

NEW MANGALORE PORT AUTHORITY

Civil Engineering Department



NIT No. CIVIL/CEC/EEC/ 39 /2023-24

eProcureTender ID: 2023_NMPT_767944_1

REQUEST FOR PROPOSAL (RFP)

FOR

APPOINTMENT OF INDEPENDENT ENGINEER (IE)

**FOR SUPERVISION OF THE PROJECT OF “MECHANIZATION OF
BERTH NO. 14 FOR HANDLING CONTAINER AND OTHER CARGO
ON DBFOT BASIS AT NEW MANGALORE PORT – PHASE-II**

TO BE EXECUTED IN TWO STAGES”

August, 2023

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 or an offer 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 may be on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be 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 unjust 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 any way 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.

GLOSSARY

Additional Costs	As in Item G of Form-2 of Appendix-II
Agreement	As defined in Schedule -2
Agreement Value	As defined in Clause 6.1.2 of Schedule -2
Applicable Laws	As defined in Schedule – 2
Applicant	As defined in Clause 2.1.1
Associate	As defined in Clause 2.3.3
Authorised Representative	As defined in Clause 2.13.3
Authority	As defined in Clause 1.1.1
Bid Documents	As defined in Clause 1.2
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conditions of Eligibility	As defined in Clause 2.2.1
Conflict of Interest	As defined in Clause 2.3.1
Consultancy	As defined in Clause 1.2
Consultancy Team	As defined in Clause 2.1.4
Consultant CV	As defined in Clause 1.2 Curriculum Vitae
DBFOT	Design, Build, Finance, Operate and Transfer
Deliverables	As defined in Clause 4 of Schedule-1
Documents	As defined in Clause 2.12
Effective Date	As defined in Clause 2.1 of Schedule-2
Eligible Assignments	As defined in Clause 3.1.4
Expatriate Personnel	As defined in Clause 1.1.1(i) of Schedule-2
PPP Expert	As specified in Clause 2.1.4
Financial Proposal	As defined in Clause 2.15.1
Form of Agreement INR, Re, Rs.	Form of Agreement as in Schedule -2 Indian Rupee(s)
Inception Report	As specified in Clause 4(A) of Schedule-1
Key Date or KD	As defined in Clause 5.2 of Schedule-1
Key Personnel	As defined in Clause 2.1.4

LOA	Letter of Award
Lead Member	As defined in Clause 2.1.1
MCA	As defined in Clause 1.1.3
Member	As defined in Clause 2.3.3 (a)
Official Website	As defined in Clause 1.11.2
PPP	Public Private Partnership
Personnel	As defined in Clause 1.1.1(n) of Schedule-2
Project	As defined in Clause 1.1.1
Team Leader/ Project Manager	As defined in Clause 4.6 of Schedule-2
Professional Personnel	As defined in Clause 2.14.6
Prohibited Practices	As defined in Clause 4.1
Proposals	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clause 1.5
RFP	As defined in Disclaimer
Resident Personnel	As defined in Clause 1.1.1(o) of Schedule-2
Revenue Model	As defined in Clause 1.2
Scheduled Bank	As specified in RBI Act, 1934
Selected Applicant	As defined in Clause 1.6
Selection Process	As defined in Clause 1.6
Services	As defined in Clause 1.1.1(q) of Schedule -2
Sole Firm	As defined in Clause 2.1.1
Statement of Expenses	As defined in Note 8, Form-2 of Appendix- II
Statutory Auditor	An Auditor appointed under Applicable Laws
Sub-Consultant	As defined in Clause 1.1.1(r) of Schedule-2
Support Personnel	As defined in Clause 2.14.6
Technical Proposal	As defined in Clause 2.14.1
TOR	As defined in Clause 1.1.3
US\$	United States Dollar

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

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NEW MANGALORE PORT AUTHORITY

I - NOTICE INVITING E-TENDER

NIT No. CIVIL/CEC/EEC/39/2023-24, dated 22.08.2023

[e Procure Tender ID: 2023_NMPT_767944_1]

The Authority invites Proposals (**the “Proposals”**) through E-Procurement System <https://eprocure.gov.in/cppp/> of CPP from interested, experienced and reputed consultancy firm(s)/consortia to submit their offers containing Technical and Financial Bids (i.e. Technical Proposal and Financial Proposal) for the work of ‘Appointment of Independent Engineer (IE) for the Project of Mechanization of Berth No. 14 for handling Containers and other cargo on DBFOT basis’ (**the “Consultant”**) who shall in accordance with the Terms of Reference (**the “TOR”**) assist the Authority for the project monitoring and approval of the detailed project report submitted by the Concessionaire, if any, design and drawings, certification of work and issue of completion certificate and other works as per the Terms of Reference specified at Schedule-1 (the “TOR”) (**collectively the “Consultancy”**).

1.2 Due diligence by Applicants

Applicants are encouraged to be acquainted 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 **Clause 1.7**.

1.3 Schedule of Selection Process

The complete RFP document can be downloaded from NMPA website: www.newmangaloreport.gov.in and <https://eprocure.gov.in/cppp/> submit as application on or before the due date and time of submission.

Name of the Work	Request for proposal (RFP) for Appointment of Independent Engineer (IE) for the project of Mechanization of Berth No. 14 for handling containers and other cargo on DBFOT basis at NMP.
Bid Security / Earnest Money Deposit	Rs. 2,36,000.00 (Rupees Two Lakh Thirty Six Thousand only) or exemption as per clause No.22 of Section II.
Cost of Tender	Rs.1,120.00 (Rupees One Thousand One Hundred Twenty only) or exemption as per clause No:22 of Section II.

Date of tender document available to parties to download	23/08/2023 at 16.00 Hrs.
Last date for receiving Pre bid queries/clarifications	06/09/2023 at 15:30 HRS
Pre-Proposal Conference	Date: 06/09/2023; Time: 15:30 Hrs Mode: Physical / Virtual Meeting through Microsoft Teams (Meeting link will be uploaded in the Portal) Contact details for Pre-bid Conference: Chief Engineer (Civil)i/c, New Mangalore Port Authority, Panambur, Mangalore – 575 010 Phone: 0824 2407948 / 0824 2407413 Email: chiefengineer@nmpt.gov.in
Starting date of e-Tender for submission of on line Techno-Commercial Bid and price Bid	13/09/2023 at 11:00 HRS
Proposal Due Date (PDD) Closing date of online e-tender for submission of Techno-Commercial Bid & Price Bid	20/09/2023 at 15:30 HRS
Part-I : Date of Opening of Technical Proposal Part-II -Financial Proposal:	21/09/2023 at 15:30 HRS Shall be communicated separately.
Validity of Tender	180 days from the date of tender opening.

Amendments / further information etc. pertaining to the tender if any will be issued only through www.newmangaloreport.gov.in and [CPP Portal](http://CPP_Portal) www.eprocure.gov.in/eprocure/app. Prospective bidders are instructed to view these websites from time to time for any such notification.

Tender documents may be viewed or downloaded by interested and eligible Tenderers from the Central Public Procurement Portal (CPPP) of Government of India, website :www.eprocure.gov.in/eprocure/app on the above mentioned dates after payment of Tender fee of Rs.1,120/-.

NMPA Bank Details

Name of the Payee: The FA&CAO, NMPA, Panambur, Mangalore
Name of the Bank: State Bank of India, Panambur,
Mangalore - 575 010.
Bank A/C No. 10205649448
IFSC Code: SBIN0002249
MICR Code: 575002011

Note:

*The benefit of Exemption of EMD and Tender Fee to all **Micro and small Enterprises (MSE)** will also be allowed. For this purpose, the bidder shall upload with their offer, proof of their being MSE registered with District Industries Centre (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Scale Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or UDYAM Registration Certificate or any other body specified by Ministry of MSME in the appropriate category.*

**Chief Engineer (Civil)i/c
New Mangalore Port Authority
Panambur, Mangalore**

1.4 Validity of the Proposal

The Proposal shall be valid for a period of not less than 180 days from the Proposal Due Date (the “PDD”).

1.5 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 through online bidding process. **Scanned copies of Technical Bid shall be submitted on <https://eprocure.gov.in/cppp/> and also one hard copy of the same shall be submitted to the address given at Clause 1.8 within seven (07) days after the PDD.** The hard copies of Technical Proposals must necessarily be 'Hard Bound' separately and all pages serially numbered & signed. 'Hard Bound' implies such binding between two covers through stitching whereby it may not be possible to replace any paper without disturbing the document.

In the first stage, a technical evaluation will be carried out as specified in **Clause 3.1**. Based on this technical evaluation, a list of qualified applicants shall be prepared. In the second stage, a financial evaluation will be carried out as specified in **Clause 3.2** of the technically qualified applicant. Proposals will finally be ranked according to their combined technical and financial scores as specified in **Clause 3.3**. The first ranked Applicant will be selected (the “**Selected Applicant**”) shall be called for negotiation, if necessary, while the second ranked Applicant will be kept in reserve.

1.6 Pre-Proposal visit and inspection of data

Prospective applicants may visit the office of the Project Authority and the Project site and review the available documents and data at any time prior to PDD.

For the convenience of the Applicants, a pre-Proposal visit to the Project site has been arranged on **06.09.2023 at 1100 Hrs**. The Applicants who desire to avail this facility may inform atleast two days prior to the above date in writing or by E-mail and provide details of their representatives (Name, Age, Permanent Address / Aadhar Card copy) for arranging entry passes.

1.7 Pre-Proposal Conference

The Pre-Proposal Conference shall be held both by virtual through MS Teams and physical mode. The VC meeting link shall be uploaded in the CPP Portal and Website. The date, time and venue of Pre-Proposal Conference shall be: **Date: 06.09.2023 at 1530 Hrs.**

Venue: Office of the Chief Engineer(Civil), 2nd floor, Administration Office Building, New Mangalore Port Authority, Panambur, Mangalore -575010

The Prospective Applicant who need clarifications on any specific issue, if any, shall submit to the Chief Engineer (Civil), New Mangalore Port Authority, Panambur, Mangaluru-575010 before the date and time indicated in Online bid reference in writing and a copy of the same shall also be submitted through Email provided in **Clause 1.8. No queries / clarifications shall be entertained after** the date and time indicated in Online bid reference.

Clarification / Amendments / further information etc. pertaining to the tender, if any shall be uploaded only on websites www.newmangaloreport.gov.in and <https://eprocure.gov.in/cppp/>, may have to be referred by the prospective applicant from time to time.

1.8 Communications

All communications including the submission of Proposal should be addressed to:

Chief Engineer (Civil)
Civil Engineering Department
New Mangalore Port Authority, Panambur,
Mangalore – 575 010, Kanrnataka (India)
Phone : 0824 2407493
Fax :0824 2407493
Email : chiefengineer@nmpt.gov.in

1.9 The Official Website of the Authority is:

www.newmangaloreport.gov.in

II - INSTRUCTIONS TO THE BIDDERS FOR THE E-SUBMISSION OF THE BIDS ONLINE THROUGH E-PROCUREMENT PORTAL

1. Bidder should do Online Enrolment in the Portal using the option Click Here to Enroll available in the Home Page. Then the Digital Signature enrollment has to be done with the e-token, after logging into the portal.
2. Bidder then logs into the portal giving user id / password chosen during enrollment.
3. The e-token that is registered should be used by the bidder and should not be misused by others.
4. DSC once mapped to an account cannot be remapped to any other account. It can only be inactivated.
5. The Bidders can update well in advance, the documents such as certificates, purchase order details etc., under My Documents option and these can be selected as per tender requirements and then attached along with bid documents during bid submission. This will ensure lesser upload of bid documents.
6. After downloading / getting the tender schedules, the Bidder should go through them carefully and then submit the documents as per the tender document; otherwise, the bid will be rejected.
7. The BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filling the relevant columns, else the bidder is liable to be rejected for that tender. Bidders are allowed to enter the Bidder Name and Values only.
8. If there are any clarifications, this may be obtained online through the e-Procurement Portal, or through the contact details given in the tender document. Bidder should take into account of the corrigendum published before submitting the bids online on the portal or on <http://eprocure.gov.in/eprocure/appor>; www.newmangalore-port.com Bidder, in advance, should prepare the bid documents to be submitted as indicated in the tender schedule and they should be in PDF formats.
9. Bidder should arrange for the EMD and tender fee as specified in the tender. The original should be posted/couriered/given in person to the Tender Inviting Authority, within the bid submission date and time for the tender.
10. The bidder should read the terms and conditions and accepts the same to proceed further to submit the bids.

11. The bidder has to submit the tender document(s) online well in advance before the prescribed time to avoid any delay or problem during the bid submission process.
12. There is no limit on the size of the file uploaded at the server end. However, the upload is decided on the Memory available at the Client System as well as the Network bandwidth available at the client side at that point of time. In order to reduce the file size, bidders are suggested to scan the documents in 75-100 DPI so that the clarity is maintained and the size of file gets reduced. This will help in quick uploading even at very low bandwidth speeds.
13. It is important to note that, the bidder has to click on the Freeze Bid Button, to ensure that, he/she completes the Bid Submission Process. Bids, which are not frozen, are considered as Incomplete/Invalid bids and are not considered for evaluation purposes.
14. The Tender Inviting Authority (TIA) will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders due to local issues.
15. The bidder may submit the bid documents online mode only, through this portal. Offline documents will not be handled through this system. Only hard copy of the Technical Bid should be submitted within seven (07) days after PDD to the Chief Engineer (Civil), NMPA
16. At the time of freezing the bid, the e-Procurement system will give a successful bid updating message after uploading all the bid documents submitted and then a bid summary will be shown with the bid no., date & time of submission of the bid with all other relevant details. The documents submitted by the bidders will be digitally signed using the e-token of the bidder and then submitted.
17. After the bid submission, the bid summary has to be printed and kept as an acknowledgement as a token of the submission of the bid. The bid summary will act as a proof of bid submission for a tender floated and will also act as an entry point to participate in the bid opening event.
18. Successful bid submission from the system means, the bids as uploaded by the bidder is received and stored in the system. System does not certify for its correctness.
19. The bidder should see that the bid documents submitted should be free from virus and if the documents could not be opened, due to virus, during tender opening, the bid is liable to be rejected.

20. The time that is displayed from the server clock at the top of the tender Portal, will be valid for all actions of requesting bid submission, bid opening etc., in the e-Procurement portal. The Time followed in this portal is as per Indian Standard Time (IST) which is GMT+5:30. The bidders should adhere to this time during bid submission.
21. The bidders are requested to submit the bids through online e-Procurement system to the Tender Inviting Authority (TIA) well before the bid submission end date and time (as per Server System Clock).
22. Tender form Fee and EMD shall be submitted with the Part I- Technical BID. BID submitted without fees, as mentioned above will not be considered for evaluation and shall be rejected summarily. The benefit of Exemption of EMD to all Micro and small Enterprises (MSE) will be allowed. The bidder shall upload with their offer, proof of their being MSE registered with District Industries Centre (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Scale Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or Udhog Aadhar Memorandum or any other body specified by Ministry of MSME, will be considered. Also, necessary document for having registered with similar category should be submitted along with Technical Bid.
23. The EMD of un-successful Bidders shall be refunded only after the contract has been awarded to the successful Bidder. No interest shall be paid on the EMD.
24. The EMD of successful Bidder will be discharged upon the Bidder's accepting the award & signing the Agreement, and furnishing the Contract Performance Security/Bank Guarantee. No interest shall be paid on the EMD. If the successful bidder fails to sign the agreement within the stipulated time, the EMD shall be forfeited to NMPA.
25. The bidder/Tenderer/contractor shall file the applicable returns with Tax departments in time and submit the same as documentary proof.
26. The GST applicable shall be shown as separate line items in the Tax invoices to avail input credit to Port.
27. In the event of forfeiting the EMD/LD/SD, GST is applicable and while imposing penalty, applicable GST shall be collected.

III - SECTIONS

1. INTRODUCTION

1.1 Brief Description of the Project

- 1.1.1 The Berth No. 14 is a deep draft multipurpose berth which was utilized for handling general & bulk cargo / container / passenger vessels with available water depth of (-) 15.1 MCD. The berth is having 350Mtr. quay length which can accommodate vessels with maximum LOA of 270Mtr. and maximum tonnage of 90,000 DWT. The berth was designed for a capacity of 6.6 Million MTPA.
- 1.1.2 New Mangalore Port awarded the project of 'Mechanization of Berth No. 14 for handling container and other cargo on DBFOT basis' to M/s. JSW Infrastructure Ltd., Mumbai vide Letter Of Award dtd. 26.08.2019. The project was structured in two phases: Phase 1 in 2020 and Phase II within 18 months of achieving 1.80 Lakhs TEU's or within 5 years of commencement of commercial operation of Phase I whichever is earlier. The construction period of Ph-II is 12 months.
- 1.1.3 Estimated total project cost (base cost 2017-18) is Rs. 280.71 crores (Rs.127.48 crores for phase-I and Rs. 153.23 crores for phase-II).
- 1.1.4 The Concession Agreement was signed between NMP and the newly constituted SPV for the project M/s. JSW Mangalore Container Terminal Pvt. Ltd., Mormugao vide on 27.01.2020 for a concession period of 30 years. After satisfactory completion of the condition precedent on 31.12.2020, the construction works of Phase-I project was commenced by the Concessionaire with effect from 01.01.2021 and was completed on 28.03.2022. The commercial operation of the container terminal was commenced on 29.03.2022.
- 1.1.5 As part of optimal utilization of the project facilities in order to attract bigger size vessels and provide higher output, M/s. JSW MCTPL came out with plan to put one more Mobile Harbour Crane (3rd Crane) and develop certain portion of stackyard, which they referred to as 'Additional Facility'. These Additional Facilities are originally planned in Phase-II of the Project. Hence, without commencement of Phase-II, they would be developing these additional facilities as soon as possible.
- 1.1.6 The civil works under Phase-II development involves container storage yard development for an area of 7.50 Ha and related facilities.
- 1.1.7 Mechanical Equipment proposed in Phase -II are, 1 No. Mobile Harbour Crane of capacity 100 T or more, 2Nos Reach stackers and 1 no empty

container handler. However, M/s. JSWMCTPL shall be initially taking up the procurement 1 No. of Mobile Harbour Crane first.

1.1.8 In this regard, M/s. JSWMCTPL vide letter dtd. 30.08.2022 requested consent of the Port Authority to allow them to procure and deploy 3rd Mobile Harbour Crane (MHC) and allot 3.0 Hectare of land forming part of Phase-II to develop additional facilities as mentioned above without linking of the commencement of Phase-II of the Project.

1.1.9 Since the additional facilities proposed above formed part of Phase-II development of the project, for which the timeline for commencement of the project was yet to be achieved, the Concessionaire M/s. JSW MCTPL requested the Port Authority to delink the additional facilities planned by them with the commencement Phase-II project development and to consider their obligation of procurement of 3rd MHC and development of 3.0 Ha. of stackyard out of the total area of 7.50 Ha under Phase-II project development as achieved.

1.1.10 The Detailed Cost Estimates of Phase-II is as follows:-

A. Civil Works and Structures Cost

Cost Head	Amount Rs. in Crores (Phase-II)
Land Preparation for the desired level including cutting, filling, removal of buildings, trees, bushes and all other debris	5.24
Stack yard area development including pavement for service roads and container stacking area	35.00
Civil works including Canopy, Security Booth, Road Furnitures, compound wall / fencing and miscellaneous.	8.30
Drainage & Sewerage System	5.00
Electrical, Lighting, Fire Fighting	7.00
Total Civil Structures Cost	60.54

B. Mechanical Equipments Cost

Cost Head	Qty.	Amount Rs. in Crores (Phase-II)
Mobile Harbour crane	1 No.	36.00
Reach Stackers	2 No.	10.50
Empty container handlers	1 No.	2.60
Total Mechanical Equipments Cost		49.10

C. IT Infrastructure & Networking cost:

Phase-II: 2% of Civil and Mechanical cost (i.e. 2.19 crores)

1.1.11 Thus, the scope of work of the present RFP is divided into the following 2 stages:-

Phase-II – First Stage	
Civil Works – Development of 3 Ha. of Container Stackyard	24.22
Mechanical Equipments - 1 No. MHC	36.00
Total	60.22

Phase-II – Second Stage	
Civil Works – Development of 3 Ha. of Container Stackyard	36.32
Mechanical Equipments - 1 No. MHC	13.10
Communication and IT Infrastructure	2.19
Total	51.61

1.1.12 This tender is in connection with the Appointment of Independent Engineer for supervision of the project of Mechanization of Berth No.14 for Handling of Containers and Other Cargo at New Mangalore Port on Public Private Partnership (PPP) Mode – Phase-II, wherein the Concessionaire M/s. JSW MCTPL has planned the execution of works in two stages initially additional facilities i.e., i) Procurement of 1 No. Mobile Harbour Crane and ii) Development of 3.0 Ha. of Container Stackyard to be taken up in First Stage and thereafter to continue with the balance works of Ph-II in the Second Stage.

1.2 Objective : Appointment of Independent Engineer for the project of Mechanization of Berth No. 14 for handling container and other cargo on DBFOT basis at NMP - Phase-II.

1.2.1 In line with provisions of Model Concession Agreement, the Authority has decided to carry out the process for selection of an Independent Engineer (IE) for supervision of the Additional Facilities as proposed above and thereafter the balance works under Phase-II project and invites competitive bids from experienced and reputed consultancy firm(s)/consortia to submit their offers on e-tendering mode through CPP Portal consisting of Technical professional for the project monitoring and approval of the detailed project report submitted by the Concessionaire, if any, design and drawings, certification of work and issue of completion certificate and other works as per the Terms of Reference specified at Schedule-1 (the “TOR”).

1.2.2 Technical Bids will be opened and firms who satisfy Minimum Eligibility Criteria (MEC) will be technically evaluated for short-listing them for opening of Financial Bids (Financial Proposal).

1.2.3 The Applicant having the highest combined score will be selected for appointment as Independent Engineer (IE) to undertake the duties and

perform the functions as set forth in Terms of Reference of this Tender document for the project “Mechanization of Berth No. 14 for handling containers and other cargo at New Mangalore Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis”

1.3 Currency conversion rate and payment

- 1.3.1 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 PDD, 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 RBI for the relevant date.
- 1.3.2 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.

**“RFP for Appointment of Independent Engineer (IE) for the Project of
Mechanization of Berth No. 14 for Handling Containers and other cargo at New
Mangalore Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis -
Phase-II”**

2. INSTRUCTIONS TO APPLICANTS

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 Independent Engineer (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 Section 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 Consultant’s team (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
Port Expert– cum–Team Leader [the “Team Leader”]	He will lead, co-ordinate and supervise the Consultancy Team for delivering the Consultancy in a timely manner as envisaged in this RFP. He shall not delegate his responsibilities except with the prior written approval of the Authority. He shall be responsible for execution of Civil Works related to the project.

Material Handling Expert	He will be responsible for execution of Mechanical works of the project. He will also be in-charge of Safety of yard development, container handling systems such as MHCs, Reach Stackers, Empty Container Handlers, Fire Fighting System of the Project.
Electrical Expert	He will be responsible for execution of Electrical, Instrumentation / IT related works of the Project.
Environmental cum Safety Expert	He will be responsible for the Environmental issues related to the Project including Safety.

2.1.5 Services of the Independent Engineer

The services of the Independent Engineer (IE) shall be provided during the construction of the Additional Facilities planned by the Concessionaire and thereafter the contract shall be continued till completion of the balance works under phase-II of the DBFOT project. Contract management and supervision of the quality standards of construction and confirming their specifications, progress of work and related activities are IE's general responsibilities. The IE is expected to play a positive and independent role in discharging its functions, thereby facilitating smooth implementation of the project. He shall co-ordinate between the Concessioneing Authority and the Concessionaire and shall report to the Concessioneing Authority for the progress of the construction activities and the planning schedule. The scope of work/duties of the Independent engineer are detailed in Terms of Reference clause No.3.

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 fulfill the following:

(A) **Technical Capacity:** The Applicant shall have, over the past 7 (seven) years preceding the PDD, undertaken assignments as specified in Clause 3.1.4. The Consultant shall have to substantiate the above experience with a work order and Completion certificate from the Client of having successfully completed the works indicating the time period during which the work has been executed and actual fees received.

(B)**Financial Capacity:** The Applicant shall have received a minimum of Rs.2.22 crore per annum as professional fees during each of the three financial years preceding the PDD. 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 fulfill the Conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Professional Experience	No. of Eligible Assignments for Experience
Port Expert– cum– Team Leader [the “Team Leader”]	Master/ Bachelor in Civil Engineering or equivalent.	Minimum 15 Years	Three
Material Handling Expert	Master/ Bachelor in Mechanical Engineering or equivalent	Minimum 10 Years	Two
Electrical Expert	Master/ Bachelor in Electrical Engineering or equivalent	Minimum 7 Years	Two
Environmental cum Safety Expert	Master/ Bachelor in Civil / Environmental engineering or equivalent	Minimum 7 Years	Two

2.2.3 The Applicants who satisfies the above criteria at (a) to (d) shall be considered for further evaluation in accordance with the method of selection specified in Clause 3.1.3 of this document.

2.2.4 The Applicant shall enclose with its Proposal, certificate(s) from its Statutory Auditors 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.

- 2.2.5 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 or Director (on the Board of Directors) of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 2.2.6 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 the Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.2.7 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.
- 2.2.8 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.

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 Performance Security, if available, 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-3. 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 Associates (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 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 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. 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 an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this Sub-clause (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 other members, if any) 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, or is deemed or published as an “Associate Office”; or has a formal arrangement such as tie up for client referral or technology sharing, joint venture with the Applicant (the “Associate”); provided, however, that if the Applicant has any formal arrangement such as consortium membership in a consortium of advisers/ consultants for a particular assignment/project, not being this project, with any other person, then such other person shall not be treated to be an Associate of the Applicant solely due to the reason of forming such consortium. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

- 2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, 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 any 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 Visit to the Authority and verification of information

Applicants are encouraged to submit their respective Proposals after

visiting the office of the Authority and ascertaining for themselves the availability of documents and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them.

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) 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.

The Authority shall not be liable for any omission, mistake or error 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.

2.7.2 The Authority shall not be liable for any omission, mistake or error 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.

Such 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.

2.9 Integrity Pact

Integrity Pact (IP) shall cover this RFP throughout its various phases, and IP would be deemed as a part of the contract. The Applicant should sign and submit a 'Integrity Pact' to be executed between the Applicant and the Authority as per the format at **Form-9**, and shall be submitted along with the Bid Enclosure in the manner provided in this RFP. IP would be implemented through the following Independent External Monitor ("IEM") for this Bid:

Sri. Prem Chand Pankaj,
Ex-CMD, NEEPCO.

B. DOCUMENTS

2.10 Contents of the RFP

2.10.1 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

- I Notice Inviting E-Tender
- II Instructions to Applicants for Online Bid Submissions
- III Sections
 - 1. Introduction
 - 2. Instructions to Applicants
 - 3. Criteria for Evaluation
 - 4. Fraud and corrupt practices
 - 5. Pre-Proposal Conference
 - 6. Miscellaneous

Schedules

- 1 **Terms of Reference**
- 2 **Form of Agreement**
 - Annex-1: Terms of Reference
 - Annex-2: Deployment of Personnel
 - Annex-3: Payment Schedule
 - Annex-4: Bank Guarantee for Performance Security

3 Guidance Note on Conflict of Interest

4 Appendices

Appendix – I

Technical Proposal

Form 1: Letter of Proposal

Form 2: Particulars of the applicant

Form 3: Statement of Legal Capacity

Form 4: Power of Attorney

Form 5: Particulars of Key Personnel

Form 6: Abstract of Eligible Assignments of Key Personnel

Form 7: Eligible Assignments of Key Personnel

Form 8: CVs of Professional Personnel

Form 9: Integrity Pact

Form 10: Proposed Deployment Schedule

Form 11: E-Payment Form

Appendix – II – Reference Format of Financial Proposal

Appendix –III – Project Information Memorandum

2.11 Clarifications

2.11.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

“QUERIES/REQUEST FOR ADDITIONAL INFORMATION CONCERNING RFP FOR APPOINTMENT OF INDEPENDENT ENGINEER (IE) FOR THE PROJECT MECHANIZATION OF BERTH NO. 14 FOR HANDLING CONTAINER CARGO AND OTHER CARGO AT NEW MANGALORE PORT ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS”

The Authority shall endeavour to respond to the queries within the period specified therein but no later than 7 (seven) days prior to the PDD. The responses will be sent by fax or e-mail. The Authority will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

2.11.2 The Authority reserves the right not to respond to any queries 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.

2.12 Amendment of RFP

- 2.12.1 At any time prior to the deadline for submission of 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 Addendum/ Amendment and posting it on the Official Website and by conveying the same to the prospective Applicants (who have purchased the RFP document) by e-mail/Fax.
- 2.12.2 All such amendments will be notified in writing through e-mail to all Applicants who have purchased the RFP document. The amendments will also be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Applicants.
- 2.11.3 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 PDD.

C. PREPARATION AND SUBMISSION OF PROPOSAL

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

2.14 Format and signing of Proposal

- 2.14.1 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.
- 2.14.2 The Applicant shall prepare the Proposal together with the enclosures required to be submitted along therewith pursuant to this RFP in ORIGINAL.
- 2.14.3 The Proposal shall be typed or written in indelible ink and signed by the 30authorized signatory of the Applicant who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be 30authorize by the person(s) signing the Proposal. The Proposals must be properly signed by the 30authorized representative (the “Authorised 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 31authorized person holding the Power of Attorney, in case of a Limited Company or a corporation; or
- (d) by the 31authorized representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified by a notary public in the form specified in Appendix-I (Form-4) shall accompany the Proposal (if required).

2.14.4 Applicants should note the PDD, as specified in Clause 1.8, 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 PDD as specified in Clause 2.17.1. 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.

The Applicants would provide all information as per this Proposal Document as well as subsequent clarifications/explanations furnished by NMPA. New Mangalore Port Authority reserves the right to reject any non responsive proposal.

2.15 Technical Proposal

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

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

- (a) all forms are submitted in the prescribed formats and signed by the prescribed signatories;
- (b) power of attorney, if applicable, is executed as per Applicable Laws;
- (c) CVs of all Key Personnel have been included;
- (d) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.2.2 (D) of the RFP;
- (e) no alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- (f) the CVs have been recently signed and dated, i.e. after the date of issue of this Request for Proposal document in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned/countersigned CVs shall be rejected;

- (g) the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;
 - (h) Key Personnel proposed have good working knowledge of English language;
 - (i) Key Personnel would be available for the period indicated in the TOR;
 - (j) no Key Personnel should have attained the age of 70 years at the time of submitting the proposal; and
 - (k) the proposal is responsive in terms of Clause 2.21.3.
 - (l) the proposal shall include EMD and Tender document fee in the form of DD.
 - (m) The work order and completion certificate from the client of having successfully completed eligible works.
- 2.15.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.
- 2.15.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, he shall be liable to be debarred for any future assignment of the Authority for a period of 3 (three) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event.
- 2.15.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.
- 2.15.6 The proposed team shall include 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. The team shall comprise other competent and experienced professional personnel in the relevant areas of expertise (where applicable) 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-11 of Appendix-I.
- 2.15.7 An Applicant may, from time to time, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise (where applicable). Credentials of such Sub-Consultants should be submitted by the Applicant in Form-12 of Appendix-I. A Sub-Consultant, however, shall not be a substitute for any Key Personnel.
- 2.15.8 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.

2.15.9 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 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 Selected Applicant or Consultant, as the case may be.

In such an event, the Authority shall forfeit and appropriate the Performance Security, if available, 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.

2.16 Financial Proposal

2.16.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the "Financial Proposal") clearly indicating the total cost of the Consultancy (Item F of Form-2 of Appendix II) in both figures and words, in Indian Rupees, and signed by the Applicant's Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.16.2 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, 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 (including break down of costs) shall be expressed in INR.

2.17 Submission of Proposal

Bidders shall submit their bid through E-tenders <https://eprocure.gov.in/cppp/> of CPP.

2.18 Proposal Due Date

- 12.18.1 Proposal must be uploaded in the website <https://eprocure.gov.in/cppp/> not later than the time and date indicated in the online bid reference.
- 12.18.2 The Authority may, in its sole discretion, extend the PDD by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.
- 12.18.3 Since the bid document is downloaded from web site and uploaded through e- Tender, the bidder shall give an undertaking that no changes have been made in document.
- 12.18.4 For both Technical and Financial evaluation purpose, e-tender only will be considered. In case the Applicant unable to upload the supporting documents through e-tender mode in case of Technical Proposal only, the hard copy of the supporting documents submitted before the due date also considered for technical evaluation.

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 PDD. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the PDD.
- 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 PDD, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.20 Bid Security

The Applicant shall furnish as part of its Proposal, a bid security of **Rs.2,36,000.00**(Rupees Two lakh thirty six thousand only) through NEFT in favour of the Financial Advisor & Chief Accounts Officer (FA&CAO), NMPA. The “**Bid Security**”, is returnable not later than 30 days from PDD except in case of the two highest ranked Applicants as required in Clause 2.24.1. In the event that the first ranked Applicant commences the assignment as required in Clause 2.29, the second ranked Applicant, who has been kept in reserve, shall be returned its Bid Security forthwith, but in

no case not later than 180 (one hundred and eighty) days from PDD. The Selected Applicant's Bid Security shall be returned, upon the Applicant signing the Agreement and completing the Deliverables assigned to it for the first 2 (two) months of the Consultancy in accordance with the provisions thereof.

The benefit of Exemption of EMD to all Micro and small Enterprises (MSE) will be allowed. The bidder shall upload with their offer, proof of their being MSE registered with District Industries Centre (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Scale Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or Udhog Aadhar Memorandum or any other body specified by Ministry of MSME, will be considered.

2.20.2. Any Bid not accompanied by the Bid Security shall be rejected by the Authority as nonresponsive.

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, 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 engages in any of the Prohibited Practices specified in Clause 4 of this RFP;
- (b) 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;
- © In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiation as required vide Clause 2.24.1;
- (d) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clause 2.28 and 2.29 respectively; or
- (e) 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 Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:

- a. It is received by the Proposal Due Date (PDD) and Time.
- b. It is Digitally Signed.
- c. It contains the information and documents as required in the RFP Document.
- d. It contains information in formats specified in the RFP Document.
- e. It mentions the validity period as set out in the document.
- f. It provides the information in reasonable detail. The Port Trust reserves the right to determine whether the information has been provided in reasonable detail.
- g. There are no significant inconsistencies between the proposal and the supporting documents.
- h. The Technical qualification conforms to as specified in the qualification criteria.
- i. It contains sealed and signed copy of RFP document, amendments and addendum (if any) issued by New Mangalore Port are submitted with initials on all pages.
- j. the EMD and Tender document fee have been paid.

2.21.2 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.

2.21.3 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Section 3 of this RFP.

2.21.4 After the technical evaluation, the Authority shall prepare a list of pre-qualified Applicants in terms of Clause 3.1.1 for opening of their Financial Proposals. 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 Financial Proposals will be through E-Tender. The Authority will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.2 and 3.3

2.21.5 Applicants are advised that Selection shall be entirely at the discretion of the Authority. Applicants shall be deemed to have understood and agreed that the Authority shall not be required to provide any explanation or justification in respect of any aspect of the Selection Process or Selection.

2.21.6 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 shall treat all information, submitted as part of the Proposal, in confidence and shall 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 to enforce or assert any right or privilege of the statutory entity and/or the Authority or as may be required by law or in connection with any legal process.

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 70% (seventy 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 next ranked Applicant 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 Consulting services 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 The Authority will not normally consider any request of the Selected Applicant for substitution of Key Personnel during negotiations as the ranking of the Applicant is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution, will, however be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

2.25.2 The Authority expects the Key Personnel to be available during implementation of the Agreement. The Authority will not consider substitution of the Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. As a condition to such substitution, a sum equal to 10% (ten per cent) of the remuneration specified for the original Key Personnel shall be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be 20% (twenty per cent) of the remuneration specified for the original Key Personnel. Any further substitution may lead to disqualification of the Applicant or termination of the Agreement.

2.25.3 Substitution of the Team Leader will not normally 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, cancel the LOA and the next highest ranking Applicant may be considered.

2.28 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within twenty one (21) days from the date of issue of LoA. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

The successful Bidder shall prepare and submit agreement format in line with the draft enclosed to the proposal document. On Approval of the Authority the agreement shall be signed by both the Bidder and Authority, after payment of stamp duties as may be necessary by the successful Bidder. The successful bidder shall also bear the cost for making of 10 sets of Agreement copies.

2.29 Commencement of Assignment

The Consultant shall commence the Consultancy within fifteen(15) 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 LOA or the Agreement, as the case may be, may be cancelled /terminated.

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. 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 70 points or more out of 100 shall be qualify for further consideration, and shall ranked from highest to the lowest on the basis of their technical score (ST).

3.1.2 Each Key Personnel must score a minimum of 70% marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 70 marks or any two of the remaining Key personnel scores less than 70 % marks. In case of selected Applicant has one Key Personnel, other than Team leader, who scores less than 70% marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the Authority, would score 70 % or above.

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

Key Personnel	Educational Qualification	Length of Professional Experience	No. of Eligible Assignments for Experience
Port Expert–cum–Team Leader [the “Team Leader”]	Master/ Bachelor in Civil Engineering or equivalent.	Minimum 15 Years	Three
Material Handling Expert	Master / Bachelor in Mechanical Engineering or equivalent	Minimum 10 Years	Two
Electrical Expert	Master / Bachelor in Electrical Engineering or equivalent	Minimum 7 Years	Two
Environmental cum Safety Expert	Master/ Bachelor in Civil / Environmental engineering or equivalent	Minimum 7 Years	Two

Sl. No.	Description	Maximum Marks	Breakup of Scoring System	MARKS
1	Relevant Experience of the Applicant	30		

Sl. No.	Description	Maximum Marks	Breakup of Scoring System	MARKS
	No. of Eligible Assignments undertaken by the Applicant over the past 7 (Seven) years preceding to PDD	15	One completed project costing more than Rs. 89 Crores	15.00
			Two completed projects costing Rs. 56 Crores or above but less than Rs. 89 Crore	12.75
			Three completed projects costing Rs. 45 Crore or above but less than Rs.56 Crore	10.50
	Overall turnover of the firm	10	More than Rs. 4.35 Cr.	10
			More than Rs. 3.11 to 4.35 Cr.	8.5
			More than Rs.2.22 upto 3.11 Cr	7
	Proposed Methodology and works plan	5	Evaluation based on quality of submission	
2	Experience of Key personnel	70		
A	Port Expert– cum –Team Leader (having experience in Container Terminal) [the “Team Leader”]	20		
	i. Total Work Experience	10	More than 25 years of experience	10
			20-25 years of experience	8.5
			15-20 years of experience	7
	ii. Qualification	5	Master	5
			Bachelor	3.5
	iii) Adequacy in Assignment /Job Experience in carrying out Eligible assignment	5	>3 Projects	5
			3 Projects	3.5
B	Material Handling Expert	20		
	i. Total Work Experience	10	More than 20 years of experience	10
			15-20 years of	8.5

Sl. No.	Description	Maximum Marks	Breakup of Scoring System	MARKS
			experience	
			10–15 years of experience	7
	ii. Qualification	5	Master	5
			Bachelor	3.5
	iii. Adequacy in Assignment /Job	5	>2	5
	Experience in carrying out Eligible assignment		2	3.5
C	Electrical Expert	15		
	i. Total Work Experience	5	More than 15 years of experience	5
			10-15 years of experience	4.25
			7–10years of experience	3.5
	ii. Qualification	5	Master	5
			Bachelor	3.5
	iii. Adequacy in Assignment /Job	5	>2	5
	Experience in carrying out Eligible assignment		2	3.5
D	Environmental cum Safety Expert	15		
	i. Total Work Experience	5	More than 15 years of experience	5
			10-15 years of experience	4.25
			7–10years of experience	3.5
	ii. Qualification	5	Master	5
			Bachelor	3.5
	iii. Adequacy in Assignment /Job	5	>2	5
	Experience in carrying out Eligible assignment		2	3.5

	Overall Maximum marks for Technical Qualification	100		
	Minimum marks to qualify technically	70		

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 monitoring and supervision of construction, for the following projects shall be deemed as eligible assignments (the “Eligible Assignments”):

Development of Port Infrastructure having an Estimated capital cost (excluding land) of atleast Rs. 45 crore (Rupees Forty Five Crores only) for three completed projects.

Or

Estimated capital cost (excluding land) of atleast **Rs. 56** Crore (Rupees Fifty Six Crores only) for two completed projects.

Or

Estimated capital cost (excluding land) of atleast **Rs. 89** Crore (Rupees Eighty Nine Crores only) for one completed work.

For the purpose of this RFP, Port Infrastructure would be deemed to include on-shore, container handling system / terminals, port based terminal facilities, CFS/ICDs, Bulk Handling Equipments or any project involving construction or supply and erection of Mechanical Bulk Handling Equipments.

Provided further that, such assignment shall have been completed prior to Proposal Due Date.

3.2 Short-listing of Applicants

Of the Applicants ranked as aforesaid, not more than 5 (five) shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such prequalified Applicants is less than 2 (two), the Authority may, in its sole discretion, pre-qualify the Applicant(s) whose Technical Score is less than the score specified in Clauses 3.1.1 and 3.1.2; provided that in such an event, the total number of pre-qualified and short-listed Applicants shall not exceed 2 (two).

The list of these short-listed Applicants shall be forwarded to the Concessionaire in accordance with Article 5.1(a) of the Concession Agreement for Development of Container Terminal which is based on the Model Concession Agreement published by Ministry of Shipping, Government of India, which is available in Ministry’s website. The Authority

may at its discretion, disqualify any of such shortlisted Applicants with respect to which an objection is raised by the Concessionaire. The Financial Proposal of the remaining 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 In the second stage, the financial evaluation will be carried out as per this Clause 3.2. Each Financial Proposal will be assigned a financial score (S_F) as specified in Clause 3.3.3.
- 3.3.2 For financial evaluation, the total cost (excluding GST) indicated in the Financial Proposal will be considered.
- 3.3.3 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. The lowest Financial Proposal (FM) will be given a financial score (SF) of 100 points. The financial scores of other proposals will be computed as follows:

$$S_F = 100 \times F_M/F$$

(F = amount of Financial Proposal)

3.4 Combined and Final Evaluation

- 3.4.1 Proposals will finally be ranked according to their combined technical (ST) and financial (SF) scores as follows:

$$S = S_T \times T_w + S_F \times F_w$$

Where, T_w and F_w are weights assigned to Technical Proposal and Financial Proposal that shall be 0.70 and 0.30 respectively.

- 3.4.2 The Selected Applicant shall be the Applicant having the highest combined score. The second highest Applicant shall be kept in reserve and may be invited in its discretion for negotiations in case the first-ranked Applicant withdraws, or fails to comply with the requirements specified in Clauses 2.28 and 2.29, as the case may be.

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 Performance Security, if available, 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 Clause, 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.

5. PRE PROPOSAL CONFERENCE

- 5.1 Pre-Proposal Conference of the Applicants shall be convened (both physical and virtual mode) at the designated date, time and place. Only those Applicants who have purchased the RFP document or downloaded the same from the Official Website of the Authority, shall be allowed to participate in the Pre-Proposal Conference.
- 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 endeavor 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.

6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Mangalore 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 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.
- 6.4 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.
- 6.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

SCHEDULES

Schedule – 1: Terms of Reference

SCHEDULE – 1

(See Clause 1.1.3)

**APPOINTMENT OF INDEPENDENT ENGINEER (IE) FOR THE PROJECT
MECHANIZATION OF BERTH NO. 14 FOR HANDLING CONTAINER CARGO
AND OTHER CARGO AT NEW MANGALORE PORT ON DESIGN, BUILD,
FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS**

TERMS OF REFERENCE (TOR)

1. GENERAL

It is proposed to develop existing Berth No.14 with “Mechanization of Berth No.14 for handling containers and other clean cargo on DBFOT Basis at NMP”. The Letter of Award is placed on M/s. JSW Infrastructure Ltd. under the Public Private Partnership (PPP) model.

The broad features of the project are as follows;

- i. The terminal will have the capacity to handle minimum of 6.02 million tons per annum of cargo / Container.
- ii. Estimated total project cost (base cost 2017-18) is Rs. 280.71 crores (Rs. 127.48 crores for phase-I and Rs. 153.23 crores for phase-II).
- iii. The concession period is 30 years.
- iv. As a part of Phase-I development, existing berth of 350 m length is handed over with a draft of ship alongside of berth 14.00m and depth of 15.1 m.
- v. Detailed Project Report for the entire project has been scrutinized by the Independent Engineer appointed for Phase-I and the same has been approved by the NMPA.
- vi. To provide unloading equipments for container handling from ship. Capacity of equipment shall be as defined in Concession Agreement / DPR.
- vii. To develop the container storage yard.
- viii. To provide Electrical / IT infrastructure.

NMPA now undertake to select the consultancy firm of repute and proven track record in planning, designing, implementing and supervising bulk /container terminals in accordance with the criteria specified in this document to be appointed as Independent Engineer (IE) for development of additional facilities proposed and thereafter to continue and execute all facilities envisaged under Phase-II development of the project of Mechanization of Berth No.14 for handling Containers and other cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) basis.

2. OBJECTIVE

In accordance with the provisions of the Concession Agreement executed

between New Mangalore Port Authority (Concessing Authority) and the selected PPP Operator (Concessionaire), inspection of construction till issue of completion certificate, and monitoring of operation and maintenance for specified period is proposed to be undertaken through an Independent Engineer (a qualified firm) that will be selected by the New Mangalore Port Authority (Concessing Authority) through a transparent process which has been broadly described in ARTICLE 5 of the Concession Agreement, the relevant extract of the same is enclosed as ANNEX- 1.

This is in view that a credible and fair arrangement for supervision is essential and its independence would provide added comfort to all stakeholders, besides improving the efficiency of project operations.

Independent Engineer (IE) thus selected would be required to independently perform the duties and the activities associated with review of design and drawings for the project, monitoring the construction works, conducting tests and certifying completion of the project including monitoring of operation and maintenance of the project for the specified period on behalf of New Mangalore Port Authority (Concessing Authority) and the selected BOT Operator (Concessionaire) so as to ensure compliance of the requirement of the provisions of the Concession Agreement.

3. SCOPE OF SERVICES

NMPA wishes to invite proposals from experienced and reputed consultancy firms for appointment as Independent Engineer (IE) for the Phase-II Project of **“Mechanization of Berth No.14 for handling containers and other cargo at NMP on Design, Build , Finance, Operate and Transfer (DBFOT) basis.”**

3.1 Role and functions of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the Project. The role and functions of the Independent Engineer shall include and not limited to the following:

- i. Review of the Designs and Drawings;
- ii. Review, inspection and monitoring of Construction Works;
- iii. Conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;
- iv. Determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

- v. Determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- vi. Assisting the Parties in resolution of disputes as regards the Designs & Drawings and all technical matters related to the Concession Agreement; and
- vii. Undertaking all other duties and functions as envisaged under the Agreement.

3.2 Review Designs and Drawings

- i. The Independent Engineer shall undertake a detailed review of the Designs & Drawings furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.
- ii. 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. The Independent Engineer shall take into account comments and suggestions of the Concessions Authority, if any while furnishing the comments.
- iii. The Independent Engineer shall review the monthly progress reports as regards the Construction Works.
- iv. The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the 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 Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.
- v. The Independent Engineer may inspect the Construction Works more

than once in a month if any lapses, defects or deficiencies require such inspections.

- vi. For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the 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. 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.
- vii. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- viii. 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 Construction Standards.
- ix. In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioneing Authority and the Concessionaire forthwith.
- x. If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioneing Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect

thereof.

- xii. Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioneing Authority.
- xiii. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessioneing Authority and the Concessionaire of the same.
- xiiii. The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Annexure hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

3.3 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 or International Codes 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 its contractors will 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 Indian or International StandardCodes. 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 best industrial 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 his 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 the 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 Port requirements to determine that all works and equipment forming part thereof conform to the provisions of the 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) **Safety Review:** Safety Audit of the project requirements shall have to be undertaken with the assistance of the relevant statutory authorities to determine conformity of the project requirements with the provisions of the Agreement.
 - (v) **The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged through the Concessionaire.
- 8) The Independent Engineer shall obtain a copy of operational and maintenance manual 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 will 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 or procedures recommended by OEM
- 10) The tests shall also satisfy the appropriate Authority and Certification, such as :
- (i) Dock safety Directorate
 - (ii) Environmental Authority
 - (iii) Fire Authority
 - (iv) Ground Water Authority
 - (v) Customs

Notwithstanding the terms mentioned above, the Independent Engineer for the study are expected to include in their work, information and studies as they deemed necessary to achieve this purpose.

4. Deliverable

Deleted

5. TIME AND PAYMENT SCHEDULE

- 5.1 The estimated duration of construction period is 24 months, i.e., 12 months for I-Stage and 12 months for II-Stage. However, the above estimation is based on the assumption that the II-Stage construction works shall be taken up by the Concessionaire immediately after completion of I-Stage works.
- 5.2 The total duration of Service of the Independent Engineer shall be until completion of 6 months from the date of Commercial Operation of the Project – Phase-II. The Consultant shall deploy its Key Personnel as per the Deployment schedule proposed.
- 5.3 Upon completion of project construction activities and upon issuing of Completion Certificate by the Independent Engineer, deployment of key personnel at site is not mandatory. However, their services shall be made available as and when required until completion of 6 months from the date of Commercial Operation of the Project – Phase-II.

5.3 The Payment Schedule linked to the specified Deliverables are given below:

Sl. No	Description of Services	Percentage payment of total quoted amount (Contract Price)
1	Review of design drawings, quality assurance procedures, procurement, engineering and construction time schedule submitted by the concessionaire in respect of 1 No. of Mobile Harbour Crane.	4%
2	Review of design drawings, quality assurance procedures, procurement, engineering and construction time schedule submitted by the concessionaire in respect of 3 Hectare storage yard development.	4%
3	Review of design drawings, construction methodology, quality assurance procedures, procurement, engineering and construction time schedule submitted by the concessionaire in respect of Civil, Electrical and balance area of storage yard development (other than Sl. No. 1 & 2).	4%
4	Pro-rata percentage payment for the services of Inspection of the Construction as per TOR based on physical progress of work during construction (subject to the stages indicated below)	70% (divided into stage payment as under)
	Completion of Physical progress (All works):	
	Of 20%	5%
	Of 30%	5%
	Of 40%	5%
	Of 50%	5%
	Of 60%	10%
	Of 70%	10%
	Of 80%	10%
	Of 90%	10%
	100%	10%
5	On conducting test on completion of construction and erection of 1 No. of Mobile Harbour Crane and issue of completion certificate.	2%
6	Vetting of as-built drawings by the Independent Engineer, Completion of civil works of 3 Ha container stackyard work and issue of completion certificate for the work.	2%
7	On conducting test on completion of construction and erection of equipments, and issue of provisional certificate for remaining works other than Sl. No. 5 & 6.	2%
8	Vetting of as-built drawings by the Independent Engineer,	2%

	Completion of work and issue of completion certificate by the New Mangalore Port to the IE for the work.	
9	Upon expiry of 6 (six) months from the date of commercial operations of Phase-II by the Concessionaire	10%

Notes:

1. The above payments shall be made to the Consultant provided that the payments to be made at any time shall not exceed the amount certified by the Consultant in its Statement of Expenses.

6. MEETINGS

- 6.2 The Authority may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held in Mangalore at the Authority's office. Further, the Consultant may be required to attend meetings and conferences with Concessionaire. The expenses towards attending such meetings in places other than Mangalore, during the period of Consultancy, including travel costs shall be reimbursed in accordance with the Financial Proposal contained in Form-2 of Appendix-II of the RFP.
- 6.3 The Authority may, in its discretion, require the Consultant to participate in extended meetings and/ or work from the offices of the Authority and the Consultant shall, on a best endeavor basis and without unreasonable delay, provide such services at the offices of the Authority.

7. CONSULTANCY TEAM

7.1 The Independent Engineer shall form a multi-disciplinary team (the "Consultancy Team") for undertaking this assignment. The following Key Personnel whose experience and responsibilities are briefly described herein would be considered for evaluation of the Technical Proposal. Other expertise such as that required for financial analysis, material investigation characterization, quantity survey, social impact assessment, safety etc. for the Project shall be included in the Team either through the Key Personnel specified below or through other Professional Personnel, as necessary.

Note: *The upper age limit of each of the Key Personnel shall be less than 70 years as on Proposal Due Date (PDD)*

Key Personnel:

A) Port Expert – cum – Team Leader (the Team Leader)

Educational Qualifications	Master/ Bachelor in Civil Engineering or equivalent.
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Essential Experience	15 Years in Planning, Project preparation, Design and Execution of Port based projects.
Job Responsibilities	<p>He will lead, co-ordinate and supervise the Consultancy Team for delivering the Consultancy in a timely manner as envisaged in this RFP. He shall not delegate his responsibilities except with the prior written approval of the Authority.</p> <p>He shall be responsible for execution of Civil Works related to the project.</p>
Minimum time required on site	<p>a) As and when required for Review of design / drawings and documents.</p> <p>b) Ten to Fifteen working days in a month after start of site construction activities till the completion of the services.</p>

B) Material Handling Expert

Educational Qualifications	Master / Bachelor in Mechanical Engineering or equivalent
Essential Experience	10 years in Mechanical projects in Container / Bulk Material Handling systems / CFS.
Job Responsibilities	He will be responsible for execution of mechanical works of the project. He will also be in-charge of Safety and for bulk / container handling systems such as MHCs, Reach Stackers, Empty Container Handlers, Fire Fighting System of the Project.
Minimum time required on site	<p>a) As and when required for Review of design / drawings and documents.</p> <p>b) Ten to Fifteen working days in a month after start of site construction activities till the completion of the services.</p>

C) Electrical Expert

Educational Qualifications	Master / Bachelor in Electrical Engineering or equivalent
Essential Experience	7 years in Electrical Projects in mechanization and bulk material / container handling systems / cement, steel industry.
Job Responsibilities	He will be responsible for execution of Electrical, Instrumentation / IT related works of the Project.
Minimum time required on site	<p>a) As and when required for Review of design / drawings and documents.</p> <p>b) Ten to Fifteen working days in a month after start of site construction activities till the completion of the services.</p>

D) Environmental cum Safety Expert

Educational Qualifications	Master/ Bachelor in Civil / Environmental engineering or equivalent
Essential Experience	7 years in Port based Projects.
Job Responsibilities	He will be responsible for the Environmental issues related to the Project including Safety.
Minimum time required on site	<p>a) As and when required for Review of design / drawings and documents.</p> <p>b) Ten to Fifteen working days in a month after start of site construction activities till the completion of the services.</p>

7.2 The Consultant shall mobilize and demobilize its Professional Personnel and Support Personnel as required.

8. REPORTING

8.1 The Consultant will work closely with the Authority and its technical and legal consultants. The Authority has established a Working Group (the "WG") to enable conduct of this assignment. A designated nodal officer of the Authority will be responsible for the overall coordination and project development. He will play a coordinating role in dissemination of the Consultant's outputs, facilitating discussions, and ensuring required reactions and responses to the Consultant.

8.2 The Consultant may prepare Issue Papers highlighting issues that could become critical for the timely completion of the Project and that require attention from the Authority.

8.3 The Consultant is required to prepare and submit a monthly report that includes and describes, inter alia, general progress to date; data and reports obtained and reviewed, conclusions to date, if any; concerns about availability of, or access to, data, analyses, reports; questions regarding the TOR or any other matters regarding work scope and related issues; and so on. The Consultants' work on the TOR tasks should continue while the report is under consideration and is being discussed.

8.5 Regular communication with the WG and the Nodal officer is required in addition to all key communications. This may take the form of telephone/teleconferencing, emails, faxes, and occasional meetings.

8.6 The Deliverables will be submitted as per schedule provided in this RFP.

9. DOCUMENTS TO BE MADE AVAILABLE BY THE AUTHORITY

The Authority shall provide to the Consultant a copy of the Concession Agreement:

Available data as may be required by the Consultant will be provided by the Authority on request. The Nodal Officer designated by the Authority shall facilitate handing over of such information to the Consultant (IE).

10. COMPLETION OF SERVICES

10.1 The project data shall remain the property of the Authority and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of the Authority. The Consultancy shall stand completed on acceptance by the Authority of all the items as per the Scope of Services upon expiry of 6 (six) months from the date of commercial operations by the Concessionaire unless extended by mutual consent of the Authority and the Consultant. The Authority shall issue a certificate to that effect.

10.2 10% (Ten percent) of the Agreement value has been earmarked as lump sum payment to be made to the Consultant upon expiry of 6 (six) months from the date of commercial operations of Phase-II by the Concessionaire as per payment schedule Annex-4.

11. FACILITIES OF IE:

The IE shall make his own transport arrangements for transportation of men and material to the office and at the project site. The IE shall have his own

supplies, computer hardware and peripherals, computer software, communication system (telephone, fax, e-mail / Internet) and support staff. After completion of the contract, all articles deployed by the IE shall remain his property.

Space for setting up of office for IE shall be provided by the Concessions Authority/Employer at the Port on monthly rental basis depending on its availability as per Port Scale of Rates. Apart from rent of office accommodation, the IE has to pay for water and Electricity charges at the prevailing rates.

If any increase in above charges, the same shall be paid by the IE as per the prevailing notified rates as applicable. All other facilities like furniture, interiors, office equipment, stationery, communication facilities, and vehicles shall be arranged by IE. IE's financial offer deemed to include expenditure involved for arranging such things

The project data shall remain the property of the Authority and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of the Authority. The Consultancy shall stand completed on acceptance by the Authority of all the items as per the Scope of Services upon expiry of 6 (six) months from the date of commercial operation of the project Phase-II.

ANNEXURE-I

EXCERPTS FROM THE CONCESSION AGREEMENT (CA) of “Mechanization of Berth No.14 for Handling Container and other Cargo at New Mangalore Port on Design, Build, Finance, Operate and Transfer (The “DBFOT”) Basis”

ARTICLE 5: INDEPENDENT ENGINEER

5.1 Independent Engineer

- a) The Independent Engineer shall be selected out of the panel prepared for the purpose by the Indian Ports Association. The Concessioneing Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability. The Concessioneing Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessioneing Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessioneing Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessioneing Authority and Persons against whom such objections are raised will at the discretion of the Concessioneing Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.

- b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operations for Phase I. For Phase II, Independent Engineer shall be appointed for a period commencing from the Date of 6 (six) months prior to start of construction for Phase II to the date of expiry of 6 (six) months from the Date of Commercial Operations for Phase II.

- c) The costs and expenses of the Independent Engineer and Indian Port Association for their services shall be borne by the Concessioneing Authority and Concessionaire, equally.

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

- e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.

ANNEXURE-I

EXCERPTS FROM THE CONCESSION AGREEMENT (CA) of “Mechanization of Berth No.14 for Handling Containers and other Cargoes at New Mangalore Port on Design, Build, Finance, Operate and Transfer (The “DBFOT”) Basis”

ARTICLE 6: PROJECT IMPLEMENTATION

6.1 Preparation of Designs and Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Scope of Work.

6.2 Review of the Designs and Drawings

- (a) The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioneing Authority with a set of the Designs and Drawings.
- (b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same (including the comments/observations of the Concessioneing Authority in respect thereof within 10 (ten) Days from the date of the receipt of such Designs and Drawings.
- (c) In the event that the Independent Engineer/ Concessioneing Authority has observed that the Designs and Drawings are not in conformity with the Scope of Work, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer/ Concessioneing Authority with regards its compliance.
- (d) If the Independent Engineer does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 10 (ten) Days of the submission, it shall be deemed that the Independent Engineer has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall be entitled to proceed with the Project accordingly.
- (e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioneing Authority at its sole discretion may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.

- (f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer/ Concessioning Authority under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer/ Concessioning Authority.
- (g) Notwithstanding the review by the Independent Engineer, the Concessionaire and Independent Engineer shall be severely and jointly be responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

6.4 Construction Phase

- (b) The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement (“Completion Certificate”) (**“Completion Certificate Phase I”**) not later than 12 (twelve) months from the date of commencement of the Concession Period.
- (c) The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement and as set out in Appendix 4 (**“Completion Certificate Phase II”**) 12 (twelve) months after commencement of 18 months of achieving 1.80 lakhs TEU’s or within 5 years of commencement of commercial operation of Phase-I, whichever is earlier.

6.5 Obligations of the Concessionaire

Without prejudice to the generality of Article 6.3 and in addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessionaire shall:

- (a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services;
- (b) engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;
- (c) give written notice to the Concessioning Authority within 7 (seven) Days of any material modification or change to any of the

Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified/amended documents to the Concessions Authority. Provided no such modification/amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessions Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessions Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessions Authority will not be enforceable against the Concessions Authority;

- (d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- (e) provide to the representative(s) of the Concessions Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessions Authority of any works shall not, in relation to such works, (i) amount to any consent or approval by the Concessions Authority nor shall the same be deemed to be waiver of any of the rights of the Concessions Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
- (f) provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;
- (g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and
- (h) ensure safe and timely construction and completion of the Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken

by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

- (i) give a written notice to the Concessioneing Authority for commencing the works, including installation of equipment, for Phase II, in accordance with the Project Schedule and as set out in Appendix 4.

6.5 Obligations of the Concessioneing Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessioneing Authority shall:

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

- (f) Handover of physical possession of the Project Site (berth area) measuring 1.225 hectares as per Appendix 1 from the Date of commencement of commercial operation by the Concessionaire.
- (g) handover of physical possession of the Project Site (storage area) measuring 6.50 hectares, as specified in Annexure 2, from the Date of commencement of commercial operation by the Concessionaire

6.6 Suspension of Works

- a) Upon recommendation of the Independent Engineer to this effect, the Concessioneing Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessioneing Authority, such work is not in accordance with the Construction Standards / Safety Standards.
- b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessioneing Authority and thereupon represent to the Concessioneing Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessioneing Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

6.7 Issue of Completion Certificate

- a) At least 30 (thirty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards (“**the Tests**”). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessioneing Authority who may designate its representative to

- witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days notice to the Independent Engineer;
- b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioneing Authority copies of all Test data including detailed Test results;
 - c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioneing Authority a Completion Certificate substantially in the form set forth in Appendix 10;
 - d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the “**Provisional Certificate**”) if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “**Punch List**”) to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessioneing Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioneing Authority shall be entitled to terminate this Agreement;
 - e) Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessioneing Authority, the Concessioneing Authority may, in its discretion, reduce the scope of Project and require the Concessionaire to pay 80% (eighty percent) of the sum saved due to such reduction of scope. Upon such payment to the Concessioneing Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

6.8 Change of Scope

- a) The Concessioneing Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement (“**Change of Scope**”). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date Phase I or Scheduled Project Completion Date Phase II. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to 5% (five percent) of the Estimated Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to 20% (twenty percent) of the Estimated Project Cost;
- b) If the Concessioneing Authority determines that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the “**Change of Scope Notice**”);
- c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessioneing Authority, the following:
 - (i) the adverse impact, if any, which the Change of Scope is likely to have on the Project; and
 - (ii) the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;
- d) Upon receipt of the foregoing information, the Concessioneing Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or the Concessioneing Authority does not disagree with the cost assessment of the Concessionaire, the Concessioneing Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and/or the Concessioneing Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty)

- Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of an Expert to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioneing Authority may issue an order to implement the Change of Scope;
- e) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
 - f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessioneing Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessioneing Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessioneing Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioneing Authority shall disburse to the Concessionaire after deducting prorata advance payment, such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Works or procuring equipments following an order for a Change of Scope;
 - g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioneing Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessioneing Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof; and
 - h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioneing Authority to

consider such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioneing Authority and all the provisions of this Article 6 for the Project Implementation shall *mutatis mutandis* apply. Provided, it is clarified that the provisions contained in Article 6.8 (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Concessioneing Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date Phase I or the Scheduled Project Completion Date Phase II, as the case may be. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Estimated Project Cost and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioneing Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% (five percent) of the Estimated Project Cost, the Concessioneing Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioneing Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee. On recovery of liquidated damages applicable GST will be collected.

6.10 Specific Provision relating to phase-wise construction

The Provisions of this Agreement including the Provisions on Preparation of Designs and Drawings, Review of the Designs and Drawings, Issue of Completion Certificate and Liquidated Damages, in so far as they relate to the Date of Commercial Operation Phase I shall apply *mutatis mutandis* to Date of Commercial Operation Phase II.

SCHEDULE – 2

(See Clause 2.1.3)

AGREEMENT

FOR

**Appointment of Independent Engineer (IE) for the Project Mechanization
of Berth No. 14 for Handling Containers and other Cargo at NMP on
Design, Build, Finance, Operate and Transfer (DBFOT) Basis – Phase-II"**

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AGREEMENT

Appointment of Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for handling container and other cargo on Design, Build, Finance, Operate and Transfer (DBFOT) Basis"

AGREEMENT No. _____ This AGREEMENT (hereinafter called the "Agreement") is made on the

_____ day of the month of _____ 2***, between, on the one hand, the SPV/ New Mangalore Port Trust (NMPA) (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

The Authority vide its Request for Proposal for Appointment of Independent Engineer (hereinafter called the "Consultancy") for the Project Mechanization of Berth No. 14 for Handling Container and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis – Phase-II (hereinafter called the "Project");

- (A) 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
- (B) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated _____ (the "LOA"); and
- (C) 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 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 or retainers 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 sub-contracts any part of the Services in accordance with the provisions of Clause 4.7;
and
- (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 part 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 Mangalore 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 tables 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 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/address as the Consultant may from time to time specify 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 Mangalore 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 email, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

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

1.8.2 The Authority may require the Team Leader/ Project Manager to spend the required man hours at the offices of the Authority and the Consultant agrees and undertakes to provide such services on a best effort basis and without any unreasonable delay.

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 Authorised 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:

The Chief Engineer (Civil)
Civil Engineering Department
New Mangalore Port Authority
Panambur,
Mangalore – 575 010

Kanrnataka (India)
Phone : 0824 2407493
Fax :0824 2407493
Email : chiefengineer@nmpt.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: -----

E-mail: -----

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions 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 fifteen (15) 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 1 (one) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

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 earlier of (i) expiry of a period of 60 (sixty) days after the delivery of the final Deliverable to the Authority; and (ii) the expiry of 1 (one) year from the Effective Date. Upon Termination, the Authority shall make payments of all amounts due to the Consultant hereunder.

2.5.1 Entire Agreement

2.5.2 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.

2.5.3 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, pandemic and epidemic, 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 fulfill 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 minimise the consequences of any event of Force Majeure.

2.7.4 Extension of time

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.

2.7.5 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 survives 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 3.5, 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 Laws.

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 materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 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) Deleted
- (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, 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 three 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 firm of the Consultant 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 The Consultant and its Personnel shall observe the highest standards of ethics and 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, 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 (ii) 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 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, 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.

3.4.5 Insurance to be taken out by the Consultant

- 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.

3.4.6 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. 5,00,000/- (Rupees Five Lakhs only);
- 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.

3.5 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.

3.6 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.

3.7 Reporting obligations

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

3.7.2 Deleted

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

3.8.1 All 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.

3.8.2 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.

3.8.3 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 unauthorised 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.

3.9 Materials furnished by the Authority

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 materials and shall dispose of such materials in accordance with the instructions of the Authority.

3.10 Providing access to Project Office and Personnel

The Consultant shall ensure that the Authority, and officials of the Authority having authorisation from the Authority, are provided unrestricted access to the office of the Consultant and to all Personnel during office hours. The Authority’s official, who has been authorised 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.

3.11 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/or vetted and data collected by it directly or procured from other agencies/authorities, 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 documents 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 other particulars of each of the Consultant's Key Personnel required in carrying out the Services are described in Annex-2 of this Agreement. The estimate of Personnel costs and man day rates are specified in Annex-3 of this Agreement.

4.2.2 Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-3 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 30% (thirty per cent), 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 by more than 25% (twenty five per cent) thereof. 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 Key Personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other Key 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-11) 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

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of the Key Personnel shall be permitted only upon reduction of remuneration equal to 10% (ten per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted. In case of a second substitution, such reduction shall be equal to 20% (twenty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted.

The Consultant should specifically note that substitution of the Key Personnel

will not normally be considered during the implementation of the Agreement and may lead to disqualification of the Applicant or termination of the Agreement. The Key Personnel must commit the time required for and be available for delivering the Consultancy in accordance with the terms specified herein.

4.5 Deleted

4.6 Senior Port Engineer cum Team Leader/ Project Manager

4.7 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. In addition, the Consultant shall designate a suitable person as Team Leader/ Project Manager (the "Team Leader/ Project Manager") who shall be responsible for day to day performance of the Services.

4.7 Deleted.

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

All service tax and other taxes other than income tax, as may be applicable from time to time, on the payment of the professional fees to the Consultant, shall be borne by the Authority.

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.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clauses 4.2.2 and 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the "Agreement Value"). The Parties agree that the Agreement Value is Rs. (Rs.....), which does not include the Additional Costs specified in Annex-5 (the "Additional Costs").

6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clause 2.6, 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) The Consultant shall be paid for its services as per the Payment Schedule at Annex-4 of this Agreement, and Clauses 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 and 10 of the TOR, and the rates specified in Annex-5 of this Agreement, 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; and

(ii) The Authority shall pay to the Consultant, only the undisputed amount.

(b) 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").

(c) 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 after issue of completion

certificate.

- (d) 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 in accordance with Clause 6.3 (c). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ PLR SBI +2% (two per cent) per annum.
- (e) 10% (Ten per cent) of the Agreement Value 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.
- (f) 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

Within ten days of the receipt of the award letter from Employer, the successful bidder/s shall furnish to the Employer a performance security in the form of a Bank Guarantee of a Nationalized/ Scheduled Bank, enforceable and encashable at Mangalore for an amount equivalent to 10% of the awarded cost/ fee+ GST as per the draft proforma specified at Annex-5 of the proposal document. Failure of the successful bidder to lodge and subsequently renew the required Bank Guarantee shall be constitute sufficient grounds for the termination of the contract and forfeiting of "Bid security". The performance security shall remain in force until the satisfactory completion of the contract and will be discharged thereafter. The obtaining of such guarantee (and the cost of guarantee) shall be at the expense of the Bidder/s.

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 the Agreement Value.

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) per week of the agreement value subject to a maximum of 10% (ten per cent) of 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 8.2 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 NMPA and the Managing Partner/ 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 Manglore and the language of arbitration proceedings shall be English.

9.4.2 There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.

9.4.3 The arbitrator 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

SIGNED, SEALED AND

For and on behalf of Authority

For and on behalf of Consultant (Signature)

(Signature) (Name)

(Name) (Designation)

(Designation) (Address)

(Address) (Fax No.)

(Fax No.) In the presence of

In the presence of 1.

1.

Annex -1

Terms of Reference

(Refer Clause 3.1.2)

(Reproduce Schedule-1 of RFP)

Annex-2

Deployment of Key Personnel

(Refer Clause 4.2)

(Reproduce as per Form-12 of Appendix-I)

Annex-3

Cost of Services

(Refer Clause 6.1)

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

Annex-4
Payment Schedule
(Refer Clause 5, Sub-clause 5.3 of TOR)

Annex-5

Bank Guarantee for Performance Security

(Refer Clause 7.1.3)

To

Board of Trustees New
Mangalore Port Authority
acting through

Chairman New Mangalore
Port Authority

In consideration of Chairman acting on behalf of the New Mangalore Port Authority (hereinafter referred as the “Authority”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s, having its office at (hereinafter referred as the “Consultant” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority’s Agreement no. dated valued at Rs.

(Rupees), (hereinafter referred to as the “Agreement”) a services for Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for Handling Containers and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis – Phase-II and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs..... (Rupees) to the Authority for performance of the said Agreement.

We, (hereinafter referred to as the “Bank”) at the request of the Consultant do hereby undertake to pay to the Authority an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant’s failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees).

3. We, (indicate the name of Bank) undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7. We, (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of

the Authority in writing.

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees ***** crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date specified in the RFQ/RFP for the Project)].

Dated, the day of 20

For

(Name of Bank)

(Signature, name and designation of the authorised signatory)
Seal of the Bank:

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch

SCHEDULE-3

(See Clause 2.3.3)

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.
 - (ii) Potential consultant should not have defined the project when earlier working for the Authority.
 - (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.
 - (ii) No consultant should be involved in owning or operating entities resulting from the project.
 - (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)

TECHNICAL PROPOSAL

Form-1

Letter of Proposal

(On Applicant's letter head)

(Date and Reference)

To

Sub: Appointment of Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for Handling Containers and Other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis – Phase-II – Reg.

Dear Sir,

With reference to your RFP Document dated, I/We, having examined all relevant documents and understood their contents, hereby submit our Proposal for Appointment of Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for Handling Containers and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis"

The proposal is unconditional and unqualified.

2. I/We acknowledge that the Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the Proposal and in the Appendices is true and correct, nothing has been omitted which renders such information misleading; 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 are not a member of 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. 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.
15. I/We agree to keep this offer valid for 180 days from the PDD specified in the RFP.
16. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith in Form 4.
17. In the event of my/our firm being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule–2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
18. In the event of my/our firm being selected as the Consultant, I/we agree and undertake to provide the services of the Team Leader/ Project Manager in accordance with the provisions of the RFP and that the Team Leader/ Project Manager shall be responsible for providing the agreed services himself and not through any other person or Associate.
19. I/We have studied RFP and all other documents carefully. 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 authorised signatory)

(Name and seal of the Applicant/ Lead Member)

APPENDIX-I

Form-2

Particulars of the Applicant

1.1	Title of Consultancy services: Independent Engineer
1.2	Title of Project: Appointment of Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for Handling Containers and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis"
1.3	State whether applying as Sole Firm or Lead Member of a consortium: Sole Firm or Lead Member of a consortium
1.4	<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:</p> <p>Registered address:</p> <p>\Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>Brief description of the Company including details of its main lines of business</p> <p>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>
1.5	<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>
1.6	<p>For the Applicant, (in case of a consortium, for each Member), state the following information:</p> <p>(i) In case of non Indian company, does the company have business presence in India?</p> <p style="text-align: right;">Yes/No</p> <p>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?</p> <p style="text-align: right;">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?</p> <p style="text-align: right;">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?</p> <p style="text-align: right;">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?</p> <p style="text-align: right;">Yes/No</p> <p>Note: If answer to any of the questions at (ii) to (v) is yes, the</p>

	Applicant is not eligible for this assignment.
1.7	(Signature, name and designation of the Authorized 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

The Chief Engineer
Administrative Office Building
2rd Floor, New Mangalore Port Authority,
Panambur, Mangalore 575010.

Dear Sir,

Sub: Appointment of Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for Handling Containers and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis – Phase-II"

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/ retained by 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 Appointment of Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for Providing Equipments for Handling Container and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis, proposed to be developed by the SPV/ VPT (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.

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, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

APPENDIX-I

Form-5

Financial Capacity of the Applicant

(Refer Clause 2.2.2 (B))

Sl. No.	Financial Year	Annual Revenue (Rs.)
1.	2020-21	
2.	2021-22	
3.	2022-23	
<p>Certificate from the Statutory Auditor[§]</p> <p>This is to certify that (name of the Applicant) has received the payments shown above against the respective years on account of professional fees.</p> <p>(Signature, name and designation of the authorised signatory)</p> <p>Date: _____ Name and seal of the audit firm: _____</p>		

[§] 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

Particulars of Key/ other Personnel

Sl. No	Designation of Key/ other Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignment
					Name of Firm	Employed Since	
1	2	3	4	5	6	7	8
1	Port Expert cum Team Leader						
2	Material Handling Expert						
3	Electrical Expert						
4	Environmental cum Safety Expert						

#Refer Form 8 of Appendix I Eligible Assignments of Key Personnel

APPENDIX-I

Form-7Abstract of Eligible Assignments of the Applicant[#]

(Refer Clause 3.1)

S.No	Name of Project	Name of Client	Estimated capital cost of Project (in Rs crore/ US\$ million)	Professional fee ^{##} received by the Applicant (in Rs crore)
(1)*	(2)	(3)	(4)	(5)
1				
2				
3				
4				

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

Exchange rate should be taken as Rs. 80 per US \$ for conversion to Rupees.

Copy of Contract/work orders along with completion certificate indicating the details of previous assignment completed, client, value of assignment/proportionate value in use of projects/ assignment in process date and year of award.

* The names and chronology of Eligible Assignments included here should conform to the project-wise details submitted in Form-9 of Appendix-I.

Certificate from 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.

(Signature, name and designation of the authorised signatory)

Date:

Name and seal of the audit firm:

[§] 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-8Abstract of Eligible Assignments of Key/ other Personnel[§]

(Refer Clause 3.1)

Name of Key/ Other Personnel:

Designation:

S.No	Name of Project*	Name of Client	Estimated capital cost of project (in Rs cr./ US\$ million)	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the assignment	Date of completion of the assignment	Man hours spent on the assignment
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							
3							
4							
5							

@ Use separate Form for each Key Personnel.

1. [§] In the case of Team Leader/ Project Manager, only those Eligible Assignments shall be included where the Team Leader/ Project Manager as the Team Leader or the leader of the Team in the relevant assignment.

* The names and chronology of projects included here should conform to the project-wise details submitted in Form-10 of Appendix-I.

APPENDIX-I

Form-9

Eligible Assignments of Applicant

(Refer Clause 3.1.4)

Name of Applicant:	
Name of the Project:	
Project size particulars:	
Description of services performed by the Applicant firm:	
Name of client and Address:	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of Project (in Rs crore or US\$ million):	
Payment received by the Applicant as professional fees (in Rs. crore):	
Start date and finish date of the services (month/ year):	
Brief Description of the Project	

Notes:

1. Use separate sheet for each Eligible Assignment.
2. Exchange rate should be taken as Rs. 80.00 per US \$ for converting to Rupees.

APPENDIX-I

Form-10

Eligible Assignments of Key Personnel

(Refer Clause 3.1.4)

Name of Key Personnel:	
Designation of Key Personnel:	
Name of the Project:	
Project size particulars:	
Name of Consulting Firm where employed:	
Description of services performed by the Key Personnel (including designation):	
Name of client and Address:	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of the Project (in Rs crore or US\$ million):	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	

Notes:

1. Use separate sheet for each Eligible Assignment.
2. In the case of Team Leader/ Project Manager, only those Eligible Assignments shall be included where the Team Leader/ Project Manager as the Team Leader or the leader of the Team in the relevant assignment.
3. Exchange rate should be taken as Rs. 80.00 per US \$ for converting in Indian Rupees.

APPENDIX-I

Form -11

Curriculum Vitae (CV) of Professional 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
 - c) Name of Project
 - d) Description of responsibilities

Certification:

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

(Signature and name of the Professional Personnel)

Place.....

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

Notes:

1. Use separate form for each Key Personnel and Professional Personnel.

2. In the case of PPP Expert, only those assignments shall be included where the PPP Expert worked as the Team Leader or the leader of the Financial/PPP Team in the relevant assignment.

3. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-7 of Appendix-I.

4. 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-12

Deployment of Key Personnel

Sl. No	Designation	Name	Man days		Week Numbers								
			At project Site	Away from Project site	1	2	3	4	5	
1	Port Expert cum Team Leader												
2	Material Handling Expert												
3	Electrical Expert												
4	Environmental cum Safety Expert												

APPENDIX-II
FINANCIAL PROPOSAL

Form - 1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

Chief Engineer
Administrative Office Building
2rd Floor, New Mangalore Port Trust
Panambur
Mangalore 575010

Dear Sir,

Subject: Appointment of Independent Engineer (IE) for the Project Mechanization of Berth No. 14 for Handling Container and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis"

I/We, _____ (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultancy Services for above.

I/We agree that this offer shall remain valid for a period of 180 (one hundred eighty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

Note: The Financial Proposal is to be submitted strictly as per forms given in the RFP.

APPENDIX -II
(See Clause 2.1.3)

Form - 2

Financial Proposal
(Format of Price Schedule for reference only and not to be filled)

Name of Work Appointment of Independent Engineer (IE) for the Project “Mechanization of Berth No. 14 for Handling Container and other Cargo at NMP on Design, Build, Finance, Operate and Transfer (DBFOT) Basis- Phase-II”.

SCHEDULE OF PRICES

Sl.No.	Description	Amount (Rs.)
1	Independent Engineer (IE) services for supervision of additional facilities forming part of Phase-II development of the project of “Mechanization of Berth No. 14 for Handling Container and other cargo on DBFOT Basis at NMP” planned by the Concessionaire and thereafter continuation of the contract till completion of the balance works under phase-II.	Amount in Lumpsum (Excluding Goods & Service Tax)

(GST as applicable will be paid)

Total cost of consultancy in words -----

Note.

1. Only the highlighted green cell to be filled.
2. The aforesaid professional fees, payable to the Consultant in accordance with the Financial Proposal, shall cover the costs of telephone/fax, photocopying, couriers and postage, collections and deliveries, traveling expense, stationery, costs of support staff and counsel fee, overheads, etc., including all taxes and duties except GST. No additional charges in respect thereof shall be due or payable. The fees shall be limited to the amounts indicated above and no escalation on any account will be payable on the above amounts.
3. Outstation travel (for locations other than Mangalore) shall be undertaken as per request of the Authority. The Team Leader/ Project Manager and Associate Consultant shall be entitled to economic class air travel, and board and lodging in a Three-star hotel. Bills for reimbursement hereunder may be submitted along in original supporting materials, along with a Statement of Expenses, duly certified by the Authorised Representative.
4. All payments shall be made in Indian Rupees and shall be subject to applicable Indian withholding taxes if any.
5. Applicable GST shall be paid separately.

Signature
Name
Designation
Date
For and on behalf

