performed for the Authority in continuation of this Consultancy or to any subsequent consultancy / advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

2.4 Number of Proposals

No Applicant or its Associate shall submit more than one Application for the Consultancy. An Applicant applying individually or as an Associate shall not be entitled to submit another application either individually or as a member of any consortium, as the case may be.

2.5 Cost of Proposal

The Applicants shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to the Authority, Project site etc. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.6 Site visit and verification of information

Applicants are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, access to the site, availability of drawings and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them. Visits shall be organized for the benefit of prospective Applicants on dates, time and venue as specified in Clause 1.8.

2.7 Acknowledgement by Applicant

2.7.1 It shall be deemed that by submitting the Proposal, the Applicant has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Authority;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in Clause 2.6 above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations there under;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 The Authority shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Authority.

2.8 Right to reject any or all Proposals

2.8.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals,

at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.8.2 Without prejudice to the generality of Clause 2.8.1, the Authority reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or discovered, or
- (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Proposal.

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If the Applicant is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest-ranking Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

B. DOCUMENTS

2.9 Contents of the RFP

2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 2.11:

Request for Proposal

- Section 1: Introduction
- Section 2: Instructions to Applicants
- Section 3: Criteria for Evaluation
- Section 4: Fraud and corrupt practices
- Section 5: Pre-Proposal Conference
- Section 6: Miscellaneous
- Section 7: Terms of Reference& Excerpts from MCA
- Section 8: E-Payment
- Section 9: Site information and Project information
- Section 10: Port assets and Drawings.

Schedules

1. Form of Agreement

Annex-1: Terms of Reference

Annex-2: Deployment of Personnel

Annex-3: Estimate of Personnel Costs (deleted)

Annex-4: Approved Sub-Consultant(s)

Annex-5: Cost of Services

Annex-6: Payment Schedule

Annex-7: Bank Guarantee for Performance Security

2. Guidance Note on Conflict of Interest.

Appendices:

Appendix-I: Technical Proposal

Form 1: Bid Submission Letter

Form 2: Particulars of the Applicant

Form 3: Statement of Legal Capacity

Form 4: Power of Attorney

Form 5: Financial Capacity of Applicant

Form 6: Abstract of Eligible Assignments of Applicant

Form 6a: Eligible Assignments of Applicant

Form 7: Particulars of Key Personnel

Form 7a: Abstract of Eligible Assignments of Key Personnel

Form 7b: Eligible Assignments of Key Personnel

Form 7c: CV of Key Personnel

Form 8: Proposed Methodology and Work Plan

Form 9: Deployment of Personnel

Form 10: Proposal for Sub-Consultant(s)

Form 11: Integrity Pact

Appendix-II: Financial Proposal

Form 1: Covering Letter

Form 2: Financial Proposal

Appendix-III: General Condition of Contract (GCC)

2.10 Clarifications

2.10.1 The prospective Tenderer may submit queries if any through e-tendering portal addressed to the Chief Engineer in connection with this tender on or before the date mentioned in the Online Bid Reference, so that the queries can be clarified.

The Authority shall endeavour to respond to the queries within the period specified therein. The Authority will post the reply to all such queries on the Official Website / e-procurement portal. The bidders' queries will be clarified through e-procurement portal and notification in this regard will be issued through www.smporkolkata.shipping.gov.in and e-procurement portal link i.e. <https://kopt.enivida.in>.

2.10.2 The Authority reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the Authority to respond to any question or to provide any clarification.

2.11 Amendment of RFP

2.11.1 At any time prior to the deadline for submission of Technical Proposal, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Corrigendum / Addendum / Amendment and posting it on the Official Website of SMPK / e-procurement portal and will be binding on all Applicants.

2.11.2 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Authority may, in its sole discretion, extend the Proposal Due Date.

C. PREPARATION AND SUBMISSION OF PROPOSAL

2.12 Language

The Proposal with all accompanying documents (the “**Documents**”) and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant

passages in English, in which case, for all purposes of interpretation of the proposal translation in English shall prevail.

2.13 Format and signing of Proposal

2.13.1 The Applicant shall provide all the information sought under this RFP. The Authority would evaluate only those Proposals that are received in the specified forms and complete in all respects.

2.13.2 The Proposal and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall initial each page, in blue ink. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the “**Authorized Representative**”) as detailed below:

- (a) By the proprietor, in case of a proprietary firm; or
- (b) By a partner, in case of a partnership firm and/or a limited liability partnership; or
- (c) By a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation; or
- (d) By the authorized representative of the Lead Member, in case of consortium.

2.13.3 A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarized by a notary public in the form specified in Appendix-I (Form- 4) shall accompany the Proposal.

2.13.4 Applicants should note the Proposal Due Date, as specified in online Bid reference, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause

2.13.5. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Authority reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.23.

2.14 Technical Proposal

2.14.1 Applicants shall submit the technical proposal in the formats at Appendix-I (the “**Technical Proposal**”).

2.14.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:

- (a) The Bid Security is provided;
- (b) All forms are submitted in the prescribed formats and signed by the prescribed signatories;
- (c) Power of Attorney, if applicable, is executed as per Applicable Laws;
- (d) CVs of all Professional Personnel have been included;
- (e) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.2.2 (D) of the RFP;
- (f) No alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- (g) The CVs have been recently signed and dated in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned / countersigned CVs shall be rejected;
- (h) The CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;
- (i) Professional Personnel proposed have good working knowledge of English language;
- (j) Key Personnel would be available for the period indicated in the TOR;
- (k) No Key Personnel should have attained the age of **75 (seventy-five) years** at the time of submitting the proposal; and
- (l) The proposal is responsive in terms of Clause 2.21.3.

2.14.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the Authority for a period of 5 (five) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event.

2.14.5 The Technical Proposal **shall not include any financial information** relating to the Financial Proposal.

2.14.6 The proposed team shall be composed of experts and specialists (the “**Professional Personnel**”) in their respective areas of expertise and managerial / support staff (the

“**Support Personnel**”) such that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the format at Form-12 of Appendix-I.

2.14.7 An Applicant may, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise. Credentials of such firms should be submitted in Form-14 of Appendix-I. A **Sub-Consultant, however, shall not be a substitute for any Key Personnel.**

2.14.8 The Authority reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the Authority to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the authority there under.

2.14.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority without the Authority being liable in any manner whatsoever to the Applicant or Consultant, as the case may be. In such an event, the Authority shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the Authority for, *inter alia*, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

2.14.10 The documents listed in Appendix-I shall be filled in without exception and uploaded through e-procurement on website <https://kopt.enivida.in>.

2.15 Financial Proposal

2.15.1 The financial bid as in Appendix-II (the “Financial Proposal”) submitted through e-procurement mode only will be taken up for the purpose for evaluation.

2.15.2 While submitting the Financial Proposal, the Applicant shall ensure the following:

(i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc.), accommodation, air fare, equipment, printing of documents, surveys, geo-technical investigations etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

(ii) The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.

(iii) Costs shall be expressed in INR.

(iv) For the purpose of payment of GST, Registration certificate shall be enclosed.

2.16 Submission of Proposal

2.16.1 In case the proposal is submitted on the document down loaded from Official Website / e-procurement portal, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by the Authority, the latter shall prevail.

2.16.2 The Proposal has to be submitted as per the online tender procedure indicated in Notice Inviting **Online Tender** and Instructions for Online Bid submission, details of technical bid, details of financial bid, determination of responsiveness of bids.

2.16.3 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents which include copy of contracts.

2.16.4 The rates quoted shall be firm throughout the period of performance of the assignment upto and discharge of all obligations of the Consultant under the Agreement.

2.17 Proposal Due Date

2.17.1 The Proposal should be submitted before 15:00 hrs. on the Proposal Due Date for online submission as in Online Bid Reference in the manner and form as specified in Notice Inviting Online Tender.

2.17.2 The Authority may, in its sole discretion, extend the Proposal Due Date by issuing Corrigendum / Addendum in accordance with Clause 2.11 uniformly for all Applicants.

2.18 Late Proposals

Proposals received by the Authority after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

2.19 Modification / substitution / withdrawal of Proposals

2.19.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Authority prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.

2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.19.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.20 Bid Security

2.20.1 The Applicant as part of its Proposal, a bid security of Rs.1,91,320/- (Rupees One Lakh Ninety-One Thousand Three Hundred Twenty Only) shall pay as described in the Tender Document.

The "Bid Security" is to be remain valid for a period of 45 (forty-five) days beyond the final bid validity period of 180 days.

Bid security should be released to unsuccessful bidders once the contract has been signed with the winning consultant at the earliest after expiry of final bid validity and latest on or before the 30th day after the award of the contract.

2.20.2 Any Bid not accompanied by the Bid Security shall be rejected by the Authority as non-responsive.

2.20.3 The Authority shall not be liable to pay any interest on the Bid Security and the same shall be interest free.

2.20.4 The Applicant, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Authority's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, inter alia, the time, cost and effort of the Authority in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- (a) If an Applicant submits a non-responsive Proposal;

- (b) If an Applicant engages in any of the Prohibited Practices specified in Section-4 of this RFP;
- (c) If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;
- (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause 2.24.1;
- (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses 2.28 and 2.29 respectively;
- or
- (f) If the Applicant is found to have a Conflict of Interest as specified in Clause 2.3.

D. EVALUATION PROCESS

2.21 Evaluation of Proposals

- 2.21.1 The Authority shall open the proposals at the scheduled time and date, mentioned in this RFP. The “Technical proposal” will be opened first and the “Financial Proposal” will be opened after completion of the evaluation of the Technical Proposal.
- 2.21.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.
- 2.21.3 Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the RFP. The Authority may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if,
 - (a) the Technical Proposal is received in the form specified at Appendix-I;
 - (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.17;
 - (c) it is accompanied by the Bid Security as specified in Clause 2.20.1.
 - (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
 - (f) it contains all the information (complete in all respects) as requested in the RFP;

- (g) it does not contain any condition or qualification; and
- (h) it is not non-responsive in terms hereof.

2.21.4 The Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Proposals.

2.21.5 The Authority shall subsequently examine and evaluate Technical Proposals in accordance with the Selection Process set out in Section 3 of this RFP.

2.21.6 After the technical evaluation, the Authority shall prepare a list of pre-qualified and shortlisted Applicants in terms of Clause 3.2. A date, time and venue will be notified to all Applicants for announcing the result of evaluation and opening of Financial Proposals. The opening of online Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present physically. The Authority will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The evaluation of Financial Proposals shall be carried out in terms of Clauses 3.3.

2.21.7 Applicants are advised that Selection will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.

2.21.8 Any information contained in the Proposal shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

2.22 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the Authority in relation to matters arising out of, or concerning the Selection Process. The Authority will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Authority.

2.23 Clarifications

- 2.23.1 To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.23.2 If an Applicant does not provide clarifications sought under Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Authority may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

E APPOINTMENT OF CONSULTANT

2.24 Negotiations

- 2.24.1 The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. **A Key Personnel** who did not score **60%** (sixty per cent) marks as required under Clause 3.1.2 shall be replaced by the Applicant with a better candidate to the satisfaction of the Authority. In case the Selected Applicant fails to reconfirm its commitment, the Authority reserves the right to designate the Applicant who has secured second highest combined score as the Selected Applicant and invite it for negotiations.
- 2.24.2 The Authority will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.
- 2.24.3 The Authority will examine the credentials of all Sub-Consultants proposed for this Consultancy and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.

2.25 Substitution of Key Personnel

- 2.25.1 Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel specified in the clause 3.1.2. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any

of the Key Personnel, the Consultants shall forthwith provide as a replacement, a person of equivalent or better qualifications with the approval of the employer.

2.25.2 As a condition to first substitution, the original Key Personnel will be allowed to be substituted with proper reason and equivalent or better qualification. In the case of a second substitution and further hereunder, such deduction shall be a sum equivalent to 10% (ten percent) of the remuneration specified for each substitution of the original Key Personnel. If the Employer (i) finds that any of the Personnel has committed a serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Employer's written request specifying the grounds there for, forthwith provide as a replacement a person with qualifications and experience acceptable to the Employer.

2.25.3 Substitution of the Team Leader will not normally be considered and may lead to disqualification of the Applicant or termination of the Agreement.

2.26 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify the Authority for an amount not exceeding 3 (three) times the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services.

2.27 Award of Consultancy

After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Applicant to acknowledge the LOA, and the next highest ranking Applicant may be considered (as per clause 3.3.3).

2.28 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period specified in LOA. The Selected Applicant shall not be entitled to seek any deviation in the

Agreement.

2.29 Commencement of assignment

The Consultant shall commence the Services at the Project site within 7 (seven) days of the date of the Agreement, or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.28 or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the Bid Security of the first ranked Applicant shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

2.30 Proprietary data

Subject to the provisions of Clause 2.22, all documents and other information provided by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. The Authority will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to the Authority in relation to the Consultancy shall be the property of the Authority.

2.31 Shortfall document:

Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tendering process.

SECTION - 3

CRITERIA FOR EVALUATION

3.1 Evaluation of Technical Proposals

3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, its understanding of TOR, proposed methodology and Work Plan, and the experience of Key Personnel. Only those Applicants whose Technical Proposals score 60 marks or more out of 100 shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score.

3.1.2 Each Key Personnel must score a **minimum of 60%** marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 60% marks or any two of the remaining Key Personnel score less than 60% marks. In case the Selected Applicant has one Key Personnel, other than the Team Leader, who scores less than 60% marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the Authority, would score 60% or above.

3.1.3 The scoring criteria to be used for evaluation shall be as follows: -

Sl. No.	Parameter	Maximum Marks	Criteria
1.	Relevant Experience of the Applicant * For example, if 1 additional eligible assignment with a value of Rs. 38.26 Crores is provided, it will be coming under 'a' and the mark for the same is 6.25.	25	While awarding marks for relevant experience of the applicant, no score will be awarded to an Applicant for fulfilling the minimum eligibility criteria prescribed in clause 2.2.2 (A) and only projects exceeding the eligibility criteria will be considered for the following scoring: a) 25% marks shall be awarded for each additional Eligible Assignment with a value of minimum Rs. 38.26 Crores and upto Rs. 47.83 Crores . b) 50% marks shall be awarded for each additional Eligible Assignment with a value of not less than Rs. 47.38 Crores and upto Rs. 76.52 Crores . c) 100% marks shall be awarded for each additional Eligible Assignment with a value of more than Rs. 76.52 Crores .

2.	Proposed Methodology and Work Plan	5	Evaluation will be based on the quality of submission.
3.	Relevant Experience of the Key personnel	70	<p>Key Personnel shall fulfil the experience criteria prescribed in clause 2.2.2 (D) for minimum eligibility.</p> <p>While awarding marks for relevant experience of the Key Personnel, no score will be awarded to a Key Personnel for fulfilling the minimum eligibility criteria prescribed in clause 2.2.2 (D) and only projects exceeding the eligibility criteria will be considered for the following scoring.</p> <p>a) 25% marks shall be awarded for each additional Eligible Assignment undertaken by each Key personnel with a value of minimum Rs. 38.26 Crores and upto Rs. 47.83 Crores.</p> <p>b) 50% marks shall be awarded for each additional Eligible Assignment undertaken by each Key personnel with a value of not less than Rs. 47.38 Crores and upto Rs. 76.52 Crores.</p> <p>c) 100% marks shall be awarded for each additional Eligible Assignment undertaken by each Key personnel with a value of more than Rs. 76.52 Crores.</p>
3a)	Team Leader/ Project Manager	20	
3b)	Civil Engineer cum Resident Engineer	10	
3c)	Sr. Engineer Mechanical	10	
3d)	Electrical / Instrumentation Engineer	10	
3e)	Environmental / Health & Safety Engineer	10	
3f)	Finance Expert	5	
3g)	Legal Expert	5	
Total Marks		100	

Note: While awarding marks for relevant experience of the Applicant / Key Personnel as the case may be, no score will be awarded to an Applicant / Key Personnel for fulfilling the eligibility criteria of a minimum number of Eligible Assignments prescribed in clause 2.2.2 (A) & (D) and only projects exceeding the eligibility criteria shall qualify for scoring. For the avoidance of doubt, it is clarified that if the minimum number of Eligible Assignments for meeting the eligibility criteria is [3 (three)], then an equivalent number will be ignored for each Applicant and only the balance remaining will be considered for awarding score.

3.1.4 Eligible Assignments

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, engineering consultancy assignments in respect of design, monitoring and supervision of construction, for the following projects shall be deemed as eligible assignments (the “Eligible Assignments”) of which at least one assignment should be in respect of Feasibility studies / Detailed Project Report / design and the remaining in monitoring and supervision.

Development of Port / IWT / Marine Infrastructure having an estimated capital cost (excluding land) of at least **Rs. 38.26 crore** (Rupees thirty-eight crores and twenty-six lakhs only) in case of each project in India. Project located outside India will not be considered as Eligible Project. For the purpose of this RFP, Port Infrastructure would be deemed to include berths, jetties, breakwater, stackyard, space for machinery, railway lines, port equipment etc.

Provided that the Applicant firm claiming credit for an Eligible Assignment shall have, prior to Proposal Due Date, received professional fees of at least **Rs. 28.70 lakhs** (Rupees Twenty-eight lakhs and seventy thousand only) for such completed assignment.

Provided further that if the Applicant firm is taking credit for an Eligible Assignment which was undertaken for a private sector entity, such assignment shall have been completed prior to Proposal Due Date and the Applicant shall have received professional fees of at least **Rs. 58 Lakhs** (Rupees Fifty-Eight Lakhs Only) and where credit is being claimed by a Key Personnel, she/he should have completed the relevant assignment prior to Proposal Due Date.

3.2 Short-listing of Applicants

3.2.1 The Applicants ranked as aforesaid shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such pre-qualified Applicants is less than two, the Authority may, in its sole discretion, prequalify the Applicant(s) whose technical score is less than 70 points even if such Applicant(s) do(es) not qualify in terms of Clause 3.1.2; provided that in such an

event, the total number of pre-qualified and short-listed Applicants shall not exceed two.

3.2.2. The Financial Proposal of the shortlisted applicants will be opened on the specified date and time which will be notified by the authority as per Notice inviting online tender and the instructions there on. The date, time and venue for opening of Financial Proposal will be notified by the Authority to all the remaining short-listed Applicants.

3.3 Evaluation of Financial Proposal

3.3.1 For Financial evaluation, the Professional fee indicated in the Financial Proposal excluding GST will be considered.

3.3.2 The Authority will determine whether the Financial Proposals are complete, unqualified and unconditional. The Cost indicated in the Financial Proposal shall be deemed as Final and reflecting the Total Cost of Services. Omissions, if any, in costing any item shall not entitle the Consultant to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Consultant.

3.3.3 The bids will be finally ranked according to the combined score of technical and financial Proposals as per the computation below. The bidder whose combined score is the highest subject to the provisions in Clause 3.2 above shall be declared as the successful bidder.

After opening of Financial proposals, the lowest financial proposal (FM) will be given a financial score (FS) of 100 points. The Financial scores of other proposals will be computed as follows:

$$\text{FS} = 100 \times \text{FM} / \text{F}$$

(F = Amount of financial proposal of the other bidder)

3.3.4. Proposals will finally be ranked according to their combined **Technical (TS)** and **Financial scores (FS)** as follows:

$$\text{S} = \text{TS} \times 0.70 + \text{FS} \times 0.30$$

Where '**S**' is the combined score and weightages assigned to Technical Proposal and Financial Proposal shall be **0.70** and **0.30** respectively.

The qualified Bidder who secures **highest combined score would be declared as the successful Bidder**. In the event that two or more bidders secure same combined score, the Bidder who scores the highest technical score will be considered as the successful bidder.

3.3.5 The Bidder with second highest combined score shall be kept in reserve and may be invited in Authority's discretion for negotiation in case, the first ranked applicant withdraws, or fails to comply with the provisions specified in clauses 2.24, 2.28 and 2.29 as the case maybe.

Section-4

FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Authority shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”) in the Selection Process. In such an event, the Authority shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by the Authority to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly
- or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year

from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of the Authority in relation to any matter concerning the Project;

- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

Section-5

PRE-PROPOSAL CONFERENCE

- 5.1 Pre-Proposal Conference of the Applicants shall be convened at 15-00 hrs on the date indicated in the Online Bid Reference. Applicants who have downloaded the RFP document from the Official Website of the Authority can seek any clarification and participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.
- 5.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process. The Authority's Response to the clarification will be uploaded in the SMPK website <https://kopt.enivida.in> and <https://smportkolkata.shipping.gov.in> including a description of the enquiry but without identifying the source, which will also form a part of the Independent Engineer agreement.

Section-6
MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Kolkata shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Authority by, on behalf of and / or in relation to any Applicant; and / or
 - (d) Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 All documents and other information supplied by the Authority or submitted by an Applicant shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 6.4 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

Section-7

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

1.1. These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated 26th September 2022 (the “**Agreement**”), which has been entered into between the Authority and M/s Century Ports Ltd. (the “**Concessionaire**”) for the Project at on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement

2.2 References to Articles, Clauses and Appendix in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Appendix of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.3, 1.4 and 1.5 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- a. review of the Designs and Drawings as set forth in Paragraph 4;
- b. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
- c. conducting Tests on completion of construction and issuing Completion / Provisional Certificate as set forth in Paragraph 5;
- d. review, inspection and monitoring of operation and maintenance as set forth in Paragraph 6;

- e. review, inspection and monitoring of Concessionaire's obligations in Clause 18.2 and as set forth in Paragraph 7;
- f. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- g. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- h. assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
- i. undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including 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/observations to the Concessioneing Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and specifications and standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings in accordance with Appendix-6 and furnish its comments thereon to the Concessioneing Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments

within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Concessioneing Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Concessioneing Authority.

5. Construction Period

5.1 In respect of the Drawings, Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatimutandis*.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Concessioneing Authority and the Concessionaire within 7 (seven) days of receipt of such report.

5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, 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 Scope of the Project and the specifications and 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 of the Project. The Independent Engineer shall send a copy of its Inspection Report to the Concessioneing Authority and the Concessionaire within 7 (seven) days of the inspection.

5.4 The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to specifications and standards, the Independent Engineer shall require the Concessionaire 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. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the

Concessioneing Authority in relation to structures, buildings and equipment (the “Quality Control Manuals”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

5.6 The sample size of the tests, to be specified by the Independent Engineer under paragraph 5.5, shall comprise 10% of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% for certain categories or types of tests.

5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. 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 Concessionaire for its own quality assurance in accordance with Good Industry Practice.

5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire 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 specifications and standards, and the provisions of this Paragraph 5 shall apply to such tests.

5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, 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 Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioneing Authority and the

Concessionaire forthwith.

5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Concessions Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Concessions Authority forthwith, recommending whether or not such suspension may be revoked by the Concessions Authority.

5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.

5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in this section and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Clause 6.7 and this section.

5.14 Upon reference from the Concessions Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 6.8 and certify the reasonableness of such costs for payment by the Concessions Authority to the Concessionaire.

5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the maintenance manual.

6. Operation Period

6.1 In respect of the Drawings, Documents and Safety Standards received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

6.2 The Independent Engineer shall review the monthly report on cargo traffic, unit gross output/discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services furnished by the Concessionaire and send its comments thereon to the Concessioneing Authority and the Concessionaire within 7 (seven) days of receipt of such report.

6.3 The Independent Engineer shall inspect the Project, once every year, before the 20th (twentieth) day of any month, and make out an operation and maintenance inspection report setting forth an overview of the status, quality and safety of operation and maintenance including its conformity with the key performance indicators, maintenance requirements and Safety Standards. In a separate section of the operation and maintenance inspection report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in operation and maintenance of the Project. The Independent Engineer shall send a copy of its operation and maintenance inspection report to the Concessioneing Authority and the Concessionaire within 7 (seven) days of the inspection.

6.4 The Independent Engineer may inspect the Project more than once in a year, if any lapses, defects or deficiencies require such inspections.

6.5 The Independent Engineer shall in its operation and maintenance inspection report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the maintenance requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

6.6 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the damages, if any, payable by the Concessionaire to the Concessioneing Authority for such delay.

7. Termination

7.1 At any time, not earlier than 90 (ninety) days prior to termination but not later than 15 (fifteen) days prior to such termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the requirements set forth in Clause 18.2 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance.

8. Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

9.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

The Independent Engineer shall notify its programme of inspection to the Concessioneing Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents

sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Concessioneing Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Concessioneing Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Concessioneing Authority or such other person as the Concessioneing Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Concessioneing Authority.

11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Annexure

Tests

- 1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the Project Requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and their Contractor shall be as per the relevant provisions of this Agreement.
- 2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipments and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the Good Industry Practice shall be used for testing with the approval of the Independent Engineer.
- 3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.
- 4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipments and machinery.
- 5) The Independent Engineer at its discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipments and machinery and any other component to ascertain the soundness of the work.

6) Schedule of Test.

- (i) The Concessionaire shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of this Agreement.
- (ii) The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted.

7) Tests.

- (i) **Visual and physical test:** The Independent Engineer shall conduct a visual and physical check of the Project Requirements to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
 - (ii) **Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of the IS codes for manufacture and testing of equipments and machinery
 - (iii) **Structural test:** All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
 - (iv) **Environmental Audit:** The Independent Engineer shall carry out a check to determine conformity of the Project Requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
 - (v) **Safety Review:** Safety audit of the Project Requirements shall have to be undertaken with the assistance of the relevant statutory authorities and determine conformity of the Project Requirements with the provisions of the Agreement.
 - (vi) **The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged by the Concessionaire.
- 8) The Independent Engineer shall obtain a copy of operational and maintenance manuals of the Project Requirements from the Concessionaire and verify the contents of the manual in order to meet the following requirements: The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual shall also cover the minimum maintenance requirement to adhere to the Performance Standards as per the provisions of this Agreement. The manual shall generally cover the expected failures and

time taken for repairs and maintenance.

9) The test procedure shall be followed as per ASTM, BIS, IS.

10) Test shall also satisfy the appropriate Authority and Certification

- (i) Dock safety Directorate
- (ii) Environmental Authority
- (iii) Director of Explosives
- (iv) Fire
- (v) Ground Water Authority
- (vi) Customs
- (vii) Indian Railways

11) Test of Handling Equipments & Electrification works The Concessionaire shall within a period of 45 (forty-five) days of Date of Award of Concession submit to Concessioneing Authority and Independent Engineer a report highlighting type of tests that would required to be carried out as per the type of the equipments for the above mentioned categories. The Independent Engineer after taking into account Concessioneing Authority's comments shall send its comments to the concessionaire within 15 (fifteen) days of receipt of report highlighting type of tests that would required to be carried out as per the type of the equipments for the above mentioned categories. The Concessionaire shall incorporate comments of the Independent Engineer and shall submit revised document within 10 (ten) days of receipt of comments.

Section-8

E-PAYMENT

E-PAYMENT – Payments of IE's bills through Banks

Payments due to the IE may, if so desired by him be made to the bank instead of direct to him, provided that the IE furnishes to the Chief Engineer, Civil Engineering Department, SMPK an authorization in the form of a legally valid document such as a power of attorney conferring authority on the bank to receive payments and (2) his own acceptance of the correctness of the account made out as being due to him by employer or his signature on the bill or other claim preferred against employer before settlement by the Chief Engineer, Civil Engineering Department, SMPK of the account or claim by payment to the Bank. While the receipt given by such banks shall constitute a full and sufficient discharge for the payment the IE should, wherever possible present his bills duly receipted and discharged through his bankers. Nothing here in contained shall operate to create in favour of the date on which e-payment to the IE by the employer will be considered as the date of payment for all purposes. Delay in making such payments by the employer due to exceptional circumstances shall not nullify or vitiate in any way or other the conditions of the contract and the IE shall have no claim on this account.

The Engineers may by any certificate make any correction or modification in any previous certificate which shall have been issued by him and shall have power to withhold any certificate if the work or any part thereof is not being carried out to his satisfaction. Balance payment will be released on completion of work to the satisfaction of Engineer's Representatives. No claim will be entertained by SMPK in this account.

The arrangements designed to work are as follows:

1. The amount due to the payee will be intimated to the port Bankers in the form of Electronic messages.
2. The Bank will arrange to credit the amount to the parties account through electronic transfer failing which by other modes as detailed further.
3. If the payee's account is with any of the computerized & net worked branches of the above named Banks, the amount due to the payee will be credited to the payee instantly without payment of Bank charges.
4. In all other cases, payment will be arranged through Banker's Cheque / DDs by the Authority through "speed post" or "courier service". For this the bank charges at the appropriate rates will be payable by the payee.

E-Payment Form

To

The Chief Engineer

Civil Engineering Department,

15, Strand road, Kolkata- 700001

Sir,

We hereby give particulars for payment of the Works bill / Advance etc.

Sl. No	Particulars	
1	Name of the IE:	
2	Address of the IE:	
3	Name of the work for which payment is made:	
4	Agreement dated: Work order No.:	
5	Name of the bank in which IE operating account:	
6	Address of the Bank:	
7	Branch Code No.:	
8	Type of Account (Whether SB A/c or Current A/c)	
9	Account No.:	
10	PAN No.:	
11	GST Registration No.:	

Yours Sincerely

(Signature of Authorized representative of IE)

Section-9

SITE INFORMATION

Site Information and Project information

1. Syama Prasad Mookerjee Port, Kolkata, the oldest in India, is located on the east coast on the river Hooghly in the state of West Bengal. It is one of the oldest Ports and only riverine Major Port of India in the eastern coast which became operational in the year 1870. It was declared as a Major Port under the Major Port Trust Act, 1963 subsequently. Geographically, Kolkata Dock System is situated on the left bank of the river Hooghly in position Latitude of 22°32'53" North and Longitude 88°18'5" East.

Syama Prasad Mookerjee Port, Kolkata maintains two approach channels from sea and through Eastern channel, the vessels visit to Khidderpore Dock (KDS). The pilotage distance to KDS is 223km comprising 148 km of river and 75 km of sea pilotage. Remote pilotage assistance is provided through VTMS during the sea passage of the vessels in the above channels.

Phase-I:

- a) Berth No. 2, 4 & 6 with a Quay length of 400m
- b) The land area comprising of **73,578** sq.m for backup area.
- c) Shed No.2 admeasuring area of 3,109 sq.m.

Section-10

PORT ASSETS AND DRAWINGS

A. PORT ASSETS

The Port's Assets being handed over to the Concessionaire during the Concession Period for each phase on as-is-where-is basis is as follows:

Phase-I:

- a) Berth Nos.: 2, 4 & 6 with a quay length of 400 m
- b) The land area comprising of **73,578** sq.m for backup area.
- c) Shed No. 2 admeasuring area of 3,109 sq.m

Phase-II:

- a) Berth nos.: 8, 10 & 12 with a quay length of 400m
- b) The land area comprising of **60,701**sq.m for backup area.
- c) Shed No. 12 admeasuring area of 4,988 sq.m

Note: The area proposed to be allotted to the Concessionaire is only indicative. However, marginal adjustments in the area will be made depending on the actual site conditions. The area to be handed over to the Concessionaire will be jointly surveyed by the representatives of the Concessions Authority and Concessionaire. The License fee as per Article 9 of Concession Agreement will be based on actual measured area.

B. Drawings

As per FEASIBILITY REPORT attached along with this tender document

SCHEDULES

SCHEDULE- 1
FORM OF AGREEMENT

(See Clause 2.1.3)

AGREEMENT

FOR

**INDEPENDENT ENGINEER (IE) FOR THE PROJECT “REJUVENATION OF
KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD,
FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD
MOOKERJEE PORT, KOLKATA”**

Contents

1. General

- 1.1 Definitions and Interpretation
- 1.2 Relation between the Parties
- 1.3 Rights and Obligations
- 1.4 Governing law and jurisdiction
- 1.5 Language
- 1.6 Table of contents and headings
- 1.7 Notices
- 1.8 Location
- 1.9 Authority of Member-in-charge
- 1.10 Authorised representatives
- 1.11 Taxes and duties

2. Commencement, Completion and Termination of Agreement

- 2.1 Effectiveness of Agreement
- 2.2 Commencement of Services
- 2.3 Termination of Agreement for failure to commence Services
- 2.4 Expiration of Agreement
- 2.5 Entire Agreement
- 2.6 Modification of Agreement
- 2.7 Force Majeure
- 2.8 Suspension of Agreement
- 2.9 Termination of Agreement

3. Obligations of the Consultant

- 3.1 General
- 3.2 Conflict of Interest
- 3.3 Confidentiality
- 3.4 Liability of the Consultant
- 3.5 Insurance to be taken out by the Consultant

- 3.6 Accounting, inspection and auditing
- 3.7 Consultant's actions requiring the Authority's prior approval
- 3.8 Reporting obligations
- 3.9 Documents prepared by the Consultant to be the property of the Authority
- 3.10 Equipment and materials furnished by the Authority
- 3.11 Providing access to the Project Office and Personnel
- 3.12 Accuracy of Documents
- 4. Consultant's Personnel and Sub-Consultant**
 - 4.1 General
 - 4.2 Deployment of Personnel
 - 4.3 Approval of Personnel
 - 4.4 Substitution of Key Personnel
 - 4.5 Working hours, overtime, leave etc.
 - 4.6 Resident Team Leader and Project Manager
 - 4.7 Sub-Consultants
- 5. Obligations of the Authority**
 - 5.1 Assistance in clearances etc.
 - 5.2 Access to land and property
 - 5.3 Change in Applicable Law
 - 5.4 Payment
- 6. Payment to the Consultant**
 - 6.1 Cost estimates and Agreement Value
 - 6.2 Currency of payment
 - 6.3 Mode of billing and payment
- 7. Liquidated damages and penalties**
 - 7.1 Performance Security
 - 7.2 Liquidated Damages
 - 7.3 Penalty for deficiency in Services
- 8. Fairness and Good Faith**
 - 8.1 Good Faith

8.2 Operation of the Agreement

9. Settlement of Disputes

9.1 Amicable settlement

9.2 Dispute resolution

9.3 Conciliation

9.4 Arbitration

ANNEXES

Annex 1: Terms of Reference

Annex 2: Deployment of Personnel

Annex 3: Estimate of Personnel cost (**deleted**)

Annex 4: Approved Sub-Consultant(s)

Annex 5: Cost of Services

Annex 6: Payment Schedule

Annex 7: Bank Guarantee for Performance Security

AGREEMENT

INDEPENDENT ENGINEER (IE) FOR THE PROJECT “REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA”

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the day of the month of _____ 2023, between, on the one hand, the Board of Trustees of Syamaprasad Mookerjee Port, Kolkata (hereinafter called the “**Authority**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal for INDEPENDENT ENGINEER (IE) FOR THE PROJECT “REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA”.
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated “**LOA**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement. NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

- 1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- a) “**Additional Costs**” shall have the meaning set forth in Clause 6.1.2;
- b) “**Agreement**” means this Agreement, together with all the Annexes;

- c) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.2;
- d) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- e) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;
- f) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- g) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- h) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- i) “**Expatriate Personnel**” means such persons who at the time of being so hired had their domicile outside India;
- j) “**Government**” means the Government of India;
- k) “**INR, Re. or Rs.**” Means Indian Rupees;
- l) “**Member**”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “**Members**” means all of these entities;
- m) “**Party**” means the Authority or the Consultant, as the case may be, and Parties means both of them;
- n) “**Personnel**” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- o) “**Resident Personnel**” means such persons who at the time of being so hired had their domicile inside India;
- p) “**RFP**” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- q) “**Services**” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- r) “**Sub-Consultant**” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7;

s) **“Third Party”** means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Award.

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of the Authority and the Consultant shall be as set forth in the Agreement, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) the Authority shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Kolkata shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

1.6 Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Kolkata may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Consultant may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Visakhapatnam it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights and obligations towards the Authority under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

1.10 Authorized Representatives

- 1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the

Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

- 1.10.2 The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

Chief Engineer,
2nd Floor,
15, Strand Road, Kolkata,
Syama Prasad Mookerjee Port
Kolkata, West-Bengal, Pin -700001
Website: www.smporkolkata.shipping.gov.in
Email: ce@kolkataporttrust.gov.in

- 1.10.3 The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

Tel: _____ Mobile: _____ Fax: _____ Email: _____

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions (other than GST) as may be levied under the Applicable Laws and the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect on the date of this Agreement (the "**Effective Date**").

2.2 Commencement of Services

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 2 (two) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the Consultant shall stand forfeited.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this

Agreement shall, unless extended by the Parties by mutual consent, expire upon the expiry of **6 (six) months** from the date of commercial operations of the Project, by the Concessionaire. Upon Termination, the Authority shall make payments of all amounts due to the Consultant hereunder.

2.5 Entire Agreement

2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Agreement, "**Force Majeure**" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been

expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.

- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement. The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3 Measures to be taken:

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 **Extension of time**

2.7.4.1. Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.7.4.2. If the construction work is extended beyond the period and if the commercial operation of handling LPG could not be started, the period for IE is also to be extended on the basis of Man-months rates quoted as per the agreement.

2.7.5 **Payments**

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.7.6 **Consultation**

Not later than **30 (thirty) days** after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material

portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8 Suspension of Agreement

The Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 30 (thirty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to

the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- (a) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within **45 (forty-five) days** (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach;
- (c) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than **60 (sixty) days**; or
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Consultant's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Authority):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily

- performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Sub-Consultants or Third Parties.

3.1.2 Terms of Reference

The scope of services to be performed by the Consultant is specified in the Terms of Reference (the "TOR") at Annex-1 of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel and agents of the Consultant and any Sub-Consultant, comply with the Applicable Laws.

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project The

Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy / advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Sub-Consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4 Consultant not to benefit from commissions discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.5 Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**").

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in

any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, *inter alia*, the time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

- 3.2.6 Without prejudice to the rights of the Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.
- 3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project;
 - (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
 - (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;

- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority's employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement **“Confidential Information”**), without the prior written consent of the Authority. Notwithstanding the aforesaid, the Consultant, its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultants and the Personnel of either of them;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the

circumstances; provided, however, that the Consultant or its Sub- Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4 Liability of the Consultant

3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 Consultant's liability towards the Authority

The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall not be liable to the Authority:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.

3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to **3 (three) times** the Agreement Value.

3.5 Insurance to be taken out by the Consultant

3.5.1 (a) The Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub- Consultant's, as the case may be) own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as specified in the Agreement and in accordance with good industry practice.

- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.

- (c) If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Authority shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by the Authority.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Authority as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect; provided that in the event the Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Authority as the sole beneficiary of the Consultant or require an undertaking to that effect.

3.5.2 The Parties agree that the risks and coverage shall include but not be limited to the following:

- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of **Rs. 50 lakhs**
- (b) Employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) Professional liability insurance for an amount no less than the Agreement Value.

The indemnity limit in terms of "**Any One Accident**" (AOA) and "**Aggregate limit on the policy period**" (AOP) should not be less than the amount stated in Clause 6.1.2 of the Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

3.6 Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- (b) permit the Authority or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

3.7 Consultant's actions requiring the Authority's prior approval

The Consultant shall obtain the Authority's prior approval in writing before taking any of the following actions:

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the Authority prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or
- (c) any other action that is specified in this Agreement.

3.8 Reporting obligations

The Consultant shall submit to the Authority the reports specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.9 Documents prepared by the Consultant to be property of the Authority

- 3.9.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.
- 3.9.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.
- 3.9.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as 'claims') which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.10 Equipment and materials furnished by the Authority

Equipment and materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Authority. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by the Authority in writing, insure them in an amount equal to their full replacement value.

3.11 Providing access to Project Office and Personnel

The Consultant shall ensure that the Authority, and officials of the Authority having authority from the Authority, are provided unrestricted access to the Project Office and to all Personnel during office hours. The Authority's official, who has been authorized by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.12. Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2 Deployment of Personnel

4.2.1 The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in Annex-2 of this Agreement.

4.2.2 Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-2 may be made by the Consultant by written notice to the Authority, provided that: (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than **20% (twenty per cent) or one week, whichever is greater**, and (ii) the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement

Value set forth in Clause 6.1.2 of this Agreement. Any other adjustments shall only be made with the written approval of the Authority.

- 4.2.3 If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between the Authority and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.2.

4.3 Approval of Personnel

- 4.3.1 The Professional Personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other Professional Personnel shall be engaged without prior approval of the Authority.

- 4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-7c) of the RFP. the Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

4.4 Substitution of Key Personnel

Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel specified in the clause 3.1.2. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Key Personnel, the Consultants shall forthwith provide as a replacement, a person of equivalent or better qualifications with the approval of the employer.

As a condition to first substitution, the original Key Personnel will be allowed to be substituted with proper reason and equivalent or better qualification. In the case of a second substitution and further hereunder, such deduction shall be a sum equivalent to 10% (ten percent) of the remuneration specified for each substitution of the original Key Personnel.

If the Employer (i) finds that any of the Personnel has committed a serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Employer's written request specifying the grounds there for, forthwith provide as a replacement a person with qualifications and experience acceptable to the Employer.

Substitution of the Team Leader shall not be considered except, for reason

beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity. The Substitution of Team Leader on any other ground may lead to disqualification of the Applicant or termination of the Agreement.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the man-days of service set forth in Annex-2. Any taking of leave by any Personnel for a period exceeding 7(seven) days shall be subject to the prior approval of the Authority, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6 Team Leader / Project Manager

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. The Civil Engineer cum Resident Engineer shall be responsible for the day to day performance of the Services.

Monthly meeting will be held to review the overall progress and way forward and it is mandatory for Team Leader to attend with relevant team at the venue of SMPK, as instructed by the Engineer-in-charge or his representative.

4.7 Sub-Consultants

Sub-Consultants listed in Annex-4 of this Agreement are hereby approved by the Authority. The Consultant may, with prior written approval of the Authority, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the Consultant under this Clause 4.

The credentials of the sub-consultant will not be considered for eligibility of applicants.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

Unless otherwise specified in the Agreement, the Authority shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform the Services;
- (b) facilitate prompt clearance through customs of any property required

for the Services; and

- (c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2 Access to land and property

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1.3.

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding **2% (two per cent)** of the Agreement Value specified in Clause 6.1.2, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

5.4 Payment

In consideration of the Services performed by the Consultant under this Agreement, the Authority shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex-5 of the Agreement in Schedule - 1.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the "**Agreement Value**").

6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:

- a. No Mobilisation Advance shall be paid.
- b. The Consultant shall be paid for its services as per the Payment Schedule at Annex-6 of this Agreement in Schedule-1, subject to the Consultant fulfilling the following conditions:
 - i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
 - ii) The Authority shall pay to the Consultant, only the undisputed amount.
- c. The Authority shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the "Due Date").
- d. The final payment under this Clause shall be made only after the successful commissioning of the project facilities and certification of completion and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority only after the completion of operation phase of 6 (six) months on issue of completion certificate. The final bill payment shall be made within 45 days of receipt of the bill by the Authority, provided there is no dispute.
- e. Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report and a final statement in accordance with Clause 6.3 (d).
- f. 10% (Ten per cent) of the Agreement Value will be withheld on each payment made as per Annex – 6. This has been earmarked as Final Payment to be made to the Consultant upon expiry of 6 months from the date of commercial operation of the Project, by the Concessionaire.
- g. All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

7.1.1 The Successful bidder should submit a Performance Security of 3% of contract value within 21 days from the date of receipt of LOI/Work Order, failing which the contract would be rescind without any further notice. For the Successful bidder, the Performance Security will be retained by Client (i.e. SMPK) until the completion of the Assignment by the Consultant and be released 90 (Ninety) Days after the completion of the Assignment as per the terms of the Contract.

The Performance Security shall be accepted through the SMPK bank account details to which amount is to be transferred (accepted only online payable through RTGS / NEFT / Bank Transfer etc) is mentioned below:

A/C: Syama Prasad Mookerjee Port, Kolkata A/c No: 067502000000491

IFSC: IOBA0000675

Bank Name: Indian Overseas Bank Branch Name: STRAND ROAD Branch, Kolkata.

The performance security will be forfeited and credited to SMPK's account in the event of a breach of contract by the Independent Engineer.

7.1.2 Refund of performance Security/ Guarantee:

The performance Security to be refunded to the selected Independent Engineer without interest, after he duly performs and completes all obligations under the contract.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 50% (fifty per cent) of the Agreement Value and an Indemnity Bond / Corporate Guarantee in this regard in the prescribed format shall be submitted by the Selected firm.

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to **0.5% (zero point five per cent)** of the Agreement Value for every week, subject to a **maximum of 10% (ten per cent)** of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

7.2.3 Encashment and appropriation of Performance Security

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

9.2 Dispute resolution

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

9.2.2 The Parties agree to use their best efforts for resolving all Disputes

arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon Chairman of Visakhapatnam Port and the Chairman of the Board of Directors of the Consultant or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Kolkata and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
DELIVERED For and on behalf of
Consultant:

(Signature)
(Name)
(Designation)
(Designation) (Address)
(Fax. No.)

SIGNED, SEALED AND
For and on behalf of
Authority

(Signature)
(Name)
(Address)
(Fax. No.)

In the presence of:

- 1.
- 2.

Annex-1

Terms of Reference

As of Section 7 of this RFP

Annex-2

Deployment of Personnel

(Reproduce as per Form-9 of Appendix-I)

Annex-3
Estimate of Personnel Costs
(Deleted)

Annex-4

**Approved Sub-Consultant (s)
(Reproduce as per Form-10 of Appendix-I)**

Annex-5

Cost of Services

(Reproduce as per Form-2 of Appendix-II)

Annex-6**Payment Schedule****(Refer Clause 6.3 of Agreement)****Stages of payment for the services are as under:**

Sl. No.	Description of services	Payment
1.	Review of the Designs and drawings of the project & approval	50% of the amount quoted in item -1 of BOQ with following breakup:
	i. Review & recommendation and appraisal of layout drawing / plan of the project	20% of the amount of Sl. No- 1 above.
	ii. Review & recommendation and appraisal of civil work of the project	10% of the amount of Sl. No- 1 above.
	iii. Review & recommendation and appraisal of mechanical work of the project	40% of the amount of Sl. No- 1 above.
	iv. Review & recommendation and appraisal of electrical/instrumentation work of the project	30% of the amount of Sl. No- 1 above.
2.	Review of construction methodology, quality assurance procedures, procurement, and engineering and construction time schedule submitted by the concessionaire.	10% of the amount quoted in item- 1 of BOQ

3.	Review and recommendation of the Operation and Maintenance plan prepared by the Concessionaire	10% of the amount quoted in item- 1 of BOQ															
4.	Verification of the Documents on Manufacture and delivery of the Handling Equipment as submitted by the Concessionaire.	10% of the amount quoted in item- 1 of BOQ															
5.	After issue of completion certificate for the Project by IE to the Concessionaire.	10% of the amount quoted in item- 1 of BOQ															
6.	Vetting of As-built drawings by the Independent Engineer, Completion of work and issue of completion certificate by the SMPA, Kolkata to the IE for the project.	10% of the amount quoted in item- 1 of BOQ															
7.	Pro-rata monthly payment for the services of Inspection of the Construction as per TOR during Construction Phase. For the purpose of payment, the man-month rates indicated in the BOQ-2 will be considered.	<p>For the purpose of evaluation, the deployment of key personnel will be considered as follows:</p> <table border="1"> <thead> <tr> <th>Key Personnel</th><th>Frequency of Visit</th><th>Minimum No. of Visits</th></tr> </thead> <tbody> <tr> <td>1. Team Leader / Project Manager</td><td>Once in a month (For 24 months)</td><td>24</td></tr> <tr> <td>2. Civil Engineer cum Resident Engineer</td><td>Stationed at SMPK (For 18 months)</td><td>NA</td></tr> <tr> <td>3. Sr. Engineer (Mechanical)</td><td>Twice in a month</td><td>36</td></tr> <tr> <td>4. Electrical / Instrumentation</td><td>Twice in a month</td><td>36</td></tr> </tbody> </table>	Key Personnel	Frequency of Visit	Minimum No. of Visits	1. Team Leader / Project Manager	Once in a month (For 24 months)	24	2. Civil Engineer cum Resident Engineer	Stationed at SMPK (For 18 months)	NA	3. Sr. Engineer (Mechanical)	Twice in a month	36	4. Electrical / Instrumentation	Twice in a month	36
Key Personnel	Frequency of Visit	Minimum No. of Visits															
1. Team Leader / Project Manager	Once in a month (For 24 months)	24															
2. Civil Engineer cum Resident Engineer	Stationed at SMPK (For 18 months)	NA															
3. Sr. Engineer (Mechanical)	Twice in a month	36															
4. Electrical / Instrumentation	Twice in a month	36															

		Engineer		
		5. Environmental / Health & Safety Engineer	Twice in a month	36
		6. Finance Expert	As and when required by SMPK in virtual mode	NA
		7. Legal Expert	As and when required by SMPK in virtual mode	NA

NOTE:

(i) All the payments under this contract will be made only in Indian Rupees. The fees / price may be quoted in Indian Rupees only. The IE shall be paid for the services rendered as per the TOR as per payment schedule given above.

(ii) TAXES & DUTIES: - The prices quoted shall be including all statutory levies excluding GST, which shall be paid extra.

Supplier / service provider to confirm that the GST amount charged in invoice is declared in its returns and payment of taxes is also made.

- The Supplier / Service Provider agrees to comply with all applicable GST laws, including GST acts, rules, regulations, procedures, circulars & instructions there under applicable in India from time to time and to ensure that such compliance is done within the time prescribed under such laws. Supplier/Service Provider should ensure accurate transaction details, as required by GST laws, are timely uploaded in GSTN. In case there is any mismatch between the details so uploaded in GSTN by Supplier/ Service Provider and details available with Syama Prasad Mookerjee Port, Kolkata, then payments to Supplier/Service Provider to the extent of GST relating to the invoices/s under mismatch may be retained from due payments till such time Syama Prasad Mookerjee Port, Kolkata is not sure that accurate tax amount is finally reflected in the GSTN to SMPK's Account and is finally available to Syama Prasad Mookerjee Port, Kolkata in terms of GST laws and that the credit of GST so taken by Syama Prasad Mookerjee Port, Kolkata is not required to be reversed at a later date along with applicable interest.

- Syama Prasad Mookerjee Port, Kolkata has the right to recover monetary loss including interest and penalty suffered by it due to any non-compliance of tax laws by the supplier/service provider. Any loss of input tax credit to Syama Prasad Mookerjee Port,

Kolkata for the fault of supplier shall be recovered by Syama Prasad Mookerjee Port, Kolkata by way of adjustment in the consideration payable.

- Supplementary invoices / Debit note / credit note for price revisions to enable Syama Prasad Mookerjee Port, Kolkata to claim tax benefit on the same shall be issued by bidder for a particular year before September of the succeeding Financial Year.

The purchase order/ work order shall be void, if at any point of time bidder is found be to a black listed dealer as per GSTN rating system and further no payment shall be entertained.

Annex-7

Bank Guarantee for Performance Security

Deleted

(As Bank Guarantee below Rs. 10 Lakhs is not acceptable)

SCHEDULE-2

(See Clause 2.3.3 of Instructions to Applicants)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the Authority and a consultant or between consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:
 - (a) Authority and consultants:
 - (i) Potential consultant should not be privy to information from the Authority which is not available to others; or
 - (ii) Potential consultant should not have defined the project when earlier working for the Authority; or
 - (iii) Potential consultant should not have recently worked for the Authority overseeing the project.
 - (b) Consultants and concessionaires/contractors:
 - (i) No consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire / contractor save and except relationships restricted to project-specific and short-term assignments; or
 - (ii) no consultant should be involved in owning or operating entities resulting from the project; or
 - (iii) no consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and

officials of the Authority who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the consultants become aware of them.
5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the Authority.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope–creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/potential conflict of interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

APPENDICES

APPENDIX-I

(See Clause 2.1.3 of Instructions to Applicants)

TECHNICAL PROPOSAL

Form-1

Bid submission Letter

(On Applicant's letter head)

Ref No. _____

Date: _____

To

Chief Engineer,

2nd Floor,

15, Strand Road, Kolkata,

Syama Prasad Mookerjee Port

Kolkata, West-Bengal, Pin -700001

Sub: **Independent Engineer** for engineering consultancy services for the Project "REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA" – Reg.

Dear Sir,

1. With reference to your RFP Document dated, I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as **Independent Engineer** for the Project "REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA". The proposal is unconditional and unqualified.
2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.

4. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we or any of our 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 against the Applicant, 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.
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;
 - (b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the
RFP Document;
 - (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 Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority 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 Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with Clause 2.8 of the RFP document.

9. I/We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for Selection as a Consultant.
10. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/ employees.
13. 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 the Authority and / or the Government of India in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.
14. The Bid Security of **Rs.1,91,320/- (Rupees One Lakh Ninety-One Thousand Three Hundred Twenty Only)** in the form of a Demand Draft is attached, in accordance with the RFP document.
15. I / We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I / we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected or I/We are not short-listed or invited for second stage for submission of Financial Proposal.
16. I/We agree to keep this offer valid for 180 (One Hundred Eighty) days from the Proposal Due Date specified in the RFP.
17. A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith in Form 4.
18. In the event of my / our firm / consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule–1 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
19. I / We have studied RFP and all other documents carefully and also

surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.

20. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
21. I / We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours Faithfully,

(Signature, name and designation of the authorized
signatory) (Name and seal of the Applicant/
Lead Member)

APPENDIX – I**FORM 2****PARTICULARS OF THE APPLICANT**

SL. No.	Particulars
1.	<p>Title of Consultancy:</p> <p>INDEPENDENT ENGINEER (IE) FOR THE PROJECT “REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA”</p>
2.	<p>Title of Project:</p> <p>“REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA”</p>
3.	<p>State whether applying as Sole Firm or Lead Member of a consortium:</p> <p>Sole Firm</p> <p>or</p> <p>Lead Member of a consortium</p>
4.	<p>State the following:</p> <p>Name of Company or Firm:</p> <p>Legal status (e.g. incorporated private company, unincorporated business, partnership etc.):</p> <p>Country of incorporation: Registered address:</p> <p>Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>GST Registration, PF and ESI registration and Professional Tax:</p> <p>Copy of PAN Card:</p> <p>Registration details:</p>

	<p>Brief description of the Company including details of its main lines of business Name, designation, address and phone numbers of authorised signatory of the Applicant:</p> <p>Name:</p> <p>Designation:</p> <p>Company:</p> <p>Address:</p> <p>Phone No.:</p> <p>Fax No.:</p> <p>E-mail address:</p>
5.	<p>If the Applicant is Lead Member of a consortium, state the following for each of the other Member Firms:</p> <p>(i) Name of Firm:</p> <p>(ii) Legal Status and country of incorporation</p> <p>(iii) Registered address and principal place of business.</p>
6.	<p>For the Applicant, (in case of a consortium, for each Member), state the following information:</p> <p>(i) In case of non-Indian Firm, does the Firm have business presence in India? Yes/No If so, provide the office address(es) in India.</p> <p>(ii) Has the Applicant or any of the Members in case of a consortium been penalized by any organization for poor quality of work or breach of contract in the last five years? Yes/No</p> <p>(iii) Has the Applicant/Member ever failed to complete any work awarded to it by any public authority/entity in last five years? Yes/No</p> <p>(iv) Has the Applicant or any member of the consortium been blacklisted by any Government department/Public Sector Undertaking in the last five years? Yes/No</p> <p>(v) Has the Applicant or any of the Members, in case of a consortium, suffered bankruptcy/insolvency in the last five years? Yes/No</p> <p>Note: If answer to any of the questions at (ii) to (v) is yes, the Applicant is not</p>

	eligible for this consultancy assignment.
7.	<p>Does the Applicant's firm/company (or any member of the consortium) combine functions as a consultant or adviser along with the functions as a contractor and/or a manufacturer? Yes/No</p> <p>If yes, does the Applicant (and other Member of the Applicant's consortium) agree to limit the Applicant's role only to that of a consultant/ adviser to the Authority and to disqualify themselves, their Associates/ affiliates, subsidiaries and/or parent organization subsequently from work on this Project in any other capacity. Yes/No</p>
8.	<p>Does the Applicant intend to borrow or hire temporarily, personnel from contractors, manufacturers or suppliers for performance of the Consulting Services? Yes/No</p> <p>If yes, does the Applicant agree that it will only be acceptable as Consultant, if those contractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this Project (including tendering relating to any goods or services for any other part of the Project) other than that of the Consultant? Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this Project and they agree to limit their role to that of consultant/ adviser for the Authority only? Yes / No</p>

(Signature, name and designation of the authorised signatory)

For and on behalf of

.....

APPENDIX-I

Form-3

Statement of Legal Capacity

(To be forwarded on the letter head of the Applicant)

Ref.

Date:

To

Chief Engineer,

2nd Floor,

15, Strand Road, Kolkata,

Syama Prasad Mookerjee Port

Kolkata, West-Bengal, Pin -700001

Dear Sir,

Sub: RFP for **Independent Engineer** for engineering consultancy services For the Project "REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA"

I/We hereby confirm that we, the Applicant (along with other members in case of consortium, constitution of which has been described in the Proposal*), satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that (insert Applicant's name) will act as the Lead Member of our consortium.

I/We have agreed that (insert individual's name) will act as our Authorised Representative/ will act as the Authorised Representative of the consortium on our behalf and has been duly authorized to submit our Proposal. Further, the authorised signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of

**Please strike out whichever is not applicable*

APPENDIX-I

Form-4

Power of Attorney

Know all men by these presents, we, (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr. / Ms..... son/daughter/wife and presently residing at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the "Authorised Representative") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the **Independent Engineer** for the Project "REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA", proposed to be developed by Syamaprasad Mookerjee Port, Kolkata (the "Authority") including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Authority.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorised Representative 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 Authorised Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF,

20**

For (Signature, name, designation and address)

Witnesses:

1.

2.

Notarised

Accepted

.....

(Signature, name, designation and address of the Attorney)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of **Rs. 100 (One Hundred)** and duly notarised by a notary public.

Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, Applicants from countries that have signed the Hague Legislation Convention, 1961 need not get their Power of Attorney legalised by the Indian Embassy if it carries a conforming Apostille certificate.

APPENDIX-I

Form-5

Financial Capacity of the Applicant

(Refer Clause 2.2.2 (B))

Sl. No.	Financial Year	Annual Revenue (Rs. / US \$ in million)
1.	2019-20	
2.	2020-21	
3.	2021-22	

Certificate from the Statutory Auditor²

This is to certify that(name of the Applicant) has received the payment shown

above against the respective years on account of professional fees.

Name of the audit firm:

Seal of the audit firm Date:

UDIN-

Note:

1. Please do not attach any printed Annual Financial Statement
2. Exchange rate should be taken as Rs.80 per US \$ for conversion to rupees.

-
2. In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.
UDIN Mandatory.

APPENDIX-I**Form-6****Abstract of Eligible Assignments of the Applicant³**

(Refer clause 3.1)

Sl. No.	Name of Project	Name of Client	Estimated capital cost of Project (in Rs. Lakhs)	Payment ^{3a} of professional fees received by the Applicant (in Rs. Lakhs)
(1)	(2)	(3)	(4)	(5)
1.				
2.				
3.				
4.				

*The names and chronology of Eligible Projects included here should conform to the project-wise details submitted in Form-6a of Appendix-I.

Certificate from the Statutory Auditor⁴**(On the letterhead of the Statutory Auditor)**

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and / or the clients.

Name of the audit firm:

Seal of the audit firm:

Date:

[Signature, name and designation of the authorized signatory]

Note: The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.

- The Applicant should provide details of only those projects that have been undertaken by it under its own name

3a- Exchange rate should be taken as **Rs.80 per US \$** for conversion to rupees.

- In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

APPENDIX-I

Form-6 a

Eligible Assignments of Applicant

(Refer Clause 3.1.4)

Name of the Applicant:	
Name of the Project:	
Description of services performed by the Applicant firm:	
Name of client and Address☺Indicate whether public or private entity)	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of Project (in Rs. Lakhs):	
Payment received by the Applicant (in Rs. Lakhs):	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	

Notes:

1. Use separate sheet for each Eligible Project.
2. The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.
3. Exchange rate should be taken as **Rs. 80 per US \$** for conversion to Rupees.

APPENDIX – I**Form-7****Particulars of Key Personnel**

Sl. No	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		Eligible Essential Experience Assignments ⁵ as per clause 7.7.1 of Section 7
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Team Leader/ Project Manager						
2.	Civil Engineer cum Resident Engineer						
3.	Sr. Engineer Mechanical						
4.	Electrical /Instrumentation Engineer						
5.	Environmental / Health & Safety Engineer						
6.	Finance Expert						
7..	Legal Expert						

5- Refer Form 7a of Appendix 1 Experience of Key Personnel

APPENDIX-I

Form-7 a

Abstract of Eligible Assignments of Key personnel⁶

(Refer Clause 3.1)

Name of Key Personnel:

Designation:

Sl. No.	Name of Project ⁷	Name of Client	Estimated capital cost of project (in Rs. Lakhs)	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the assignment	Date of completion of the assignment	Man-Days Spent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Note: The Applicant may attach separate sheets to provide brief particulars of other relevant experience of Key Personnel.

6- Use separate Form for each Key Personnel

7- The names and chronology of projects included here should conform to the project-wise details submitted in Form-6 of Appendix-I)

APPENDIX-I

Form- 7b

Eligible Assignments of Key Personnel
(Refer Clause 3.1.4)

Name of the Key Personnel:	
Designation of Key Personnel:	
Name of the Project:	
Name of Consulting Firm where employed:	
Description of services performed by the Key Personnel (including designation):	
Name of client and Address: (indicate whether public or private)	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of the Project (in Rs. Lakhs):	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	
It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.	
(Signature and name of Key Personnel)	

Notes:

1. Use separate sheet for each Eligible Project
2. The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.

APPENDIX-I

Form- 7c

Curriculum Vitae (CV of Key Personnel)

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:
(Starting with present position, list in reverse order every employment held)
7. List of projects on which the Personnel has worked Name of project Description of responsibilities:
8. Details of the current assignment and the time duration for which services are required for the current assignment:

Certification:

- a. I am willing to work on the Project and I will be available for entire duration of the project assignment as required.
- b. I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.

Place

(Signature and name of the Key Personnel)

(Signature and name of the authorized signatory of the Applicant)

Notes:

1. Use separate form for each Key Personnel
2. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-7a of Appendix-I.
3. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.

APPENDIX – I

Form-8

Proposed Methodology and Work Plan

The proposed methodology and work plan shall be described as follows:

1. Understanding of TOR (not more than two pages)

The Applicant shall clearly state its understanding of the TOR and also highlight its important aspects. The Applicant may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the TOR.

2. Methodology and Work Plan (not more than three pages)

The Applicant will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Applicant will submit a brief write up on its proposed team and organisation of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. In case the Applicant is a consortium, it should specify how the expertise of each firm is proposed to be utilised for this assignment. The Applicant should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

Note: Marks will be deducted for writing lengthy and out of context responses.

APPENDIX-I**Form-9****Deployment of Personnel**

Sl. No	Designation	Name	Man-Days (MD) at Project Site	Week Numbers									
				1	2	3	4	5	6	7
1.	Team Leader/ Project Manager												
2.	Civil Engineer cum Resident Engineer												
3.	Sr. Engineer Mechanical												
4.	Electrical / Instrumentation Engineer												
5.	Environmental / Health & Safety Engineer												
6.	Finance Expert												
7.	Legal Expert												
Total Man- Days													

Note: The “Minimum No. of Visits” as indicated in Payment Schedule and BOQ–2 in Form-2 of Appendix II shall be taken into consideration with respect to the deployment of each Key Personnel.

APPENDIX-I

Form-10

Proposal for Sub-Consultant (s)

1. Details of the Firm				
Firm's Name, Address and Telephone				
Name and Telephone No. of the Contact Person				
Fields of Expertise				
No. of Years in business in the above Fields				
2. Services that are proposed to be sub contracted:				
3. Person who will lead the Sub-Consultant Name: Designation: Telephone No.: Email ID:				
4. Details of Firm's previous experience				
Name of work	Name, address and Telephone no. Of Client	Total value of service performed	Duration of services	Date of Completion Of Services
1.				
2.				
3.				

(Signature and name of the authorized signatory)

Note:

1. The Proposal for Sub-consultant(s) shall be accompanied by the details specified in Forms 7c and 9 of Appendix-I.
2. Use separate form for each Sub-Consultant.

APPENDIX-I
Form-11
DRAFT INTEGRITY PACT

(As per GCC)

APPENDIX-II
FINANCIAL PROPOSAL
Form-1
Covering Letter
(On Applicant's letter head)

Reference No. _____

Date _____

To,
Chief Engineer,
2nd Floor,
15, Strand Road, Kolkata,
Syama Prasad Mookerjee Port
Kolkata, West-Bengal, Pin -700001

Sub: RFP for **Independent Engineer** for engineering consultancy services For the Project "REJUVENATION OF KIDDERPORE DOCKS (KPD-1 WEST) THROUGH PPP MODE ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT SYAMA PRASAD MOOKERJEE PORT, KOLKATA"

Dear Sir,

I/We have perused the Proposal Document for subject assignment containing Terms of Reference in **Section-7** and other details and am/are willing to undertake and complete the assignments as per terms and conditions stipulated in the 'Proposal Document'.

Our price offer indicated in Form-2 of Appendix – II is inclusive of all taxes and duties **except GST** but including incidentals, overheads, traveling expenses, sundries etc., all other items involving expenditure for execution of this assignment covering scope as stipulated in "Terms of Reference" (specified in Section-7 of this RFP and as detailed in the Concession Agreement of Captive User project). This offer is valid for a period of **180 days** from the proposal due date.

TENDER NO.: SMPK/KDS/CIV/T/2738/10 dated 15th February, 2023

I/We also noted that all the payments under this contract will be made only in Indian Rupees and that the GST as applicable from time to time will be reimbursed on production of documentary evidence.

Date:

Witness:

Signature_____

Name _____

Designation_____

For and on behalf of_____

Address_____

Signature _____

Name _____

Designation_____

For and on behalf of_____

Address_____

APPENDIX-II
(See Clause 2.1.3)

Form-2

Financial Proposal

BOQ-1: Review of the Designs and drawings & approval etc. upto Issue of completion certificate by Syama Prasad Mookerjee Port, Kolkata, as detailed below:

PRICE BID FORMAT/Bill of Quantities (BOQ)

The BOQ can be downloaded from <https://kopt.enivida.in> This BOQ template must not be modified / replaced by the bidder and the same should be uploaded after filling the relevant columns or else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the bidder name and values only.

BOQ-2: Pro-rata monthly payment for the services of Inspection of the Construction as per TOR during Construction Phase. Remuneration for Key personnel inclusive of all taxes and duties (Except GST), incidentals, overheads, travelling expenses, consumables, sundries etc.

PRICE BID FORMAT / Bill Of Quantities (BOQ)

The BOQ can be downloaded from <https://kopt.enivida.in/>. This BOQ template must not be modified / replaced by the bidder and the same should be uploaded after filling the relevant columns or else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the bidder name and values only.

Note:

1. No escalation on any account will be payable on the above amounts during the entire contract period.
2. The payment for the above BOQs will be paid as per the Payment schedule indicated in Annex-6 of Schedule-1 of this tender.
3. All the payments shall be made in Indian Rupees only and shall be subject to applicable Indian Laws for withholding taxes, if any.
4. Each man-month to be converted into 30 man-days.
5. In the case deployment of key personnel in man days, remuneration schedule shall be made accordingly in pro-rata basis based on Note no.4 above.
6. The GST as applicable from time to time will be reimbursed.

- 7. The total quoted amount (excluding GST) shall be equal to or less than Rs. 95.66 lakhs (ceiling amount). If any bidder quotes above this ceiling amount, their bid will be summarily rejected.**
- 8. The break up of the above said lumpsum amount quoted, shall be provided at Appendix-II Form-2 as mentioned above.**

APPENDIX-II
Form-3
Financial Proposal
Bill of Quantities (Break up)

(Amount / Rate in INR)

* **Note:** The Grand Total amount shall be equivalent to the Lump-Sum Amount (INR Excluding GST) of RFP- Appendix-II (Form-2) Financial Proposal.

Appendix-III

**General Condition of Contract
(GCC)**