

DEENDAYAL PORT AUTHORITY
MECHANICAL ENGINEERING DEPARTMENT
NOTICE INVITING TENDER

Tender No.MS/WK/4050-II/IE

Offers are invited for **"Appointment of Independent Engineer for the work of "Development, Operation & Maintenance of Berth No.13 for handling Multipurpose Clean Cargo including Container Cargo at Deendayal Port on DBFOT basis under PPP mode" for a Concession Period of 30 Years from the IPA Empanelled List of Independent Engineers.**

Estimated Cost: Rs.2,77,30,791/-

EMD is Rs.2,77,307/- and Tender Fee is Rs. 1,770/- (Including 18% GST)

Detailed Tender Notice along with complete tender documents can be downloaded from the official web-site of Deendayal Port Authority www.deendayalport.gov.in OR <https://tender.nprocure.com> OR CPP Portal from **25/11/2024 to 09/12/2024 up to 15:00 Hours.**

Technical Bid will be opened on **09/12/2024 @ 16:00 Hours.** Date of opening of Price bid shall be notified after scrutiny of Technical Bids. For further details and general enquiries, the prospective bidders may contact Superintending Engineer (E), Room no.312, 2nd Floor, Annex-Administrative Building, Gandhidham (Kachchh) – 370201, Gujarat. Email: see@deendayalport.gov.in (Contact No: +91 98252 34436), during working hours, before the last date and time of submission of tender document. The modifications / Corrigendum, if any, will be uploaded on the website of Authority and shall be intimated to IPA Empanelled List of Independent Engineer through email.

Sd/-

Superintending Engineer (E)
DEENDAYAL PORT AUTHORITY

DEENDAYAL PORT AUTHORITY

MECHANICAL ENGINEERING DEPARTMENT



TENDER No. MS/WK/4050-II/IE

APPOINTMENT OF INDEPENDENT ENGINEER FOR THE PROJECT
“DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR
HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER
CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR
A CONCESSION PERIOD OF 30 YEARS.

ISSUED BY:

SUPERINTENDING ENGINEER (E)

Mechanical Engineering Department
Deendayal Port Authority
Room No.312, Annex, Administrative Office Building,
Gandhidham –370 201.
District–Kutch, State-Gujarat
INDIA

Mo. No.: +91 9825234436

E-mail: see@deendayalport.gov.in

Website: www.deendayalport.gov.in



**DEENDAYAL PORT AUTHORITY
MECHANICAL ENGINEERING DEPARTMENT**

TENDER No. MS/WK/4050-II/IE

APPOINTMENT OF INDEPENDENT ENGINEER FOR THE PROJECT “DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR A CONCESSION PERIOD OF 30 YEARS.

CONTENTS OF THE TENDER DOCUMENTS

Sr.No	Section No	Contents	Page No.
01		TENDER NOTICE	3
02		TENDER ACTIVITY SHEET	4
03		NOTICE INVITING ONLINE TENDER	5-7
04	SECTION I	INFORMATION AND INSTRUCTION FOR BIDDERS FOR E-TENDERING AND DISCLAIMER	8-10
05	SECTION II	INSTRUCTION TO BIDDERS	11-20
06	SECTION III	SCOPE OF WORK/TERMS OF REFERENCE(TOR)	21-27
07	SECTION IV	EVALUATION OF PROPOSAL	28
08	SECTION V	GENERAL CONDITIONS OF CONTRACT	29-35
09	SECTION VI	FORMS OF BID	36-69
10	SECTION VII	EXTRACT OF CONCESSION AGREEMENT	70-78

TENDER NOTICE

Tender No. MS/WK/4050-II/IE

ONLINE TENDERING (E-Tendering)

NAME OF WORK	APPOINTMENT OF INDEPENDENT ENGINEER FOR THE PROJECT “DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR A CONCESSION PERIOD OF 30 YEARS.
--------------	---

E-Tenders are invited on-line under TWO BID SYSTEMS (Technical and Financial Bid) by Superintending Engineer (E), DPA from the IPA Empaneled List of Independent Engineers.

Details of the Tender Fee & Estimated Cost are as follows:

Tender Fee (In Rs.)	Estimated cost (In Rs.)	Last Date and Time of online Submission of bid documents
Rs. 1770 (i.e.1500 + 18% G.S.T.)	Rs.2,77,30,791.00	ON 09/12/2024 up to 15:00 Hrs.

Detailed Tender Notice along with complete tender documents can be downloaded from the official website of Deendayal Port Authority www.deendayalport.gov.in OR <https://tender.nprocure.com> OR CPP Portal from **25/11/2024 to 09/12/2024 up to 1500 Hrs.**

Technical Bid will be opened on **09/12/2024 @ 16:00 Hours**. Date of opening of Price bid shall be notified after scrutiny of Technical Bids. For further details and general enquiries, the prospective bidders may contact Superintending Engineer (E), Room no.312, Annex, A.O.Building, Gandhidham (Kutch) – 370201. Email id: see@deendayalport.gov.in, Mo. No: +91 9825234436, during working hours, before the last date and time of submission of tender document. The modifications / Corrigendum's, if any, will be uploaded on the website of Authority and shall be intimated to IPA Empaneled List of Independent Engineer through mail.

Sd/-
Superintending Engineer (E)
DEENDAYAL PORT AUTHORITY

TENDER ACTIVITY SHEET

APPOINTMENT OF INDEPENDENT ENGINEER FOR THE PROJECT “DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR A CONCESSION PERIOD OF 30 YEARS.

Sr. No.	Particulars	Date	Time
1.	Tender-publication date	25.11.2024	17:00 Hrs.
2.	Pre-Bid Meeting Date	02.12.2024	11:00 Hrs.
3.	Replies to Pre-Bid Queries by DPA	05.12.2024	17:00 Hrs.
4.	Bid Submission End Date / Bid Due Date	09.12.2024	15:00 Hrs.
5.	Tender Opening Date		
	a)Technical Cover	09.12.2024	16:00 Hrs.
	b)Financial Cover	Will be intimated to the Qualified Bidders.	

NOTICE INVITING ONLINE TENDER DEENDAYAL PORT AUTHORITY

Details about E-Tender

Department Name	Mechanical Engineering Department												
Circle/Division	Circle office, Administrative Office Building, Gandhidham (Kutch), Gujarat-370201.												
Tender No.	MS/WK/4050-II/IE												
Name of Work	APPOINTMENT OF INDEPENDENT ENGINEER FOR THE PROJECT “DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR A CONCESSION PERIOD OF 30 YEARS.												
Estimated Contract Value (INR)	Rs.2,77,30,791/-												
Period of Completion (in Months)	21 Months (15 Months Construction + 6 Months post Commercial Operation Date (COD))												
Bidding Type	Limited (Issued to IPA empaneled list of Independent Engineers)												
Bid Call (Nos.)	First												
Tender Currency Settings	Indian Rupee (INR)												
Bid Document Fee/Tender Fee :	Rs.1770/- (Rupees One thousand Seven Hundred Seventy) shall be deposited only through online payment mode. [i.e. Rs.1500/- (Tender Fee) + 18% GST]												
Bid Security/EMD(INR):	Rs.2,77,308/- towards EMD is to be submitted to D.P.A. through online payment mode in the account of Deendayal Port Authority as mentioned below: Account no.: 10080100022427 IFSC Code: BARBOGANKUT Bank of Baroda, Gandhidham Branch. In case of Micro and Small Enterprise (MSEs) holding valid certificate issued by any agencies/ organization under the Ministry of Micro, Small and Medium Enterprise indicating the list of activity related to the subject tender shall become eligible for exemption from payment of tender fee/ EMD. Such bidder shall upload a scanned copy of valid and relevant certificate on the (n) procure website, along with the duly filled in and signed ‘Bid Securing Declaration’ (Form no. 12) in the technical bid failing which the bid shall be considered non-responsive or disqualified. Such bidders shall upload the scanned copy of valid certificate in Technical bid. List of activity related to the subject tender as per National Industrial Classification-2008 for exemption of tender fee and EMD are listed below												
	<table border="1"> <thead> <tr> <th>NIC Code</th> <th>Activities</th> </tr> </thead> <tbody> <tr> <td>Division 70</td> <td>Activities of head offices; management consultancy activities</td> </tr> <tr> <td>702</td> <td>Management Consultant activities</td> </tr> <tr> <td>7020</td> <td>Management Consultant activities</td> </tr> <tr> <td>70200</td> <td>Management Consultant activities</td> </tr> <tr> <td>Division 71</td> <td>Architecture and engineering activities; technical</td> </tr> </tbody> </table>	NIC Code	Activities	Division 70	Activities of head offices; management consultancy activities	702	Management Consultant activities	7020	Management Consultant activities	70200	Management Consultant activities	Division 71	Architecture and engineering activities; technical
NIC Code	Activities												
Division 70	Activities of head offices; management consultancy activities												
702	Management Consultant activities												
7020	Management Consultant activities												
70200	Management Consultant activities												
Division 71	Architecture and engineering activities; technical												

		testing and analysis
	711	Architecture and engineering activities and related technical consultancy
	7110	Architecture and engineering activities and related technical consultancy
	71100	Architecture and engineering activities and related technical consultancy
	712	Technical testing and analysis
	7120	Technical testing and analysis
	71200	Technical testing and analysis
Bid Document Downloading Start Date	25/11/2024	

Last Date & Time for Receipt of Bids online	09/12/2024 up to 15:00 Hrs.	
Bid Validity Period	120 Days from the date of opening of technical bid	
Condition	<p>Payment towards tender fee shall be submitted through online payment mode in the account of Deendayal Port Authority as mentioned below: Account no.: 10080100022427 IFSC Code: BARBOGANKUT Bank of Baroda, Gandhidham Branch</p> <p>and Receipts of Same as a proof towards payment shall be submitted in electronic form through on line (by scanning) while uploading the bid.</p> <p>In case of Micro and Small Enterprises (MSEs) holding valid certificate issued by any agencies/organization under The Ministry of Micro, Small and Medium Enterprises indicating the list of activity related to the subject tender shall become eligible for exemption from payment of Tender Fee/EMD. Such bidder shall upload a scanned copy of valid and relevant certificate on the (n) procure website, along with the duly filled in and signed 'Bid Securing Declaration' (Form no. 12) in the technical bid failing which the bid shall be considered non-responsive or disqualified. Such bidder shall upload the scanned copy of valid certificate in technical bid. (Check Bid Security/EMD for list of activities)</p>	
Technical Bid Opening Date	09/12/2024 at 16:00 Hrs.	
Pre-Bid Meeting Date	02/12/2024 at 11:00 Hrs.	
Financial Bid (Price Bid) Opening Date	Financial Bid opening date will be intimated online to the technically qualified bidders through DPA's website.	
Documents required to be submitted by scanning through online	<ol style="list-style-type: none"> a. Receipt of Digital payment as Proof of Payment for Bid Security or the copy of valid certificate issued by any agencies/ organization under the Ministry of Micro, Small and Medium Enterprise towards the exemption of Bid Security & cost of tender fee along with bid security declaration as per form no. 12 of the tender document. b. Receipt of Digital payment as Proof of Payment for Tender fees. c. Resume/CV's of the team to be deployed. d. Integrity Pact Agreement. (Form-11) e. Any other Document as specified in the Tender Document. <p>Note: However, in case of any technical glitch due to which if any</p>	

	potential bidder is unable to upload the Integrity Pact Agreement, then he/she shall submit the Hard Copy of the duly filled, signed IP Agreement to the Department concerned of DPA within a period of seven days and prior to opening of the Technical Bid, failing which Bid of potential Bidder shall be treated as disqualified.
Bid Inviting & Opening Authority:	Superintending Engineer (E)
Address:	Room no.312, 2 nd floor, Annex, Administrative Office Building, Gandhidham (Kutch)-370201
Contact Details:	Email: see@deendayalport.gov.in, Mo. No.: +91 9825234436
Eligibility Criteria:	<ol style="list-style-type: none"> 1. The bidder is required to submit the declaration that they have not been banned or de-listed by any government/ Semi government Agency or PSU's. 2. The bidder is required to submit Duly signed integrity pact with bidder signature along with witness name, address and signatures in the Technical Proposal. 3. The bidder should have no conflict of Interest in taking up the subject work. 4. The Eligibility criteria (Clause 2.4, Section-II) and evaluation methodology have been detailed out in the tender document. 5. The bidder is required to submit Bio data (Resume/CV's) of Key Personnel complete in the prescribed format. (Form-5) 6. Bid Security/Earnest Money Deposit through digital payment mode. In case of Micro and Small Enterprise (MSEs) holding valid certificate issued by any agencies/ organization under the Ministry of Micro, Small and Medium Enterprise indicating the list of activity related to the subject tender shall become eligible for exemption from payment of EMD. Such bidder shall upload a scanned copy of valid and relevant certificate on the (n) procure website, along with the duly filled in and signed 'Bid Securing Declaration' (Form no. 12) in the technical bid failing which the bid shall be considered non-responsive or disqualified. Such bidders shall upload the scanned copy of valid certificate. 7. Bidder should furnish Income tax PAN number and GST registration number.

Note:

In case bidders need any clarifications or if training is required to participate in online tenders, they can contact (n) Procure Support team at following address: -

(n)Code Solutions– A division of GNFC Ltd.,

(n)Procure Cell, 4b103, GNFC Info tower,

S.G. Road, Bodakdev,

Ahmedabad–380054 (Gujarat).

Contact Details of (n) code Solutions:

Airtel:+91-79-40007501, 40007512, 40007516, 40007517, 40007525

BSNL:+91-79-26854511, 26854512, 26854513 (EXT:501,512,516,517,525)

Reliance:+91-79-30181689 Fax:+91-79-26857321,40007533

E-mail: nprocure@gnvfc.net

TOLL FREE NUMBER:1-800-233-1010(EXT:501,512,516,517,525)

SECTION-I
INFORMATION AND INSTRUCTIONS FOR BIDDERS FOR E-
TENDERING FORMING PART OF NIT AND TO BE POSTED ON
WEBSITE:

Information and instructions for bidders will form part of NIT and to be published on website.

The intending bidder must have Class III digital signature to submit the bid.

The Bid document as uploaded can be viewed and downloaded free of cost by anyone including intending bidder. But the bid can only be submitted after uploading the mandatory scanned documents such as EMD through Electronic online mode of payment towards Bid Security & Electronic online mode of payment towards Tender Fee or exemption certificate (as mentioned in this tender) towards Bid Security & cost of bid document.

- 1) Bidders may modify or withdraw their bids before last date and time of submission of bid as notified.
- 2) While submitting the modified bid, bidder can revise the rate of one or more item (s) any number of times (he need not re-enter rate of all the items) but before last time and date of submission of bid as notified.
- 3) On opening date, bidder can login and see the bid opening process. After opening of bids he will receive the competitor bid sheets.
- 4) Bidder can upload legible copies of documents in the form of JPG format and PDF Format.
- 5) It is mandatory to upload scanned copies of all the documents including GST registration as stipulated in the bid document. If such document is not uploaded his bid will become invalid and cost of bid document shall not be refunded.
- 6) If the bidder is found ineligible after opening of bids, his bid shall become invalid and cost of bid document shall not be refunded.
- 7) If any discrepancy is noticed between the documents as uploaded at the time of submission of bid and hard copies as submitted physically by the bidder the bid shall become invalid and cost of bid document shall not be refunded.
- 8) Bidder must ensure to quote rate of each item. If any cell is left blank and no rate is quoted by the bidder, rate of such item shall be treated as "0" (ZERO).
- 9) The Draft information and instructions to Bidders may be modified suitably by NIT approving authority as per requirement.
- 10) All the mandatory document required have to be enclosed by the bidder failing which his proposal shall be rejected and treated as non-responsive. However, additional documents required if any for verification of the original documents shall be submitted by the bidder if required by DPA.

DISCLAIMER

The information contained in this Request for Proposals document (“TENDER”) 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 TENDER and such other terms and conditions subject to which such information is provided.

This TENDER is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this TENDER is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this TENDER. This TENDER 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 TENDER 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 TENDER. The assumptions, assessments, statements and information contained in this TENDER, 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 TENDER and obtain independent advice from appropriate sources.

Information provided in this TENDER to the Applicants is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Authority, its employees and advisers make no representation or warranty and shall have no liability to any person including any Applicant under any law, statute, rules or regulations or tort, principles of restitution or 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 TENDER or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the TENDER and any assessment, assumption, statement or information contained therein or deemed to form part of this TENDER or arising in any way in this Selection Process.

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

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 TENDER.

The issue of this TENDER does not imply that the Authority is bound to select an Applicant or to appoint the Selected Applicant, as the case may be. 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 submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

SECTION – II

INSTRUCTION TO BIDDERS

2.1 INTRODUCTION

Deendayal Port is situated on the West Coast of India, in Gulf of Kutch along the West Bank of Kandla Creek at 70°13” E longitude and 23°01” N Latitude. The Port was developed after Independence of India. It was commissioned in the year 1955 with 2 dry cargo berths and was declared a Major Port. Presently the Port has fourteen cargo berths for handling dry cargo traffic, two berths for handling container cargo, seven oil jetties for handling POL products and other liquid cargo traffic at Kandla within Kandla Creek, one Offshore Terminal at Tekra for handling dry bulk cargo, and three Single Buoy Mooring (SBM) & Two products Jetties at Vadinar, in Jamnagar District, for handling crude oil.

Presently, DPA in the light of increasing future demand for Dry bulk (including break bulk) Clean Cargo handling facilities, and, in order to attract good volume of containerized cargo at Kandla and maintain cleanliness at the port as well, which would be better for the port in long term. In view of the same, DPA through a tendering process has identified the concessionaire (the “Concessionaire”) for “Development, Operation & Maintenance of Berth No.13 for handling Multipurpose Clean Cargo including Container Cargo at Deendayal Port on DBFOT basis under PPP mode” for a Concession Period of 30 Years (the “Project”), which shall implement the Project.

The objective of the assignment is to develop Modern Multipurpose handling facility along with state of the art equipment’s for dry bulk (including break-bulk) and container handling at Deendayal port inside the port premises, and then to augment the business, operate and maintain the facility for the tenure of 30 years. The initiative will enable efficient handling of vessels, leading to their faster turnaround. The existing facility like HMCs, equipment’s, Quay, yard, buildings, electrical & utilities etc. shall be handed over to the concessionaire on “as is where is” basis. Facility Planning has been undertaken in line with the anticipated market demand. Civil infrastructure and equipment are planned taking into account the latest developments in container ports worldwide. The berth no. 13 is already under operations by Port Authority, having total quay length of 300 meters and the approx. 21.7 Ha backup area shall be utilized for the storage yard, shed, office buildings and other allied infrastructure.

In such regard, DPA is intended to appoint an independent engineer (the “Independent Engineer” or “IE”) who would be appointed for a period commencing from the date of award of the concession and up to the date of expiry of 6 months from the date of commercial operations of the Project.

Accordingly, online bids though limited competitive e-bidding are invited by Deendayal Port Authority for appointment of Independent Engineer for the Project from the list of IPA empaneled Independent Engineers, circulated vide letter dated 18.10.2018 and 31.05.2019.

2.2 DEFINITION

2.2.1 “Board/ Authority” means Board of Deendayal Port Authority, a body corporate under the Major Port Authority Act, 2021 as amended from time to time.

2.2.2 “Bidder” means the person or persons, firm or company who have submitted bid application in response to this bid invitation document to be considered for evaluation to be appointed as an

Independent Engineer for the Project and includes the Bidder's representatives, officers, successors and permitted assignee.

- 2.2.3 "Chairperson" means the Chairperson of the Board of Deendayal Port Authority.
- 2.2.4 "Chief Mechanical Engineer" means the Chief Mechanical Engineer of Deendayal Port Authority.
- 2.2.5 "PPP Guidelines" means Public Private Partnership Guidelines issued by GoI.
- 2.2.6 "BOT" mean Built, Operate & Transfer.
- 2.2.7 "C.A" means the Concession Agreement executed between the Board of the Authority and the Concessionaire dated 10.09.2024
- 2.2.8 "RFQ" means Request for Qualification
- 2.2.9 "RFP" means Request for Proposal
- 2.2.10 "DPA" means Deendayal Port Authority as constituted and existing under the provisions of the Major Ports Act 2021.
- 2.2.11 "Independent Engineer" means an IPA empaneled firm to be considered for appointment in accordance with Article 5.1 of Concession Agreement for supervision and monitoring of the Scope of Work by the Concessionaire during the period as mentioned in section 3.2.1 of this document, and more particularly to undertake, perform and carry out the duties, responsibilities, services and activities set forth in Section III of this document read with Appendix 7 of Concession Agreement.
- 2.2.12 "Lowest Bidder" means L1 as defined in clause 4.2 (i).
- 2.2.13 "Project" means "Development, Operation & Maintenance of Berth No.13 for handling Multipurpose Clean Cargo including Container Cargo at Deendayal Port on DBFOT basis under PPP mode."

2.3 GENERAL

Digitally signed and uploaded online bids in Single Stage Two Cover System are invited by the Superintending Engineer (E) on behalf of Board of the Deendayal Port Authority (also referred to as Deendayal Port Authority) from the IPA Empaneled List of Independent Engineer for the subject work.

The bidding documents shall be downloaded from DPA's website (www.deendayalport.gov.in) and website of n-procure. The documents should be completely filled and submitted through on line Tendering process and one hard copy (except Price bid) shall be submitted within 5 days of the date of opening of the tender (Technical bid).

The bidder is expected to examine carefully all instructions, conditions of contract, forms, terms, etc., in the bid document. Failure to comply with the requirements of the bid document shall be at the bidder's own risk. Pursuant to clause 2.7 hereof, bids which are not substantially responsive to the requirements of the bid documents shall be rejected.

Language of Bid: All documents relating to the bid shall be in the English language

2.4 ELIGIBILITY CRITERIA

2.4.1 The Bidder has to submit the following for qualification as an eligible bidder:

- i. Bid Security/Earnest Money Deposit through digital online payment mode. In case of Micro and Small Enterprise (MSEs) holding valid certificate issued by any agencies/ organization under the Ministry of Micro, Small and Medium Enterprise indicating the list of activity related to the subject tender shall become eligible for

exemption from payment of EMD. Such bidder shall upload a scanned copy of valid and relevant certificate on the (n) procure website, along with the duly filled in and signed 'Bid Securing Declaration' (Form no. 12) in the technical bid failing which the bid shall be considered non-responsive or disqualified. Such bidders shall upload the scanned copy of valid certificate.

- ii. Tender Documents together with accompaniments, including Duly signed integrity pact with bidder signature along with witness name, address and signatures.
- iii. Bio data (Resume/CV's) of Key Personnel complete in the prescribed format.
- iv. Bidder should furnish Income tax PAN number and GST registration number.
- v. The declaration that they have not been banned or delisted by any government/Semi government Agency or PSU's.
- vi. The bidder should have no conflict of Interest in taking up the subject work as per clause no. 2.24.

2.4.2 Even though the bidder meets the above eligibility criteria, they are subject to be disqualified, if they have made misleading or false representations in the forms, statements and attachments submitted in proof of the qualification requirements.

2.5 EARNEST MONEY DEPOSIT/BID SECURITY

- i. No tender will be considered which is not accompanied by a sum of Rs.2,77,308/- (Rupees Two lakh Seventy-Seven Thousand Three Hundred Eight Only) as Earnest Money Deposit. In case of Micro and Small Enterprise (MSEs) holding valid certificate issued by any agencies/organization under the Ministry of Micro, Small and Medium Enterprise indicating the list of activity related to the subject tender shall become eligible for exemption from payment of EMD. Such bidder shall upload a scanned copy of valid and relevant certificate on the (n) procure website, along with the duly filled in and signed 'Bid Securing Declaration' (Form no. 12) in the technical bid failing which the bid shall be considered non-responsive or disqualified. Such bidders shall upload the scanned copy of valid certificate.
- ii. The EMD up to Rs. 5 Lakhs be payable through digital online mode. EMD beyond Rs.5 Lakhs be payable in the form of Bank Guarantee (drawn in favour of "Deendayal Port Authority" as per Form no. 2) for the entire amount from any Nationalized Bank/Scheduled Bank (except Co-operative Bank) having its branch at Gandhidham. Bank Guarantees submitted as Earnest Money shall be valid for 28 days beyond the validity of the bid. Bank Guarantee shall be verified independently by the Port with the bank before finalization of technical proposal. In the event of lack of confirmation of issue of the Bank Guarantee by the Bank, the bid shall stand disqualified.
- iii. EMD of unsuccessful bidders other than L1 and L2 would be refunded immediately after evaluation of price bids. Earnest money of L2 would be refunded immediately after entering in to agreement with L1 and acceptance of performance Guarantee from L1.
- iv. EMD is refunded suo-motto without any application from the bidders.
- v. The bid security of the successful bidder will be discharged after he has signed the Agreement and furnished the required Performance security.
- vi. The Bid security may be forfeited, if
 - a. The bidder withdraws the bid after bid opening during the period of bid validity.
 - b. The bidder does not accept the correction of bid price, pursuant to any Arithmetic error

OR

- c. The successful bidder fails within the specified time limit to
- I. Sign the Agreement or
 - II. Furnish the required Performance security.

List of activity related to the subject tender as per National Industrial Classification-2008 for exemption of tender fee and EMD are listed below

NIC Code	Activities
Division 70	Activities of head offices; management consultancy activities
702	Management Consultant activities
7020	Management Consultant activities
70200	Management Consultant activities
Division 71	Architecture and engineering activities; technical testing and analysis
711	Architecture and engineering activities and related technical consultancy
7110	Architecture and engineering activities and related technical consultancy
71100	Architecture and engineering activities and related technical consultancy
712	Technical testing and analysis
7120	Technical testing and analysis
71200	Technical testing and analysis

2.6 DOCUMENTS COMPRISING THE BID:

The Proposal should be submitted online in two Parts:

“Part 1: “Technical Proposal” which will consist of details mentioned in **Clause 2.6.1** of this tender and required to send the hard copies of all required documents within 5 days from the date of opening of the tender (Technical bid).

“Part 2: Financial Proposal” to be submitted online only. No hardcopy of financial proposal or any reference of quoted fees to be submitted with the above documents.

2.6.1 TECHNICAL PROPOSAL-Technical Proposal shall contain the following documents:

2.6.1.1 Towards Eligibility Criteria (Clause 2.4) with required information in the formats prescribed in Section VI of Tender document.

- Form 01 Specimen of Application for bidding & Declaration
- Form 02 Specimen of Bank Guarantee for EMD/Bid Security – **Not Applicable.**
- Form 03 Details of Litigations/arbitration cases resulting from the contracts executed by bidder in the past or currently under execution
- Form 04 Particulars of Proposed Key Personnel
- Form 05 Curriculum Vitae (CV) of Key Personnel Proposed for Assignment
- Form 06 Power of Attorney
- Form 11 Integrity Pact

2.6.1.2 Bid Security through digital online payment mode in favour of Deendayal Port Authority & Tender Fee through digital online mode of payment or the copy of valid certificate issued by any agencies/ organization under the Ministry of Micro, Small and Medium Enterprise

towards the exemption of Bid Security & cost of tender fee. Such bidder shall upload a scanned copy of valid and relevant certificate on the (n) procure website, along with the duly filled in and signed 'Bid Securing Declaration' (Form no. 12) in the technical bid failing which the bid shall be considered non-responsive or disqualified.

2.6.1.3 Income tax PAN number and GST registration number.

2.6.1.4 Tender Documents together with accompaniments, including Duly signed integrity pact with bidder signature along with witness name, address and signatures

2.6.1.5 The Bidder shall provide all the information as per this Tender Document and in the specified formats. DPA reserves the right to reject any Proposal that is not in the specified formats or in accordance with the terms of this Tender.

NOTE: The Technical Proposal must not include Financial Proposal (Price Bid).

2.6.2 FINANCIAL PROPOSAL

2.6.2.1 It shall contain only Form 7, i.e., Price bid, showing the rate and amount against the items for "DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE" FOR A CONCESSION PERIOD OF 30 YEARS. **The Financial Proposal is to be submitted online only.**

2.7 Responsiveness of the Technical Proposal

A Proposal will be considered responsive only if:

- i. The Technical Proposal is received in the form specified in this Tender;
- ii. It contains all the information (complete in all respects) as requested in this TENDER
- iii. It is received by the Due Date including any extension thereof in terms hereof;
- iv. It is accompanied by the Bid Security and Tender Fee or exemption certificate as specified in this Tender;
- v. It is signed, sealed, bound together and marked as stipulated in this Tender;
- vi. It is accompanied by the Power of Attorney for the Authorized Representative;
- vii. It does not contain any condition or qualification; and
- viii. It is not non-responsive in terms hereof.

2.8 The Bidder should not make any alteration in the tender documents.

2.9 In case of Micro and Small Enterprise (MSEs) holding valid certificate issued by any agencies/ organization under the Ministry of Micro, Small and Medium Enterprise indicating the list of activity related to the subject tender shall become eligible for exemption from payment of EMD. Such bidders shall upload the scanned copy of valid certificate. Such bidder shall upload a scanned copy of valid and relevant certificate on the (n) procure website, along with the duly filled in and signed 'Bid Securing Declaration' (Form no. 12) in the technical bid failing which the bid shall be considered non-responsive or disqualified. It may be noted that exemption certificate issued by any other authority will not be entertained.

- 2.10 The Board will not be responsible for or pay for expenses or losses, which may be incurred by any Bidder in the preparation of his tender.
- 2.11 The Bidder should not send revised or amended proposal after the closing date and time of the tender.
- 2.12 The tender should be delivered to the office of the Superintending Engineer (E) and the Bidder should obtain written acknowledgement for the same. Hard copy of the Tender along with its accompaniments should reach the office of the Superintending Engineer (E) within 5 working days from the date of online opening of Technical bids for the purpose of realization. The Bidders should specifically note that their tenders whether sent by post or by hand must reach this office on or before due date and time.
- 2.13 The Technical Proposal will be opened online at the date & time specified in the “Tender Activity Sheet” in the presence of such persons / representatives of the Independent Engineers who may wish to be present in the Office of Superintending Engineer (E), Deendayal Port Authority, Gandhidham.
- 2.14 **Bid Validity**
- 2.14.1 The Technical and Financial Proposal to be submitted by the Bidders should be valid for a period of 120 days from the date of opening of the Technical Proposal.
- 2.14.2 In exceptional circumstances, prior to expiry of the Bid Validity Period, DPA may request bidders to extend such Validity Period for a specified additional period. The request and the bidders' responses shall be made in writing or by email. A bidder may refuse the request without forfeiting its bid security.
- 2.14.3 A bid valid for a shorter period shall be rejected by the DPA as non-responsive.
- 2.15 **Modification and Withdrawal of Bids**
- 2.15.1 Bidders may modify or withdraw their bids before the deadline of submission of bid or extension if any.
- 2.15.2 No Bid can be modified after the dead line for submission of Bids.
- 2.15.3 Withdrawal or modification of a Bid between the deadline for submission of bids and the expiration of the original period of bid validity including extension, if any, may result in the forfeiture of the Bid security i.e. EMD.
- 2.16 The tender documents shall be digitally signed by the Bidder or by a person holding power of attorney authorizing him to sign on behalf of the Bidder before submission of tender.
- 2.17 The Bidder is required to submit a hard copy of the tender documents, duly signed by the Bidder or by a person holding power of attorney authorizing him to act on behalf of the Bidder, must be submitted to the Office of the Superintending Engineer (E), Deendayal Port Authority, within 5 working days of submission of the Bid for the purpose of realization.
- 2.18 The Board reserves the right to make deviation from the proposals. Such changes, if any, will be intimated to the Bidder at the appropriate time.

2.19 Bank Guarantee, towards P.G. is acceptable only, if issued by Nationalized Bank/Schedule Bank (except Cooperative Bank) having its Branch at Gandhidham.

2.20 Amendment of Bidding Documents:

Before the deadline for submission of bids, the Authority may modify the bidding documents by using addenda, in which case all rights and obligations of the Authority and the bidders previously subject to the original deadline will then be subject to the new deadline.

Any addendum thus issued shall be part of the bidding documents and shall be communicated by uploading online on www.deendayalport.gov.in & on n-procure website www.tender.nprocure.com. Prospective bidders shall acknowledge receipt of each addendum by email to the Authority.

In order to afford the prospective bidders a reasonable time in preparing their bids by taking an Addendum into account, or for any other reason to be recorded in writing for the interest of the bidding and selection process, the Authority shall, in its sole discretion, extend as necessary the deadline for submission of bids.

2.21 PRE-BID MEETING:

2.21.1 The bidder or his official representative may attend pre-bid meeting to be held on 02/12/2024 at 11:00 hrs. in the Chamber of Chief Mechanical Engineer, 2nd floor, Annex-A.O. building, Deendayal Port Authority, Gandhidham OR Virtual through video conference. The bidders/representative of bidders who wish to attend the Pre-Bid meeting shall furnish the authority letter on the letter head of Bidder, for attending the Pre-Bid Meeting on behalf of bidder.

2.21.2 The purpose of the Pre-Bid meeting will be to clarify issues related to work and tender conditions.

2.21.3 Pre-Bid clarifications will be uploaded in <https://tender.nprocure.com> or www.deendayalport.gov.in website without disclosing source of enquiry.

2.21.4 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

2.21.5 No queries received after pre-bid meeting will be entertained. The queries shall be sent by email in the word format as under on email see@deendayalport.gov.in in writing so as to reach the Superintending Engineer (E) not later than One (1) day before the date of Pre-Bid meeting:

Sr.No.	Clause No.	Page No.	Query

2.22 SCHEDULE OF BIDDING PROCESS:

DPA has fixed the schedule for this bid which has been mentioned in Tender Activity Sheet. In order to meet the target dates, all bidders are requested to respond expeditiously to inquiries during the evaluation process.

2.23 INSTRUCTIONS FOR ONLINE BID SUBMISSION

2.23.1 Registration

Bidders who wish to participate in the tender will have to procure/should have legally valid Digital Certificate, as per Information Technology Act-2000, using which they can sign their electronic bids. The bidders can procure the Digital Certificate from (n) code solutions a division of GNFC Ltd, who are licensed certifying authority by Government of India. All bids should be digitally signed. For details regarding Digital signature certificate and related matters, the bidder may contact the following address:

(n) code Solutions, A Division of GNFC,
301 GNFC Info tower, Bodakdev, Ahmedabad.
Tel.9179 26857316/17/18Fax:91 7926857321
Mobile: 9327084190/ 9898589652, E-mail:nprocure@gnvfc.net.

2.23.2 The bidders are required to submit soft copies of their bids electronically on the n-procure website, using valid Digital Signature Certificates. The instructions given above are meant to assist the bidders in registering on the n-procure Portal, prepare their bids in accordance with the requirements and submitting their bids online on the above website. More information useful for submitting online bids on the n-procure Portal may be obtained at: <https://tender.nprocure.com>.

2.24. **Conflict of Interest:**

- 2.24.1. The Bidder should confirm that there is no conflict of interest in taking up this assignment. An undertaking in this regard should be submitted by Bidder that the conflict or interest does not exist or arise.
- 2.24.2. DPA policy requires that the Bidders provide professional, objective, and impartial advice and at all times strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.
- 2.24.3. Bidder shall not have a conflict of interest that may affect the Selection Process or the Service pursuant to this document. The bidders have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Authority and the Assignment, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Bidders or the termination of its Contract. Any Bidder found to have a Conflict of Interest shall be disqualified.
- 2.24.4. The Bidder shall not accept or engage in any assignment that would be in conflict with its prior or current obligations under any other Agreements/Contracts or any such understanding which may place it in a position of not being able to carry out the Assignment in the best interests of DPA.
- 2.24.5. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest that affects the Selection Process, if:
 - I. Such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Proposal of either or each of the other Bidder; or
 - II. There is a conflict among this and other assignments of the Bidder (including its personnel)

and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Bidder depend on the circumstances of each case. While providing Services to DPA for this particular Assignment, the Bidder shall not take up any assignment that by its nature will result in conflict with the present Assignment; or

III. Any entity which has been engaged by DPA to provide goods or works or Services for an assignment, will be disqualified from providing Services for the same assignment; conversely, a firm hired to provide Services for this Assignment, will be disqualified from subsequently providing goods or works or other Services related to the same assignment;

2.24.6. For the avoidance of doubt, an entity affiliated with the Bidder shall include a partner in the Bidder's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Bidder, as the case may be, and any Associate thereof.

2.25 No Sub-Consultancy is permitted for the Assignment.

2.26. A Bidder or its Associate should have, during the last 3 (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 Bidder or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder or its Associate.

2.27 Bid Prices.

The rates and prices quoted by the bidder shall be fixed for the duration of the contract and shall not be subject to adjustment on any account.

The prices shall be quoted inclusive of all taxes, duties, and other incidentals charges like transportation, loading, unloading, boarding & lodging etc. except GST and should remain firm till completion of work. Applicable GST on the taxable value of supply of Goods or Services or both covered in this tender/contract will be paid by Port on production of bill mentioning GSTIN. Applicable Statutory recoveries including TDS under Income Tax, TDS under GST acts will be deducted/ recovered while accounting for or making payments to the contractor as per the applicable laws.

2.28 Notification of Award and Signing of Agreement:

- (i) The Bidder whose Bid has been accepted will be notified for the award by the employer prior to expiration of the Bid validity period by confirmation in writing. In this letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") the contract amount, completion period of the work, etc. will be mentioned in line with the tender conditions.
- (ii) The notification of award will constitute the formation of the Contract subject to the furnishing of a performance security in accordance with the provisions of tender condition.
- (iii) The Agreement will be submitted by successful Bidder within 14 days (National Bid) 28 days (Global Bid) of issue of the notification of award (Letter of Acceptance). The agreement will incorporate all correspondence between the employer and the successful bidder.

2.29 Contract Agreement:

The agreement on stamp paper shall be furnished by the Contractor as per the following

guidelines within 14 days (National Bid) 28 days (Global Bid) from the date of issue of Letter of Acceptance.

The successful Bidder will be required to execute an agreement at his expense on Three Hundred Rupees (Rs.300/-) Non-Judicial Stamp Paper in the proper departmental format (Form 10) for the due and proper fulfillment of the contract within 14 days (National Bid) 28 days (Global Bid) from the date of Letter of Acceptance.

Pending preparation and execution of the contract agreement as above, the tenders submitted by the Contractor together with Chief Mechanical Engineer's letter /fax accepting the tender shall constitute a binding contract between the Board and the Contractor.

The contract period shall be reckoned from the date of issue of Work-order to commence the work. Party has to submit the followings after issue of LOA as:

- i) The original agreement as per the format attached with the tender should be executed on a stamp paper of appropriate value (at present Rs.300/-)
- ii) The Agreement should be submitted in duplicate and the date of execution is to be kept blank.
- iii) Each page of the document is to be signed by the Contractor/ his authorized representative by indicating his full name.
- iv) If the Contractor is a partnership contractor, then a copy of the Partnership Deed and in case it is a Company, a copy of Memorandum and Articles of Association along with Registration Certificate is to be submitted.
- v) If the agreement is signed by a Partner/ a Director/ an authorized person of the contractor, in such case, a certified true copy of the power of attorney/ letter of authority given by the contractor/ company to the signatory of the contractor is to be submitted.
- vi) The entire agreement should be in type written form/ computer printed form.
- vii) Leaving blanks and insertion of some contents of the agreement with hand writing should be avoided.
- viii) All corrections/ additions made in the agreement are to be initialed.

2.30 Issue of Work Order:

Work order will be issued indicating the Contract value, completion period etc. after submission of Performance Security Deposit and Contract Agreement on Non- Judicial Stamp Paper by the successful bidder as per Tender Conditions.

2.31 Corrupt or Fraudulent Practices:

The employer requires that Bidders/Suppliers/Contractors under this contract, observe the highest standard of ethics during the procurement and execution of this contract. In pursuance of this policy, the employer:

- (a) defines the following for the purpose of these provisions:
 - (i) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the employer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the employer of the benefits of free and open competition.
- (b) will reject a proposal for award of work if he determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- (c) Will declare a Bidder ineligible, either indefinitely for a stated period of time, to be awarded a contract/contracts if he at any time determines that the Bidder has engaged in corrupt or fraudulent practices in competing for or in executing, the contract.

SECTION–III
SCOPE OF WORK /TERMS OF REFERENCE (TOR)

3.1 The Independent Engineer team shall consist of following minimum key personnel:

Key Personnel	Responsibilities
Team Leader/ Project Manager	He/she will lead, co-ordinate, and supervise the multidisciplinary IE team for providing services.
Civil Engineer	He/she will be responsible for overseeing Civil / Marine works related to the Project.
Mechanical Engineer	He/she will be responsible for overseeing Mechanical works related to the Project
Electrical/Instrumentation Engineer	He/she will be responsible for overseeing electrical and instrumentation works related to the Project.

3.2 SCOPE OF THE WORK:

The scope of work for project to be carried out by the Independent Engineer is as under:

3.2.1 Role and Functions of the Independent Engineer

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

- a. Review of the Drawings and Documents within 21 (twenty-one) days of the submission;
- b. Review, inspection and monitoring of Construction Works;
- c. Rendering assistance in seeking approval from Collector of Customs for the purpose of operationalizing the facilities and services;
- d. Conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;
- e. Review, inspection and monitoring of Concessionaire’s obligations.
- f. Determining as required under the Concession Agreement, the costs of any works or services and/or their reasonableness;
- g. Review and approve the actual capital cost of the Project upon completion of the Construction Works in line with the requirements of the Concession Agreement.
- h. Review and approve the detailed Operation and Maintenance Plan (O&M Plan), within 30 days from the date receipt of the same from the Concessionaire.
- i. Determining, as required under the Concession Agreement, the period or any extension thereof, for performing any duty or obligation;
- j. Assisting the Parties in resolution of Disputes;
- k. Undertaking all other duties and functions in accordance with the Concession Agreement.
- l. Independent Engineer shall commence the assignment and services to be rendered by it, from the date of award of concession of this Project to the date of expiry of 6 (Six) months from the date of commercial operation or extension thereof, if any, for project.
- m. Issue partial completion certificate for operationalization of the Project prior to the COD if required, after determining and notifying the Concessionaire the schedule and manner of the tests as are specified in this Section III that is required to be carried out to ensure that the Project meets with the Construction Standards.

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

3.3 Development Period

- i. During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Concessions Authority and the Concessionaire within 21 (twenty-one) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and specifications and standards.
- ii. The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- iii. The Independent Engineer shall review the Drawings in accordance with Appendix-6* of Concession Agreement and furnish its comments thereon to the Concessions Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.
- iv. The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- v. Upon reference by the Concessions Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Concessions Authority.

3.4 Construction Period

- 3.4.1 In respect of the Drawings, Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 3.3 shall apply, mutatis mutandis.
- 3.4.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Concessions Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 3.4.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the specifications and

standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Independent Engineer shall send a copy of its Inspection Report to the Concessions Authority and the Concessionaire within 7 (seven) days of the inspection.

- 3.4.4 The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 3.4.5 For determining that the Construction Works conform to specifications and standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph, the tests specified in the relevant Manuals specified by the Concessions Authority in relation to structures, buildings and equipment (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner and shall monitor and review the results thereof.
- 3.4.6 The sample size of the tests, to be specified by the Independent Engineer, under paragraph 3.4.5 above, shall comprise 10% of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% for certain categories or types of tests.
- 3.4.7 The timing of tests referred in paragraph 3.4.5 above and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 3.4.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the specifications and standards, and the provisions of this paragraph 3.4 apply to such tests.
- 3.4.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Concession Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessions Authority and the Concessionaire forthwith.
- 3.4.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Concessions Authority forthwith, identifying the whole or part of the Construction Works that should be suspended

for ensuring safety in respect thereof.

- 3.4.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Concessions Authority forthwith, recommending whether or not such suspension may be revoked by the Concessions Authority.
- 3.4.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.
- 3.4.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Section III and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Clause 6.7* of Concession Agreement and this Section III.
- 3.4.14 Upon reference from the Concessions Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 6.8* of Concession Agreement and certify the reasonableness of such costs for payment by the Concessions Authority to the Concessionaire.
- 3.4.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the maintenance manual.

3.5 Determination of costs and time

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

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

3.6 Assistance in Dispute resolution

- 3.6.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 3.6.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Concession Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

3.7 Other duties and functions

The scope is non-exhaustive. However, the selected Independent Engineer would perform works related to the project as directed by the Authority as and when required.

3.8 Miscellaneous

- 3.8.1 The Independent Engineer shall notify its programme of inspection to the Concessions Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 3.8.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this Scope of work, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Concessions Authority forthwith.
- 3.8.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under the Concession Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Concessions Authority along with its comments thereon.
- 3.8.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 3.8.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Concessions Authority or such other person as the Concessions Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Concessions Authority.
- 3.8.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

3.9 TESTS

Depending on the parameters of the Project/Construction Requirements, the Tests shall be as per Good Industry Practice shall be stipulated on a project specific basis and listed as below.

- 1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the Project Requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and their Contractor shall be as per the relevant provisions of the Concession Agreement.
- 2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipment and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the Good Industry Practice shall be used for testing with the approval of the Independent Engineer.
- 3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better

- quality of work.
- 4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipment and machinery.
 - 5) The Independent Engineer at its discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipment 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 Concession Agreement.
 - (ii). The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted.
 - 7) Tests:
 - (i). Visual and physical test: The Independent Engineer shall conduct a visual and physical check of the Project Requirements to determine that all works and equipment forming part thereof conform to the provisions of the Concession 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 equipment and machinery.
 - (iii). Structural test: All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
 - (iv). Environmental Audit: The Independent Engineer shall carry out a check to determine conformity of the Project Requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
 - (v). Safety Review: Safety audit of the Project Requirements shall have to be undertaken with the assistance of the relevant statutory authorities and determine conformity of the Project Requirements with the provisions of the Concession Agreement.
 - (vi). The procedures for tests: The procedures as stipulated in the relevant IS specifications shall be adhered and the equipment for testing shall be arranged by the Concessionaire.
 - 8) The Independent Engineer shall obtain a copy of operational and maintenance manuals of the Project Requirements from the Concessionaire and verify the contents of the manual in order to meet the following requirements:

The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual shall also cover the minimum maintenance requirement to adhere to the Performance Standards as per the provisions of the Concession Agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.
 - 9) The test procedure shall be followed as per ASTM, BIS, IS.
 - 10) Test shall also satisfy the appropriate Authority and Certification:
 - (i). Dock safety Directorate
 - (ii). Environmental Authority
 - (iii). Director of Explosives
 - (iv). Fire
 - (v). Ground Water Authority
 - (vi). Customs

11) Test of Handling Equipment & Electrification works

The Concessionaire shall within a period of 45 (Forty-Five) days from the date of award of the concession shall submit to Independent Engineer a report highlighting type of tests that would require to be carried out as per the type of the equipment for the above-mentioned project.

Independent Engineer within 10 (ten) days of receipt of such document shall give their comments. The Concessionaire shall incorporate comments of the Independent Engineer and shall submit the revised document within 10 (ten) days of receipt of comments

3.10 **Reports:**

The Independent Engineer shall submit to Deendayal Port Authority each month its monthly progress report including any results of tests, indicating the development activities made by the Concessionaire as per the Project Schedule provided in accordance with the Appendix 5 of the Concession Agreement, during the respective monthly period.

SECTION – IV

EVALUATION OF PROPOSAL

4.1 TENDER EVALUATION (General)

- a) A two-stage procedure will be adopted in evaluating the proposals: (i) Technical evaluation, which will be carried out prior to opening financial proposal and (ii) Financial evaluation.
- b) Prior to evaluation of Technical proposals, the Authority will determine whether each Proposal is responsive to the requirements of the Tender as indicated in clause 2.7. The Authority reserves the right to reject any Proposal, which is non-responsive, and no request for alteration, modification, substitution or withdrawal will be entertained by the Authority in respect of such Proposals. However, Authority reserves the right to seek clarifications or additional information from the applicant during the evaluation process.

4.2 Evaluation of Technical & Financial Proposals

- a. For the purpose of Qualification, the Bidders should satisfy the Eligibility Criteria as prescribed in Clause 2.4. In case an Applicant does not fulfil the Eligibility Criteria, the Financial Proposal of such an Applicant will not be evaluated further.
- b. Only those Technical Proposals which are found to be responsive and satisfy the Eligibility Criteria would be further evaluated in accordance with the criteria set out in Section IV.
- c. After the technical evaluation is completed, DPA shall inform the Bidders who have submitted their Proposals and have qualified in the Technical Evaluation.
- d. The eligible Bidders, who have qualified in the Technical Evaluation, shall be notified of being qualified for opening of the Financial Proposal submitted online. The Bidders' representatives may attend the opening of Financial Proposal online as per the time informed by DPA.
- e. Financial Proposal shall be opened in the presence of the Bidders' representatives, who may choose to remain present at the time of online opening of the Financial Proposals.
- f. The fee quoted in the Price Bid shall be deemed as final and reflecting the Assignment fee for the Assignment. Omissions, if any, in costing any item shall not entitle the firm/ entity to be compensated and the liability to fulfil its obligations as per the ToR within the total quoted price shall be that of the Independent Engineer.
- g. The Bids will be evaluated on the technical requirements.
- h. Only the price bids of the bidders who qualify based on the technical requirements shall be opened.
- i. Post opening of the price bids of the qualified bidders, the Bidder quoted the lowest Assignment Fee shall be awarded the assignment and termed a 'Lowest Bidder'.

SECTION-V GENERAL CONDITIONS OF CONTRACT

5.1 PERFORMANCE SECURITY/SECURITY DEPOSIT:

Security deposit shall consist of two parts; a) Performance Guarantee to be submitted after issue of LOA, and b) Retention money to be recovered from Running Bills.

- (i) Security deposit shall be 10% of the contract price, of which 5% of contract price should be submitted through **Online Digital Transfer or FDR or in form of Bank Guarantee** issued from Nationalized/ Scheduled bank (except co-operative banks), having its branch at Gandhidham, within 21 days on receipt of Letter of Award and balance 5% to be recovered as Retention Money from Running Bills. Recovery of 5% Retention Money to commence from the First RA Bill onwards @ 5% of the Bill Value from each Bill.

The Retention Money will be refunded not later than 14 days from the date of payment of final bill. The balance Performance Security of 5% that is in the form of Bank Guarantee or Online Digital Transfer or FDR shall be refunded to the Successful Bidder within 14 days from the completion of Contract period.

- (ii) **Successful Bidder has to submit the Performance security @ 5% of Contract price within 21 days of receipt of Letter of Award (LOA)**, failing which the work will not be awarded and the Bid Security i.e., EMD will be forfeited.
- (iii) The Port Authority will also be at liberty to deduct from performance guarantee or from any sums of money due or that may become due under any contract with the contractor that may become due to the employer. This is without prejudice to the rights of the employer under the terms of the contract. The Bank Guarantee is required to be dispatched by the issuing bank directly to The Employer by Registered AD Post.
- (iv) Failure of the Successful Bidder to comply with the requirements as mentioned above shall constitute sufficient grounds for cancellation of the award of work and forfeiture of bid security i.e. EMD.
- (v) The Bank Guarantee is required to be dispatched by the issuing bank directly to The Employer by Registered AD Post.
- (vi) The bank guarantee towards performance guarantee cum security deposit will be accepted in the form of bank guarantee from any nationalized bank / scheduled bank (except Co-operative Bank) having is branch at Gandhidham. The validity of Bank Guarantee should be kept up to 90 days from the date of completion of the contract period or extensions granted, if any. In addition to the above the Bank Guarantee should have a claim period of 3 months from the date of expiry of the Bank Guarantee.
- (vii) The Port Authority may at their option forfeit the Performance Guarantee cum Security Deposit if the contractor fails to carry out the work or perform or observe the conditions of contract.
- (viii) In case of submission of fraudulent documents with regard to Bank Guarantee against Performance Security by the Bidder shall be treated as major violation of the Tender procedure and in such cases, Black listing the contractor for the next three years.
- (ix) The Performance Guarantee cum Security Deposit will be released as mentioned above.
- (x) If applicable, the documentary evidence (copy of paid Challan in Govt. Treasury) of Welfare cess

@1% of work done or as amended by Statutory Authority from time to time, paid on final bill shall be submitted before releasing the Performance Guarantee.

5.2 Contract Period: The total duration of Services to be rendered by the Independent Engineer under this instrument and the contract to be signed by it with the Authority, shall commence from the date of Award of Concession of this Project until completion of 6 months from the date of Commercial Operation of the project or any extension thereof. In the event of the extension of the Construction Period (COD being extended), the Authority shall reserve the right to require the IE to perform such services as is prescribed in the ToR (Section III) during the extended period of construction on the same terms and conditions mentioned herein this instrument. Further, IE has to perform the obligation till the expiry of 6 month from the Commercial Operation Date COD or any extension as may be granted by the Authority in the interest of the Project. The Independent Engineer shall assist the Port for completion of the Project and giving any clarifications to any Statutory Authorities, on call basis.

5.3 Availability of Professional staff/experts:

5.3.1 The Bidder shall ensure availability of the requisite Professional staff/ Experts / Key Personnel as and when required to perform the Scope of Work of the Independent Engineer for the Project during assignment period.

5.3.2 The Bidder should provide a detailed description of the resources that will be applied to the assignment, especially adequately experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under the contract. The Bidder shall assign specific individuals to the key positions and that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to Deendayal Port Authority (DPA).

The key personnel so identified and notified to the DPA by the bidder, shall remain available on an “*as when required*” basis upon notification to that effect by the DPA to the bidder. In case the key personnel are unavailable for work or are found as committing substantially less effort to the work than initially anticipated, the Bidder shall immediately notify DPA, and shall, subject to the concurrence of the DPA, replace such personnel with personnel of substantially equal ability and qualifications.

5.4 No local transport will be provided to the Independent Engineer.

5.5 Mode & RELEASE OF PAYMENT:

The payment will be released on monthly pro-rata basis on the rates accepted by the Authority as per quoted/ accepted Assignment Fee for the Contract Period. In the event of extension of the term of services of the bidder during the Contract Period on account of extension of the COD, payment shall be based on the same terms as agreed above i.e., on monthly pro-rata basis, during the said extended period.

All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.

The Authority shall cause the payment of the Bidder within thirty (30) days after the receipt by the Authority of bills with supporting documents. Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Bidder, the Authority may add

or subtract the difference from any subsequent payments.

The Bidder shall also quote prevailing GST rate as per clause 5.7.2

5.6 Signing of Agreement

The Bidder whose tender is accepted will be required to enter into an agreement within 14 days of receipt of Letter of Acceptance, the form of which (subject to necessary modification) will be as set out in the form appended to the conditions of the contract at Form no 10. The cost of stamping the agreement and final acceptance etc., shall be borne by the successful Independent Engineer

5.7 TAXES & DUTIES:

5.7.1 Income tax and surcharge as applicable shall be deducted at source by Deendayal Port Authority in accordance with Income Tax act and in accordance with instruction issued by Tax Authorities on this behalf from time to time for this TDS certificate will be given.

5.7.2 GST Clause: The contractor shall quote the price exclusive of GST. The contractor shall quote prevailing GST rate separately, which shall be reimbursed by DPA after ascertaining necessary compliance as per Goods & Service Tax Act, 2017. All other duties, taxes, cesses applicable if any, shall be borne by the contractor. TDS under GST rules as applicable will be deducted from payment.

Contractor/ service provider/ supplier etc. has to ensure timely and proper filling of GSTR- 1 so that DPA can avail input tax credit in timely manner. In case DPA not allowed input tax credit due to failure on part of the contractor/ service provider/supplier etc., it will be a financial loss to the DPA and therefore same shall be recovered from the payment / deposit of the contractor / service provider / supplier etc.

5.7.3 The element of GST will not be considered for evaluation of financial proposal.

5.8 CARE AND DILIGENCE:

The Bidder shall exercise all reasonable care and diligence in discharge of Technical, Professional and Contractual duties to be performed by them and will be fully responsible for carrying out their duties properly.

5.9 SUSPENSION:

The Authority may, by written notice of suspension to the Independent Engineer, and after affording due opportunity of hearing to the Independent Engineer, may in the event the Independent Engineer fails to perform any of its obligations, including any default in carrying out of the Services as, contemplated under Article 5.1 (d) and (f)* of Concession Agreement, suspend all payments to the Independent Engineer hereunder provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Independent Engineer to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Independent Engineer of such notice of suspension.

5.10 TERMINATION OF SERVICES:

5.10.1 This Contract may be terminated by either Party as per provisions set forth below:

5.10.1.1 If the 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, or has relinquished performance of its duties as contemplated under Article 5.1(d)

and (f)* of the Concession Agreement, the Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer.

5.10.1.2 The Authority may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) to (d) of this Clause. In such an occurrence the Authority shall give at least thirty (30) calendar days' written notice of termination to the Independent Engineer in case of the events referred to in (a) to (c); and at least sixty (60) calendar days' written notice in case of the event referred to in (d);

*-Extract of Article 5 of Concession Agreement provided in Section VII

- a) If the Independent Engineer fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 5.9.
- b) If the Independent Engineer becomes (or, if the Independent Engineer consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.
- c) If the Independent Engineer fails to comply with any final decision reached as a result of arbitration proceedings.
- d) If the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

5.10.2 Furthermore, if the Authority determines that the Independent Engineer has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Authority may, after giving fourteen (14) calendar days written notice to the Bidder, terminate the Independent Engineer's employment under the Contract

5.10.3 The Balance work will be carried out by the Deendayal Port at the risk and cost of the Bidder. The Performance security shall be forfeited in case of termination of contract. The decision of the Deendayal Port in this regard shall be final and binding upon the Bidder.

5.10.4 The Independent Engineer may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Authority, in case of the occurrence of any of the events specified in paragraphs (a) to (d) of this Clause:

- a) If the Authority fails to pay any money due to the Independent Engineer pursuant to this Contract and not subject to dispute within forty-five (45) calendar days after receiving written notice from the Independent Engineer that such payment is overdue.
- b) If, as the result of Force Majeure, the Independent Engineer is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- c) If the Authority fails to comply with any final decision reached as a result of arbitration.
- d) If the Authority is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the

Independent Engineer may have subsequently approved in writing) following the receipt by the Authority of the Independent Engineer's notice specifying such breach.

5.10.5 This Agreement shall be co-terminus with the Concession Agreement unless otherwise as provided in Clause 5.10 and/or Clause 3.2.1 (i).

5.11 DISPUTE RESOLUTION

5.11.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Authority (DPA) and the Bidder/Independent Engineer in connection with interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Contract, whether before or after the termination of this Contract, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

5.11.2 Conciliation

In case any dispute is not resolved amicably as provided in clause 5.11.1, the Bidder/Independent Engineer shall agree to refer the matter to Conciliation & Settlement Committee established by the Authority (DPA) as per provisions contained in Part-III of the Arbitration & Conciliation (Amendment) Act, 2015. The standard operating procedures for conciliation and settlement of disputes through the conciliatory process and the constitution of the committee shall be contained in the policy guidelines issued by the Authority (DPA) (available on website of DPA) on the subject, which shall be in alignment with the provisions contained in Sections 63 and 64 of the Arbitration & Conciliation (Amendment) Act, 2015. In case the recommendations/decision of the committee is not acceptable to the Bidder/Independent Engineer, it shall be free to refer the dispute to arbitration in accordance with the provisions of Clause 5.11.3.

5.11.3 Arbitration:

Any Dispute which is not resolved amicably as provided in Clause 5.11.1 and 5.11.2 shall be finally settled by arbitration as set forth below:

- i. Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions here in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim right, matter or any other thing whatsoever, in any way arising out of or relating to the contract, design, drawings, specifications, estimates, instructions, order or to the condition or otherwise concerning the work or regarding the execution or failure to execute the same whether arising during the progress of work or after the completion there of as described here in after shall be referred to an arbitrator appointed by the parties under the Arbitration and Conciliation Act 1996 as amended from time to time.

- ii. It is a term of the contract that only such question and disputes as were raised during progress of work till its completion and not thereafter shall be referred to arbitration. However, this would not apply to the questions and disputes relating to liabilities of parties during the guarantee period after completion of the work.
- iii. It is a term of the contract that the party invoking arbitration shall give a list of disputes with amounts of claim in respect of each said disputes along with the notice seeking appointment of arbitrator.
- iv. It is also a term of the contract that if the Bidder does not make any demand for appointment of arbitrator in respect of any claims/disputes in writing, as aforesaid, within 120 days of receiving the intimation from the Nodal Officer or his nominee that the final bill is ready for payment, the claim of the Bidder shall be deemed to have been waived and absolutely barred and the Port Authority shall be discharged and released of all liabilities under the contract in respect of these claims.
- v. It is also a term of the contract that the arbitrator shall adjudicate only such disputes/claims as referred to him by the appointing authority and give separate award against each dispute/claim referred to him. The arbitrator will be bound to give claim wise detail and speaking award and it should be supported by reasoning.
- vi. The award of the arbitrator shall be final, conclusive and binding on all the parties to the contract.
- vii. The arbitrator from time to time, with the consent of both the parties, enlarges the time for making and publishing the award.
- viii. Arbitration shall be conducted in accordance with the provision of Indian Arbitration and conciliation Act, 1996 or any statutory modifications or re-enactment thereof and rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.
- ix. It is also a term of the contract that if any fees are payable to the arbitrator, this shall be paid equally by both the parties.
- x. It is also a term of the contract that the arbitration shall be deemed to have been entered on the reference on the date he issued the first notice to both the parties calling them to submit their statement of claims and counter statement of claims.
- xi. Venue of the arbitration shall be such place as may be fixed by the arbitrator at his sole discretion”.

5.12 Language and Law Governing the Contract:

English language shall be the binding and controlling language for all matters relating to the meaning or interpretation of this contract. This contract, its meaning and interpretation, and the relation between the DPA and Independent Engineer shall be governed by the Applicable law in India.

5.13 Confidentiality

The Independent Engineer and their Personnel shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Board's business or operations without the prior written consent of the Board.

5.14 **Reporting Obligations**

The Independent Engineer shall submit to the DPA the reports and documents as specified in the Scope of Services.

5.15 **Documents Prepared by the Independent Engineer to be the Property of Board**

All reports and other documents prepared by the Independent Engineer in performing the Services shall become and remain the property of the DPA. The Independent Engineer shall not use these documents for purposes unrelated to this Contract without the prior written approval of the DPA.

5.16 **Integrity Pact**

The bidder has to execute an Integrity pact with the Deendayal Port Authority (As per Form No 11.). Shri S.K. Sarkar, IAS (Retd.) and Shri Saurabh Chandra, IAS (Retd.) has been nominated as Independent External Monitor for Integrity Pact, whose address is as under :

1 Shri S.K. Sarkar, IAS (Retd.)

2. Shri Saurabh Chandra, IAS (Retd.)

B-104, Nayantara Aptt.,

A-9, Sector – 30

Plot 8 B, Sec-07, Dwarka,

Noida (U.P.) – 201301

New Delhi – 110 075.

Mobile No.9871322133

Mobile No.98111 49324

Email : saurabh7678@yahoo.co.in

Email : sksarkar1979@gmail.com

Scanned copy of pre- contract Integrity Agreement duly signed by the bidder along with witness name, address and signatures (as per Form No 11) is to be uploaded along with the technical proposal failing which tender shall be considered non-responsive. Original hard copy of Pre-Contract Integrity Pact Agreement shall be submitted by post or hand immediately after closing date of online E-tender. However, the Integrity Pact is to be executed on Stamp paper with the successful bidder only.

The “Procedure for signing Integrity Pact” is as follow:

- (1) The Employer / Authorized Person of Employer has signed the IP in the presence of a witness from their side, who has also affixed his/her signature thereof and then the same IP has been uploaded on n-procure portal;
- (2) The potential bidders shall download and print the IP Agreement signed by the Employer and their witness and affix his/her signature on the IP Agreement in the presence of a witness from his/her side, who shall also affix his / her signature thereof. Having completed the signing procedure, the Potential Bidder shall upload the duly filled and signed IP Agreement on n-procure portal.
- (3) The procedure mentioned above regarding signing of Integrity Pact Agreement by both the parties (Employer and Potential bidders) shall be completed online. However, in case of any technical glitch due to which if any potential bidder is unable to upload the IP Agreement, then he / she shall submit the Hard Copy of the duly filled, signed IP Agreement to the Department concerned of DPA within a period of seven days and prior to opening of the Technical Bid, failing which Bid of potential Bidder shall be treated as disqualified.

SECTION VI

FORMS OF BID

To be submitted by Bidders with their Bids

Form No.	Description of Form
1	Specimen of Application
2	Specimen of Bank Guarantee for EMD/Bid Security - Not Applicable
3	Details of Litigations/Arbitration cases resulting from the contracts executed By bidder in the past or currently under execution
4	Particulars of proposed key personnel
5	Curriculum Vitae(CV) of key personnel proposed for assignment
6	Power of Attorney
7	Price Bid
8	Letter of Acceptance
9	Specimen Bank Guarantee Performance Guarantee/Security Deposit
10	Form of Agreement
11	Integrity Pact
12	Bid Securing Declaration form (For bidders claiming relaxation for tender fee and EMD)

Tendering Forms

SPECIMEN OF APPLICATION

[On the Letter Head of the Bidder (in case of Single Bidder)]

(Date and Ref)

To,
The Superintending Engineer (E)
Deendayal Port Authority
(Address _____)

Pin Code: _____

Dist-Kutch (Gujarat)

Sub: APPOINTMENT OF INDEPENDENT ENGINEER FOR THE PROJECT “DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR A CONCESSION PERIOD OF 30 YEARS.

Dear Sir,

With reference to your Tender Document dated, I/we, having examined Tender documents and all other relevant documents and understood their contents, here by submit our Proposal/Bid for "". This proposal is unconditional and unqualified.

1. I/We acknowledge that DPA will be relying on the information provided in the Proposal/ Bid and the documents accompanying the Bid for the aforesaid purpose and I/we certify that all information provided in the Proposal/ Bid and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
2. I/We shall make available to DPA any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
3. I/We acknowledge the right of DPA to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
4. 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 Bidder, nor been expelled from any project/assignment or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
5. I/We declare that:
 - a) I/We have examined and have no reservations to the Tender Documents, including any Addendum which may be issued by DPA;
 - b) I/We do not have any conflict of interest in accordance with the terms set forth in this Tender 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 this Tender document, in respect of any tender or request for proposal issued by or any agreement

Entered into with DPA 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 this Tender document, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

6. I/We acknowledge that, in case of being pre-qualified the Authority may invite us to participate in due time for the opening of Price bid of the Tender on the basis of provisions made in the Tender Documents to follow.
7. When the call for Tenders is issued, if the legal, technical or financial conditions, or the contractual capacity of the firm changes, we commit ourselves to inform you and acknowledge your sole right to review the pre-qualification made.
8. I/We also declare that, our firm has not been banned/black-listed/de-listed by any Central / State/Public govt. Agency/PSUs.
9. 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 Bidder, without incurring any liability to the Bidders in accordance with the Tender document.
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 Assignment 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 Department 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 here by 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 DPA and/ or the Government of India/Gujarat in connection with the selection of Bidder or in connection with the selection process itself in respect of the above mentioned Assignment.
14. I/We agree and understand that the proposal is subject to the provisions of the Tender document. In no case, I/we shall have any claim or right of whatsoever nature if the Assignment is not awarded to me/us or our proposal is not opened or rejected.
15. I/We agree to keep this offer valid for 120 days from the Due Date specified in the Tender.
16. A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith in format provided in the tender.

17. In the event of our firm being selected as the Bidder, I agree to enter into the Agreement with DPA for the said Assignment in such manner as set out in the Tender Document.
18. I/We have studied Tender and all other documents carefully and also surveyed the Assignment site. We understand that except to the extent as expressly set forth in the Consultancy Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by DPA or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Assignment.
19. The Financial Proposal is submitted online only. The Technical Proposal read with the Financial Proposal shall constitute the Application made in response to the Tender and shall be binding on us.
20. I/We agree and undertake to abide by all the terms and conditions of the Tender Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the Tender Document.
21. We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it would lead to our disqualification.
22. I/We agree and understand that this Proposal is subject to the provisions of the Tender documents. In no case, I/We shall have any claim or right of whatsoever nature if the Assignment is not awarded to me/us or our Bid is not opened.
23. I/We agree and undertake to abide by all the terms and conditions of the Tender document.

In witness thereof, I/we submit this Bid/Proposal under and in accordance with the terms of the Tender document.

Yours faithfully,

(Signature, name and designation of the authorized signatory)
(Name and seal of the Bidder)

Specimen EMD (Bank Guarantee Format)

[The Bank shall fill in this Bank Guarantee Form in association with the instructions indicated. To be executed on Rs. 300/- or applicable non-Judicial Stamp Paper]

(Bank's name and address of Issuing Branch or Office)

Beneficiary:(Name and Address of Authority/Board) Board of Deendayal Port Authority.

Date: _____

Tender Guarantee No.:

We have been informed that [name of the Tenderer] (here in after called "the Tenderer") has submitted to you its Tender dated (hereinafter called "the Tenderer") for the execution of [name of contract] under Invitation for Tenders No. [Number]. Furthermore, we understand that, according to your conditions, Tenders must be supported by an EMD.

At the request of the Tenderer, we [name of Bank] here by irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in figures] ([amount in words]) upon receipt by us your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer:

- (a) Has withdrawn its Tender during the period of tender validity specified by the Tenderer in the Form of Tender; or
- (b) Having been notified of the acceptance of it's Tender by the Authority/Board during the period of Tender validity, (i) fails or refuses to execute the Form of Agreement, if required, or (ii) fails or refuses to furnish the performance guarantee, in accordance with the Instructions to Tenderers.

This guarantee will expire unless otherwise extended or informed by the Authority/Board:

- (a) If the Tenderer is the successful Tenderer, upon our receipt of copies of the contract signed by the Tenderer and the performance guarantee issued to you upon the instruction of the Tenderer; or
- (b) If the Tenderer is not the successful Tenderer, upon the earlier of
 - (i) Our receipt of a copy of your notification to the Tenderer of the name of the successful Tenderer; or
 - (ii) Twenty-eight days after the expiration of the Tenderer's tender or any extended period there of;

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

[Signature(s)]

[Authorization letter from the issuing bank that the signatory of this BG is authorized to do so should also be enclosed]

Details of Litigation / Arbitration cases resulting from the contracts executed by the bidder in the past or currently under execution (Details of both completed as well as Ongoing Litigations & Arbitrations may be furnished)

Year	On going/ completed	Name of the Court where pending	Name of Client	Main Cause Of Litigation/ Arbitration	Disputed Amount	Actual Awarded Amount

**Signature of the Authorized Signatory of
the Tenderer (with seal)**

Name Designation

Date:

Place.

PARTICULARS OF PROPOSED KEY PERSONNEL

Sr. No.	Key Personnel– Current Position and Proposed Position	Name	Education Qualification
1	Team Leader/Project Manager		
2	Civil Engineer		
3	Mechanical Engineer		
4.	Electrical/Instrumentation Engineer		

Note: Provide CV of each key personnel as proposed above in **FORMNO.05**.

Date:.....

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

CURRICULUM VITAE (CV) OF KEY PERSONNEL PROPOSED FOR ASSIGNMENT

1. **Proposed Position** [*only one candidate shall be nominated for each position*]:_____
2. **Name of Firm** [*Insert name of firm proposing the staff*]:_____
3. **Name of Staff** [*Insert full name*]:_____
4. **Date of Birth:**_____ **Nationality:** _
5. **Education** [*Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment*]: _____
6. **Membership of Professional Associations:**_____
7. **Other Training**[*Indicate significant training since degrees under5-Education were obtained*]:
8. **Countries of Work Experience:**[*List countries where staff has worked in the last ten years*]:
9. **Languages** [*For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing*]: _

10. **Employment Record and Work Experience** [*Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment(see format here below): dates of employment, name of employing organization, position held, projects worked upon and respective, roles and Services.*]:

From [Month & Year]:_____ To[month&Year]: _ Employer:_____ Positions held:_____	Project1.....	Role and Services
	Project2.....	Role and Services
	Project3.....	Role and Services
	Project4....	Role and Services

11. **Detailed Tasks Assigned**

[*List all tasks to be performed under this Assignment*]

12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned [*Among the assignments in which the staff has been involved, indicate the following information for all those assignments that best illustrate staff capability to handle the tasks listed under point 11. The information in respect of assignments carried out, for the period post securing the required qualification as per the tender, shall only be furnished.*]

Name of assignment:

Name of project (s): _____

Project Sector(Core Sector OR Port Sector):

From [Month &Year]:_____ To [month &Year]:_____

Location:_____

Client:_____

Main project features:_____

Positions held: _____

Activities performed: _____

13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

[*Signature of staff member or authorized representative of the staff*]

Day/Month/Year

Place.....

(Signature and name of the Key Personnel)

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

Notes:

1. *Use separate form for each Key Personnel.*
2. *The names and chronology of assignments included here should conform to the assignment-wise details as mentioned in earlier format.*
3. *Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorized Representative of the Bidder firm along with the seal of the firm. Photocopies will not be considered.*

It is allowed to use Scanned Signatures of Personnel and countersigned by the authorised Signatory in original.

POWER OF ATTORNEY

(On a Stamp Paper of relevant value)

Know all men by these presents, we,..... (Name of Independent Engineer and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr. / Ms.....son/daughter/wife of..... and presently residing at,who is presently employed with us and holding the position ofas our true and lawful attorney (hereinafter referred to as the “Authorized Representative”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Independent Engineer for “DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR A CONCESSION PERIOD OF 30 YEARS, including but not limited to signing and submission of all applications, proposals/bids and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to DPA, representing us in all matters before DPA, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with DPA in all matters in connection with or relating to or arising out of our Proposal for the said Assignment and/or upon award thereof to us till the entering into of the Agreement with DPA.

AND GENERALLY to act as our Attorney or agent in relation to the Proposal for and selection as the Independent Engineer for DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE FOR A CONCESSION PERIOD OF 30 YEARS.

and on our behalf to execute and do all instruments, acts, deeds, matters and things in relation to the said Proposal or any incidental or ancillary activity, as fully and effectually in all respects as we could do if personally present.

AND We hereby for ourselves, our heirs, executors and administrators, ratify and confirm and agree to ratify and confirm all acts, deeds and things whatsoever lawfully done or caused to be done by our said Attorney and that all acts, deeds and things done by our said Attorney 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....., 2024.

For.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarized Accepted

.....

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

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

Wherever required, the Bidder 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 Bidder.

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

(You can print the Power of Attorney on a stamp paper of the same value of your country and then get legalised by the Indian Embassy.)

PRICE BID

SCHEDULE FOR ITEM OF WORK:

APPOINTMENT OF INDEPENDENT ENGINEER FOR THE PROJECT “ DEVELOPMENT, OPERATION & MAINTENANCE OF BERTH NO.13 FOR HANDLING MULTIPURPOSE CLEAN CARGO INCLUDING CONTAINER CARGO AT DEENDAYAL PORT ON DBFOT BASIS UNDER PPP MODE” FOR A CONCESSION PERIOD OF 30 YEARS.

Description	Amount	
	In figure	In words
Lump-sum charges including all taxes, duties for performing scope of work as per Section - III of the Tender for the subject work. The amount quoted shall be exclusive of Goods & Service Tax which shall be reimbursed in accordance with clause no. 5.7.2 of Tender document.		
Total Rs.		

Note:

1. All the payment under this contract will be made only in Indian Rupees. The fees/price maybe quoted in Indian Rupees only. The Bidder shall be paid for the services rendered as per the Scope of Work.
2. The rates should be inclusive of all taxes, duties, fees, cess, all incidentals charges but excluding of GST.

LETTER OF ACCEPTANCE

(On the letter head paper of the Deendayal Port)

To: _____
(Name & address of
Contractor)

Date: _____

Dear Sir,

Sub: Tender No. (Title of Tender)

Ref: Your Bid Dated ___ and (list of correspondence with the Bidders)

This is to notify you that your bid dated _____ for execution of _____ (name of the contract and identification number, as given in the instruction to bidders) for the Contract Price of Rupees _____ (amount in words and figures) in accordance with the Tender Documents is hereby accepted by the Authority/Board.

You are hereby requested to furnish performance guarantee, in the form detailed in Tender Document for an amount of Rs. _____ and also sign the contract agreement within 14 days of the receipt of this letter of acceptance and which shall be valid up to 28 days after the end of Contract Period , failing which action as stated in the tender document will be taken.

Please acknowledge receipt.

Yours faithfully

**Authorized signatory
Name and title of signatory
Deendayal Port Authority**

SPECIMEN BANK GUARANTEE PERFORMANCE GUARANTEE/SECURITY DEPOSIT

(To be executed on Rs.300/-non-judicial Stamp Paper & to be submitted after entering by issuing Branch in their online system for generating Bank Guarantee in SFMS Mode)

To,

The Board of Deendayal Port Authority,
Deendayal Port Authority
A.O. Building, P.O.BoxNo.50,
Gandhidham-Kutch.

In consideration of the Board of Deendayal Port Authority incorporated by the Major Port Authority Act, 2021 (here in after called "The Board" which expression shall unless excluded by or repugnant to the context or meaning there of be deemed to include the Board of Deendayal Port Authority, its successors and assigns) having agreed to exempt _____(here in after called the" contractor") (Name of the contractor/s) from the demand under the terms and condition of the contract, vide _____ (Name of the Department)'s letter No. _____ Date _____ made between the contractors and the Board for execution of _____ covered under Tender No. _____ dated (hereinafter called "the said contract") for the payment of Security Deposit in cash or Lodgement of Government Promissory Loan Notes for the due fulfilment by the said contractors of the terms and condition of the said contract, on production of a bank Guarantee for Rs. _____ (Rupees _____) only we, the (Name of the Bank and Address) _____ hereinafter referred to as "the Bank") at the request of the contractors do hereby undertake to pay to the Board an amount not exceeding Rs. _____ (Rupees _____) only against any loss or damage caused to or suffered by the Board by reason of any breach by the contractors of any of the terms and conditions of the said contract.

2. We, _____ (Name of Bank) (Name of Branch), do hereby Undertake to pay the amount due and payable under this guarantee without any demur merely on a demand from the Board stating that the amount claimed is due by way of loss or damage caused to or which would be caused to or suffered by the Board by reason of the contractors failure to perform the said contract. 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 any amount not exceeding Rs. (Rupees _____) only.

3. We, _____ (Name of Bank and Branch), undertake to pay to the

Board any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) 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 there under and the Contractor(s) shall have no claim against us for making such payment.

4. We, _____ (Name of Bank and Branch), further agree with the Board that the guarantee herein contained shall remain in full force and effect during the period that would be taken for performance of the said contract and that it shall continue to be enforceable till all the dues of the Board under or by virtue of the said contract have been fully paid and its claims satisfied or discharged or till the _____ (Name of the user department) of the said certifies that the terms and conditions of the said contract have been fully and properly carried out by the said Contractors and accordingly discharge this guarantee. PROVIDED HOWEVER that the Bank shall at the request of the Board but at the cost of the Contractors, renew or extend this guarantee for such further period or periods as the Board may require from time to time.

5. We, _____ (Name of Bank and Branch), further agree with the Board that the Board 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 contract or to extend the time of performance by the said contract or to extend the time of performance by the said Contractors from time to time or to postpone for any time or from time to time any of the powers exercisable by the board against the said Contractors and to forbear or enforce any of the terms and conditions relating to the said contract and we shall not be relieved from our liability by reason of any such variation or extensions being granted to the contractors or for any for bearance, act or omission on the part of the Board or any indulgence shown by the board to the Contractors or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

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

7. It is also hereby agreed that the Courts in Gandhidham would have exclusive jurisdiction in respect of claims, if any, under this Guarantee.

8. We, Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Board in writing.

9. Notwithstanding anything contained herein:

(a) Our liability under this Bank Guarantee shall not exceed Rs. _____ (Rupees only);

(b) This Bank Guarantee shall be valid up to _____; and

(c) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before (date of expiry of Guarantee).”

10. (i) Name of Beneficiary's Bank is State Bank of India, Gandhidham.

(ii) IFSC No. of Beneficiary's Bank is SBIN0060239.

(iii) Bank Account No. of Beneficiary is 10316591671.

Date day of 20

For (Name of Bank)

(Name) Signature

Form of Agreement

(to be executed on Rs.300-non-judicial stamp paper)

This agreement made this _____ day of _____ between the Board of Deendayal Port Authority a body corporate under Major Port Authority Act, 2021, having its Administrative Office Building at Gandhidham (Kutch) (hereinafter called the 'Board', which expression shall unless excluded by or repugnant to the context, be deemed to include their successors in office) of the one part «Name_of_Party», «Address_of_Party», «Address_1», «Address_2», «Address_3», (Name and address of the Independent Engineer if an individual and all partners if a partnership with all their addresses) (hereinafter called the 'Independent Engineer' which expression shall unless excluded by or repugnant to the context be deemed to include his / their heirs, executors, administrators, representatives and assigns or successors in office) of the other part.

Whereas the Board is desirous of carrying out the work of "«Name_Of_Work»" and whereas the Independent Engineer has offered to execute and complete such works.

And whereas the contractor has deposited a sum of Rs.«EMD»/-as security in the form of **Online digital transfer or FDR or in form of BG** «Form_Of_EMD» and/or agreed to deposit the security deposit as follows for the due fulfilment of all the conditions of the contract.

Rs. _____ Paid towards EMD to be treated as Security Deposit.

Balance amount of Rs.«Balance SD»Rs. /- to be recovered from work bills.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this agreement words and expressions shall have the same meaning as are respectively assigned to them in the conditions of contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this agreement viz.:
 - i. The tender submitted by the Independent Engineer.
 - ii. The conditions of contract as provided Section-V, VI & VII
 - iii. The entire scope of work as per Section-III
 - iv. The schedule of items of work with quantities and rate.
 - v. Performance Guarantee/Security Deposit.
 - vi. Any correspondence made between the Superintending Engineer(E) and the IPA empaneled Independent Engineer after opening of the Cover-I as regards to contain clarification/details called for vice versa.
3. The Independent Engineer here by covenants with the Board to complete the work in conformity, in all respects to the satisfaction of Board in accordance with the provision of the contract.
4. The Board here by covenants to pay the Independent Engineer in consideration of such work, the 'Contract Price' at the time and in the manner prescribed by the contract.

IN WITNESS where of the parties hereunto have set their hands and seals the day and year first above written.

Signed and sealed by Independent Engineer in the presence of:-

M/s _____

(Name, signature description and seal of Independent Engineer)

Witness: (Name, signature, address)

1. _____

2. _____

Signed, sealed and delivered by Chief
Mechanical Engineer on Behalf of the Board in
presence of _____ :

Witness:(Name, signature, address)

(1) _____

(2) _____

Chief Mechanical Engineer
Deendayal Port Authority
(For and on Behalf of the
Board of Deendayal Port Authority.)

The common seal of the Board of Deendayal Port Authority affixed in the presence of.

Secretary
Deendayal Port Authority

INTEGRITY PACT

Between

Deendayal Port Authority (DPA) hereinafter referred to as "**The Principal**"
and

..... (Name of The bidders and consortium members) hereinafter referred to
as "**The Bidder / Contractor**"

Preamble

The Principal intends to award, under laid down organizational procedures, contract(s) / concession(s) for Tender No. The Principal values full compliance with all relevant laws of the land rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

In order to achieve these goals, the Principal will appoint Independent External Monitors (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - (a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - (b) The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - (c) The Principal will exclude from the process all known prejudicial persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC / PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s) / Contractor(s)

- (1) The Bidder(s) / Contractor(s) commits themselves to take all measures necessary to prevent corruption. The Bidder(s) / Contractor(s) commits themselves to observe the following principles during participation in the tender process and during the contract execution.

- a. The Bidder(s) / Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in tender process or the execution of the contract or to any third person any material or other benefit, which he / she is not legally entitled to, in order to obtain in exchange of advantage of any kind whatsoever during the tender process or during the execution of the contract.
 - b. The Bidder(s) / Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
 - c. The Bidder(s) / Contractor(s) will not commit any offence, under the relevant Prevention of Corruption Act / Indian Penal Code / PC Act; further the Bidder(s) / Contractor(s) will not use improperly, for purposes of competition, or personal gain, or pass on to others, any information or document provided by the Principal, as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The Bidder(s) / Contractor(s) of foreign origin shall disclose the name and address of the Agents / Representatives in India, if any. Similarly, the Bidder(s) / Contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s) / Contractor(s). Further, as mentioned in the Guidelines all the payments made to Indian agent / representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed at (page Nos. 59-68)
 - e. The Bidder(s) / Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with the award of the contract.
 - f. Bidder(s) / Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.
- (2) The Bidder(s) / Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from tender process and exclusion from future contracts.

If the Bidder(s) / Contractor(s), before award or during execution has committed a transgression through a violation of Section-2 above, or in any other form, such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder (s) / Contractor(s), from the tender process, or take action as per the procedure mentioned in the "Guidelines on Banning of

business dealings". Copy of the "Guidelines on Banning of business dealings" is placed at (Page No. 59-68).

Section 4 - Compensation for Damages

- (1) If the Principal has disqualified the Bidder(s), from the tender process prior to the award, according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit / Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor, liquidated damages of the Contract Value or the amount equivalent to Security Deposit / Performance Bank Guarantee, whichever is higher.
- (3) The Bidder(s) agrees and undertakes to pay the said amounts, without protest or demur, subject only to condition that, if the Bidder(s) / Contractor(s) can prove and establish that the termination of the contract, after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder/Contractor shall compensate the principal, only to the extent of the damage in the amount proved.

Section 5 - Previous transgression

- (1) The Bidder declares that, no previous transgressions occurred in the last three years with any other company in any country confirming to the anti-corruption approach or with any other Public Sector Enterprises in India, that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Guidelines on Banning of Business dealing".

Section 6 - Equal treatment of all Bidders / Contractors

- (1) In case of a Joint Venture, all the partners of the Joint Venture will enter into agreement with identical conditions as this on which all Bidders.
- (2) There is no provision of sub-contract in the tender, any violation of the same, Contractor shall be held solely responsible for the same.

Section 7 - Criminal charges against violating Bidders / Contractors

If the principal obtains knowledge of conduct of a Bidder or Contractor or of an employee, or a representative, or an associate of a Bidder or Contractor, which constitutes corruption, or if the Principal has substantive suspicion, in this regard, the Principal will inform the same to the Chief Vigilance Officer (CVO) and the CVO will take further necessary action as deemed fit in accordance with the CVC Manual.

Section 8 - External Independent Monitor

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representative of the parties and performs his / her functions neutrally and independently. The Monitor would have access to all Contact documents, whenever required. It will be obligatory for him / her to treat the information and documents of the Bidders / Contractors as confidential. He / she reports to the Chairperson of the Board of the Principal.
- (3) The Bidder(s) / Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Bidder / Contractor will also grant the Monitor, upon his / her request and demonstration of a valid interest, unrestricted and unconditional access to the project documentation. The Monitor is under contractual obligation, to treat the information and documents of the Bidder / Contractor with confidentiality.
- (4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s) / Contractor(s) with confidentiality. The Monitor has also signed declaration on "Non-Disclosure of Confidential Information" and of "Absence of Conflict of Interest". In case of any conflict of interest arising at a later date, the IEM shall inform Chairman, DPA and recues himself / herself from that case
- (5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder / Contactor. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he / she will so inform the Management of the Principal and request the management to discontinue, or take corrective action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (7) The Monitor will submit a written report to the Chairperson of the Board of the Principal, within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the Monitor has reported to the Chairperson of the Board of the Principal, a substantiated suspicion of an offence under relevant IPC / PC Act and the Chairperson of the Board of the Principal has not, within reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- (9) The word "**Monitor**" would include both singular and plural.

Section 9 - Pact Duration

- 9.1 This Pact shall be operative from the date of signing of IP by both the parties till the final completion of contract of successful bidder and for all other bidders six months after the contract has been awarded. Issues like warranty, guarantee, etc. should be outside the purview of IEMs.
- 9.2 If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact, as specified above unless it is discharged / determined by the Chairperson, DPA.

Section 10 - Other Provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Gandhidham, Gujarat.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Bidder / Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement, turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.
- (6) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail.

(For & on behalf of the Principal)

अधिकृत अभियंता (विद्युत)
दीनदयाल पतन प्राधिकरण
Superintending Engineer (Elect.)
Deendayal Authority
(Office Seal)

Signature of Witness:
(Name & Address)

Mahesh P. Hatya

(For & on behalf of the Bidder/Contractor)

(Office Seal)

Signature of Witness:
(Name & Address)

Place : Gandhidham

Date : ___ / ___ /20___

“Note: The bidder has to execute Integrity Pact agreement with Deendayal Part Authority (as per Bid Response Sheet No. 10 and Dr. S.K. Sarkar, IAS (Retd.) and Shri Saurabh Chandra, IAS (Retd.) have been appointed by DPA as independent External Monitors and whose address are as under: -

Dr S K Sarkar, IAS (Retd.),
B-104, Nayantara Aptt.,
Plot 8 B, Sec 07, Dwarka,
New Delhi - 110 075.
Mobile No. 98111 49324
email: sksarkar1979@gmail.com

Shri Saurabh Chandra, IAS (Retd.)
A-9, Sector -30,
Noida (UP) 201301.
Mobile No. 9871322133
email: saurabh7678@yahoo.co.in”

The “Procedure for signing Integrity Pact” is as follow:

- (1) The Employer / Authorized Person of Employer has signed the IP in the presence of a witness from their side, who has also affixed his/her signature thereof and then the same IP has been uploaded on n-procure portal;
- (2) The potential bidders shall download and print the IP Agreement signed by the Employer and their witness and affix his/her signature on the IP Agreement in the presence of a witness from his/her side, who shall also affix his / her signature thereof. Having completed the signing procedure, the Potential Bidder shall upload the duly filled and signed IP Agreement on n-procure portal.
- (3) The procedure mentioned above regarding signing of Integrity Pact Agreement by both the parties (Employer and Potential bidders) shall be completed online. However, in case of any technical glitch due to which if any potential bidder is unable to upload the IP Agreement, then he / she shall submit the Hard Copy of the duly filled, signed IP Agreement to the Department concerned of DPA within a period of seven days and prior to opening of the Technical Bid, failing which Bid of potential Bidder shall be treated as disqualified.

GUIDELINES ON BANNING OF BUSINESS DEALINGS

(Effective from 01/01/2023)



Sr. No.	CONTENTS	Page
1.	Introduction	58
2.	Scope	58
3.	Definitions	58-60
4.	Initiation of Banning / Suspension	60
5.	Suspension of Business Dealings	60
6.	Grounds on which Banning of Business Dealings can be initiated	61
7.	Banning of Business Dealings	62-64
8.	Department / Division wide Holdon participation of the Agency in Tenders	64
9.	Show-cause Notice	64
10.	Appeal against the Decision of the Competent Authority	64
11.	Circulation of the names of Agencies with whom Business Dealings have been banned	65
12.	Saving	65

1. Introduction

- 1.1 "Board" of Deendayal Port Authority (DPA) constituted by the Central Government in accordance with sub-section (1) of section 3 of the Major Port Authorities Act, 2021, has to ensure preservation of rights enshrined under the above Act. DPA has also to safeguard its commercial interests. DPA is committed to deal with Agencies, who have a very high degree of integrity, commitment and sincerity towards the work undertaken. It is not in the interest of DPA to deal with Agencies who commit deception, fraud or other misconduct while participating in tenders/in the execution of contracts awarded/orders issued to them. In order to ensure compliance with the constitutional mandate, it is incumbent on DPA to observe principles of natural justice before banning the business dealings with any Agency.
- 1.2 Since banning of business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity for hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.
- 1.3 The objective of these guidelines is to have a common procedure for Banning of Business Dealings with Agencies across the Company.

2. Scope

- 2.1 These guidelines are applicable to the sale and procurement of goods & services including contracts / projects across all the Departments and Divisions of DPA.
- 2.2 The General Conditions of Contract (GCC) of DPA provide that DPA reserves the rights to keep on hold participation in tenders or to ban business dealings if any Agency has been found to have committed misconduct and also to suspend business dealings pending investigation. If such provision does not exist in any GCC, the same may be incorporated.
- 2.3 Similarly, in the case of sale of material, there is a clause in Sale Order to deal with the Agencies / customers / buyers, who indulge in lifting of material in unauthorized manner. This should also include all activities including unauthorized selling of the material. If such a stipulation does not exist in any Sale Order, the same may be incorporated.
- 2.4 However, absence of such a clause as mentioned at para 2.2 & 2.3 above does not in any way restrict the right of the Board (DPA) to take action / decision under these guidelines in appropriate cases.
- 2.5 The procedure for (i) Board wide Hold on participation of the Agency in Tenders (ii) Suspension and (iii) Banning of Business Dealings with Agencies, has been laid down in these guidelines.
- 2.6 It is clarified that these guidelines do not deal with the decision of the Management not to entertain any particular Agency due to its poor / inadequate performance or for any other reason.
- 2.7 The banning shall be with prospective effect, i.e., future business dealings.

3. Definitions

In these Guidelines, unless the context otherwise requires:

i) ‘Party / Contractor / Supplier / Purchaser / Customer / Bidder / Tenderer’ shall mean and include a public limited company or a private limited company, a firm whether registered or not, an individual, partnership firm, Limited Liability Partnership, a cooperative society or an association or a group of persons engaged in any commerce, trade, industry, etc. Party / Contractor / Supplier / Purchaser / Customer / Bidder / Tenderer’ in the context of these guidelines is termed as ‘Agency.’

ii) ‘Inter-connected Agency’ shall mean two or more companies having any of the following features:

- a) If one is a subsidiary of the other;
- b) If the Functional Director(s), Partner(s), Manager(s) or Representative(s) are common;
- c) If management is common;
- d) If one owns or controls the other in any manner;
- e) If the agencies have same authorized signatory (ies)
- f) If they have the same address/same Permanent Account Number / same Bank Account Number / common email ID.

Note: This list is only illustrative in nature.

iii) ‘Competent Authority’ and ‘Appellate Authority’ shall mean the following

Area of Banning/ Suspension	Competent Authority	1st Appellate Authority	2nd Appellate Authority
Board-wide banning	HoD of the Board	Chairman, DPA	--
Banning / Suspension of business dealings with Foreign supplier of imported coal & coke	HoD's Committee	Chairman, DPA	DPA Board**
Board wide Suspension of business dealings with Agency	Officer nominated by Chairman of Board. For Department headed by HoDs, the respective HoDs will nominate the officer for this purpose.*	Chairman of the Board. For Departments headed by HoDs, the respective HoDs will be the Appellate Authority.	--
Board wide Hold on participation of the Agency in Tenders #	Officer nominated by Chairman of Board. For Departments headed by HoDs, the respective HoDs will nominate the officer for this purpose.*	Chairman of the Board. For Departments headed by HoDs, the respective HoDs will be the Appellate Authority.	--

* For Board – The nominated officer shall be a Direct Reporting Officer (DRO) not below the rank of Head of the Department for “Competent Authority” for the purpose of suspension of business dealings with the Agency as well as for Board wide Hold on participation of the Agency in tenders under these guidelines. For Corporate Office, in case of procurement of items / award of contracts to meet the requirement of Corporate Office only, Head of Department shall be the Competent Authority and HoD concerned shall be the Appellate

Authority. The Management of Subsidiary shall define / appoint the “Competent Authority”, Appellate Authority & Standing Banning Committee in their respective cases.

This provision for Hold on participation of the Agency in tenders shall be applicable only in such case where Standing Banning Committee recommends for keeping on Hold the participation in tenders and which shall be limited to particular Department / Division.

** This would be applicable only in cases of banning of business dealings with Foreign Suppliers of imported coal and coke.

iv) ‘Investigating Department’ shall mean any Department or Division investigating into the conduct of the Agency and shall include the Vigilance Department, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.

4. Initiation of Banning/Suspension

Action for banning/suspension of business dealings with any Agency should be initiated by the Concerned Department such as Indenting / Contracting / Executing Departments, etc. having business dealings with Agency or by the department which floated the tender (in case where the tenderer has committed deception, fraud or other misconduct) subsequent to noticing the irregularities or misconduct on their part.

5. Suspension of Business Dealings

5.1 If the conduct of any Agency (except Foreign Suppliers of imported coal and coke) dealing with DPA is under investigation by any department of any Department, the Concerned Department may consider whether the allegations under investigations are of serious nature and whether pending investigations, it would be advisable to suspend (temporarily discontinue) business dealings with the Agency. Recommendation in the matter shall be submitted to the Competent Authority for this purpose.

5.2 If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, decides that it would not be in the interest of Department of DPA to continue business dealings pending investigation, it may suspend business dealings with the Agency. The Suspension Order to this effect shall be issued by the Head of Concerned Department or by his representative / concerned executive with the approval of the Head of the Concerned Department, indicating a brief of the charges under investigation and the period of suspension. If it is decided that inter- connected Agencies would also come within the ambit of the order of suspension, the same should be specifically stated in the order. Ordinarily, the order of suspension would operate for a period not more than six months and may be communicated to the Agency and also to the Investigating Department.

Further to the suspension, the investigation, recommendation by the Standing Banning Committee (SBC) and final decision by the Competent Authority to be completed within six months from order of suspension.

5.3 The order of suspension of business dealings with the Agency under investigation shall be communicated to all Departmental Heads within the Board. During the period of suspension, no fresh contract will be entered into with the Agency. Suspension would be valid only for the concerned Board.

5.4 As far as possible, the Agency under suspension should be allowed to complete the job of existing contracts, unless the Competent Authority, having regard to the circumstances of the case, decides otherwise. Once the order for suspension is issued, existing offers against ongoing tenders (prior to issuance of contract)/ new offers of the Agency shall not be entertained during the period of suspension.

5.5 For suspension of business dealings with Foreign Suppliers of imported coal & coke, following shall be the procedure :-

- i) Suspension of the foreign suppliers shall apply throughout the Board including Subsidiaries.
- ii) The complaint against any foreign supplier shall be investigated by Board or by any other Investigating Department. If the gravity of the misconduct under investigation is found serious and it is felt that it would not be in the interest of DPA to continue to deal with such Foreign Supplier, pending investigation, the recommendation on such matter by Investigating Department (including Board) may be sent to Chairman, DPA to place it before a Committee consisting of the following:
1. Head of Finance Department,
 2. Head of Department
 3. Head of Law / Legal Division

The committee shall expeditiously examine the report; give its comments / recommendations within twentyone days of receipt of the reference by DPA.

- iii) The comments / recommendations of the Committee shall then be placed before DPA Board's Committee. If DPA Board's Committee decides that it is a fit case for suspension, Board's Committee shall pass necessary orders which shall be communicated to the foreign supplier by Head of Department.

- 5.6 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into correspondence or argument with the Agency at this stage.
- 5.7 It is not necessary to give any show-cause notice or personal hearing to the Agency before issuing the order of suspension. However, if investigations are not complete in six months' time, the Competent Authority with approval of Head of the Department may extend the period of suspension by another three months, during which period the investigation must be completed.

6. Grounds on which Banning of Business Dealings can be initiated

- 6.1 If the security consideration, including questions of loyalty of the Agency to the State, so warrants;
- 6.2 If the Director / Owner of the Agency, proprietor or partner of the firm, is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises or DPA, during the last five years preceding date of tender opening or during execution of contract, provided such information is known to DPA;
- 6.3 If there is strong justification for believing that the Directors, Proprietors, Partners, owner of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc. during the last five years preceding date of tender opening or during execution of contract, provided such information is known to DPA;
- 6.4 If the Agency continuously refuses to return / refund the dues of DPA without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in Arbitration or Court of Law;
- 6.5 If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offence, provided such information is known to DPA;
- 6.6 If business dealings with the Agency have been banned by the Central or State Govt. or any other public sector enterprise at the time of submitting his bid or on the date of tender opening or at the time of placement of order, provided such information is known to DPA;
- 6.7 If the Agency has resorted to Corrupt, fraudulent practices including misrepresentation of facts and / or fudging / forging / tampering of documents;

- 6.8 If the Agency uses intimidation / threatening / misbehaves with DPA Official or brings undue outside pressure or influence on the Board (DPA) or its official in acceptance / performances of the job under the contract;
- 6.9 If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations / delayed the tendering process;
- 6.10 Wilful indulgence by the Agency in supplying sub-standard material irrespective of whether pre- dispatch inspection was carried out by Board (DPA) or not;
- 6.11 Based on the findings of the investigation report of Investigating Department against the Agency for mala-fide / unlawful acts or improper conduct on its part in matters relating to the Board (DPA) or even otherwise;
- 6.12 Established litigant nature of the Agency to derive undue benefit;
- 6.13 Continued poor performance of the Agency in several contracts;
- 6.14 If the Agency misuses the premises or facilities of the Board (DPA), forcefully occupies tampers or damages the Board's properties including land, water resources, forests / trees, etc.
- 6.15 If the Agency resorts to unauthorized sale of materials purchased from the Board.
- 6.16 If the Agency has committed a transgression through violation of any of its commitments under the Integrity Pact entered with DPA.
(Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealings for any good and sufficient reason).

Ω No experience certificate shall be issued by Engineer in Charge / Executing Authority against the contract to the Agency found to have submitted forged / fabricated documents / indulged in corrupt / fraudulent practices.

7. Banning of Business Dealings.

- 7.1 A decision to ban business dealings with any Agency by any one of the Departments of DPA will apply throughout the Board including Divisions, i.e., Board-wide banning.
- 7.2 There will be a Standing Banning Committee (SBC) in each Department to be appointed by Competent Authority for processing the cases of "Banning of Business Dealings". However, for procurement of items/ award of contracts, to meet the requirement of Board only, the Committee shall be HoD each from Operations, Finance & Law Departments. The proposal of the Concerned Department for initiating action under the Guidelines for Banning of Business Dealings based on their own findings and / or upon receipt of advice of the Investigating Department shall be forwarded through respective Head of Department to the Standing Banning Committee for consideration.
- 7.3 The functions of the Standing Banning Committee shall, inter-alia include:
 - i) To examine in detail the allegations / irregularities / misconduct mentioned in the proposal for banning forwarded by the Department, hold preliminary meeting and decide if a prima-facie case for banning under the guidelines exists. If during preliminary meeting, SBC is of opinion that prima facie no case is made out, it shall return the case to the Concerned Department.
 - ii) If it is decided to proceed for banning action, to recommend for issue of show-cause notice (as per para 9) to the Agency by the Concerned Department, as to why action should not be taken against the Agency, including its interconnected agencies, under the Guidelines for Banning of Business Dealings with them. Agency should be asked to submit its reply within 15 days of the show-cause notice
 - iii) To examine the reply given by the Agency to show-cause notice and call the Agency for personal hearing, if required.

- iv) To submit final recommendation to the Concerned Department for banning of business dealings with the Agency or Board wide Hold on participation of the Agency in tenders or exoneration.

7.4 If banning is recommended by the Standing Banning Committee of any Department / Division, the proposal containing the facts of the case, proper justification of the action proposed, relevant supporting documents along with the recommendation of the SBC and proposed banning period should be sent by the Concerned Department and duly forwarded by the Head of the Department / Division, to the Competent Authority. Based on this proposal, a decision for banning or otherwise shall be taken by the Competent Authority. At this stage if it is felt by the Competent Authority that there is no sufficient ground for banning, then the case with detailed reasons shall be sent back to the respective Department / Division for necessary action at their end. The Competent Authority may consider and pass an appropriate Speaking Order:

- a) For exonerating the Agency if the charges / allegations are not established;
- b) For banning the business dealings with the Agency or
- c) For putting on Hold the participation of the Agency in tenders in the concerned Department / Division.

7.5 If the Competent Authority decides that it is a fit case for banning of business dealings with the Agency, the Competent Authority shall pass necessary orders which shall be routed back to the Department concerned for issuance of banning orders to the Agency. However, in cases where there is a shortage of suppliers and banning may hurt the overall interest of DPA, endeavour should be to pragmatically analyze the circumstances, try to reform the Supplier and to get a written commitment from them that their performance will improve.

7.6 If the Competent Authority decides to ban business dealings, the period for which the ban would be operative shall be mentioned. If applicable, the order may also mention that the ban would extend to the interconnected agencies of the Agency. The Speaking Order for banning would be conveyed by the Concerned Department to the Agency concerned and copy circulated to all Departments of DPA.

7.7 The Banning period may range from 1 year to 3 years depending on the gravity of the case as decided by the Competent Authority. Ordinarily, the period of banning shall be in the range of 1-2 years from the date of issuance of order depending on the severity of the irregularities / lapses committed / termination of contract due to poor performance, etc. However, in case of fraud / forgery / corrupt / fraudulent practice or tampering of documents by the Agency as given in para 6.7 above, the period of banning to be imposed on the Agency would be three years. The period of suspension, if any, shall be accounted for upto a maximum of 6 months in the period of banning provided the banning order is issued within the period of suspension.

7.8 As far as possible, the Agency under banning should be allowed to complete the job of existing contracts, unless the Competent Authority, having regard to the circumstances of the case, decides otherwise. Once the order for banning is issued, existing offers against ongoing tenders (prior to issuance of contract) / new offers of the Agency shall not be entertained during the period of banning. In addition, if the Agency has been banned under provisions of Para 6.7, then the particular contract in which the irregularity has been proved will be terminated with immediate effect. In exceptional cases, where it would not be prudent to terminate the said contract with immediate effect, the contract may be allowed to continue for such minimum period during which alternate arrangement(s) can be made. The same shall however require the approval of the Chairman / HoD where the exigency to continue the contract has been clearly brought out.

7.9 In case the Competent Authority has decided to exonerate the Agency, the Concerned Department will issue the exoneration letter to the Agency concerned as well as communicate to all Departmental Heads within the Department / Division. If the Agency has been suspended in the case under consideration, in the same letter to the Agency it must be clarified that the Suspension has also been revoked.

7.10 Procedure for Banning of Business Dealings with Foreign Suppliers.

- i) Banning of the Agencies shall apply throughout the Company including Subsidiaries.

- ii) The complaint against any Foreign Supplier shall be investigated by Head of Department of DPA or any other Investigating Department. After investigation, depending upon the gravity of the misconduct, Investigating Department may send their report to Head of Department of DPA to place it before a Committee referred at 5.5 (ii) above. The Committee shall examine the report and give its comments / recommendations within 21 days of receipt of the reference by Head of Department, DPA.
- iii) The comments / recommendations of the Committee shall be placed by Head of Department before DPA Board's Committee constituted for the above purpose. If DPA Board's Committee decides that it is a fit case for initiating banning action, it will direct Chairman of DPA to issue show-cause notice to the Agency for replying within a period of 15 days of receipt of the show-cause notice or reasonable time.
- iv) On receipt of the reply or on expiry of the stipulated period, the case shall be submitted by DPA Board's Committee to Chairman of DPA for consideration & decision.
- vi) The decision of the Chairman of DPA shall be communicated to the Agency by DPA.

8. Department / Division wide Hold on participation of the Agency in Tenders

- 8.1 If the SBC recommends for Board wide Hold on participation of the Agency in Tenders on coming to a conclusion that the charge against the Agency is minor in nature, the Concerned Department shall put up a proposal to the Competent Authority containing facts of the case, proper justification of action proposed, relevant documents along with the recommendations of the Committee and proposed period for Hold from participation in tenders. If the Competent Authority decides that it is a fit case for Board wide Hold on participation of the Agency in tenders, the Competent Authority may pass necessary orders which shall be communicated to the Agency by the Concerned Department. The period of Hold may range from 6 months to 1 year.
- 8.2 The effect of Board wide Hold on participation of the Agency in tenders would be that the Agency would not be considered for any type of Tenders for such period as mentioned in the order at any stage before issuance of contract. Other existing contracts with the Agency would continue unless otherwise decided by the Competent Authority. However, no repeat orders would be placed on the party for the period as mentioned in the order.
- 8.3 The modalities for effecting Hold on participation of the Agency in tenders and re-entry after completion of period of Hold shall be worked out by the concerned Department / Division as the Hold is Department / Division specific.

9. Show-cause Notice

- 9.1 In case where the Competent Authority decides that action against an Agency is called for, a show-cause notice shall be issued to the Agency by the Concerned Department. Statement containing the imputation of misconduct should be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defence. It must be clearly mentioned in the Show-Cause Notice that DPA hereby proposes to initiate action against the Agency in terms of the Guidelines on Banning of Business Dealings. Generally, all communication with the Agency shall be through email mentioned by Agency in contract or last known email and postal address.
- 9.2 If the Agency requests for inspection of any relevant document in possession of DPA, necessary facility only for inspection of documents may be provided.

10. Appeal against the Decision of the Competent Authority

- 10.1 The Agency may file an appeal against the order of Board-wide banning of business dealings / suspension / Board wide Hold on participation of the Agency in tenders. The appeal shall lie to the

respective Appellate Authority only. Such an appeal shall be preferred within 30 days of receipt of the order.

- 10.2 Appellate Authority would consider the appeal and pass appropriate Speaking Order which shall be communicated by the Concerned Department to the Agency as well as the Competent Authority whose Order has been appealed.

11. Circulation of the names of Agencies with whom Business Dealings have been banned

- 11.1 The Board shall upload/update the list of banned agencies along with the period of banning immediately on issue of the banning order on the Board's website as well as DPA Tenders website for wider circulation. Other Boards would check the list of banned Agencies before proceeding on tenders at their respective Boards. Boards having SAP/SRM system shall disable the banned vendors in SAP/SRM from issuance of further Enquiry/Purchase Order till the expiry of the banning period.
- 11.2 Depending upon the gravity of misconduct established, the Competent Authority may advise Head of Vigilance Department / HoD for circulating the names of Agency with whom business dealings have been banned, to the Government Departments, other Boards, Public Sector Enterprises, etc., for such action as they deem appropriate. The updated list of banned Agencies must be uploaded by Board on DPA Tenders website for wider circulation.
- 11.3 If Government Departments or a Public Sector Enterprise request for more information about the Agency with whom business dealings have been banned, a copy of the report of Investigating Department / Standing Banning Committee / DPA Board's Committee together with a copy of the order of the Competent Authority / Appellate Authority may be provided.
- 11.4 If business dealings with any Agency have been banned by the Central or State Government or any other Public Sector Enterprise, DPA may, on receipt of such information, without any further enquiry or investigation, issue an order banning business dealings with the Agency and its interconnected Agencies. In event of receipt of information, the procedure for banning in DPA will still have to be followed though no investigation will be called for, and the banning period proposed should be co-terminus with the period of banning in the organization which has issued the banning order but limited to the maximum period of banning as per the extant banning guidelines of DPA. On completion of the banning period as per DPA banning order, the Agency will be eligible for participating in any tenders in DPA irrespective of banning status in the other organization.
- 11.5 Based on the above, Departments / Divisions may take necessary action for implementation of the Guidelines for Banning of Business Dealings and same be made a part of the tender documents.

12. Saving

Any amendment to the guidelines shall require the approval of Chairman, DPA.

x-x-x-x

FORMAT OF BID SECURITY DECLARATION FROM BIDDERS
(On Bidders Letter head)

Bid Security Declaration Form

Date: _____ Tender No. _____

To (insert complete name and address of the Employer/ Purchaser)

I/We. The undersigned, declare that:

I/We understand that, according to your conditions, bids must be supported by a Bid Securing Declaration.

I/We accept that I/We may be disqualified from bidding for any contract with you for a period of three year from the date of notification if I am /We are in a breach of any obligation under the bid conditions, because I/We

a) have withdrawn/modified/amended, impairs or derogates from the tender, my/our Bid during the period of bid validity specified in the form of Bid; or

b) having been notified of the acceptance of our Bid by the purchaser during the period of bid validity (i) fail or reuse to execute the contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the Instructions to Bidders.

I/We understand this Bid Securing Declaration shall cease to be valid if I am/we are not the successful Bidder, upon the earlier of (i) the receipt of your notification of the name of the successful Bidder; or (ii) thirty days after the expiration of the validity of my/our Bid.

Signed: (insert signature of person whose name and capacity are shown) in the capacity of (insert legal capacity of person signing the Bid Securing Declaration)

Name: (insert complete name of person signing the Bid Securing Declaration)

Duly authorized to sign the bid for an on behalf of (insert complete name of Bidder)

Dated on _____ day of _____ (insert date of signing)

Corporate Seal (where appropriate)

SECTION VII

Extract of Concession Agreement

ARTICLE 5 INDEPENDENT ENGINEER

5.1 Independent Engineer

- a) Independent Engineer shall be a technical consultancy firm selected in accordance with provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof. If any panel of such firms is prepared by Indian Ports Association for the purpose, then Independent Engineer shall be selected out of that panel. The Concessions Authority shall complete the selection process within a period of 3 months of the date of this Agreement. The Concessions Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7.
- 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 COD. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7. On expiry or termination of the aforesaid appointment, the Concessions Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Appendix 7, and such procedure shall be repeated after expiry of each appointment.
- c) The costs and expenses of the Independent Engineer for their services shall be borne by the Concessions Authority and Concessionaire, equally.
- d) If the Concessions 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 Concessions 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.
- f) In the event that the Concessions Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Concessions Authority may, in the interim, designate and authorize any person for a maximum duration of 90 days to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 5.1 (f) shall in any manner restrict the rights of the Concessions Authority to enforce compliance of the provisions of this Agreement .

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 the Concession Agreement for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessions 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 Concessions Authority in respect thereof within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.
- c) In the event that the Independent Engineer/ Concessions 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 and Concessions Authority with regards its compliance.
- d) If the Independent Engineer /Concessions Authority does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 21 (twenty-one) Days of the submission, it shall be deemed that the Independent Engineer/ Concessions Authority 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 Concessions Authority at its sole discretion may suitably extend the Construction Phase or provide other relief (excluding any liquidated damages or financial compensation paid by the Concessions Authority to the Concessionaire) 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 /Concessions Authority under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer / and Concessions Authority.
- g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall 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.
- h) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Concessions Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Concessions Authority, reflecting the Project as

actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

6.3 Construction Phase

- a) 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**”) not later than 15 (fifteen) Months from the date of commencement of the Concession Period.
- b) During the construction period, the Independent Engineer shall inspect the construction works and shall require the Concessionaire to carry out or cause to be carried out Tests as set out in the Concession Agreement. The remedial measures required to be taken by the Concessionaire, in case of any defects or deficiencies in the Construction works, shall be as set out in the Concession Agreement.
- c) Concessionaire shall be entitled to approach Concessioneing Authority for permission to use the assets handed over to it by Concessioneing Authority and/or the Project Facilities and Services developed by the Concessionaire for handling cargo during the period between handing over of assets and achievement of COD which shall be allowed as per terms and conditions given in Concession Agreement subject to no extension of construction period on this account.

6.4 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioneing Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessioneing Authority will not be enforceable against the Concessioneing 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) to 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) construct internal road and rail connectivity from take off points as provided in the Concession Agreement.

6.5 Obligations of the Concessions Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessions 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 effort 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 Provisional 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 26 of the MPA 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) Carry out capital dredging alongside berth number 13 to provide 14.5 m draft.
- g) Deleted.

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 threatens the safety of the Users or any other person on or about the Project. Provided, however, that in case of an Emergency, the Concessioneing Authority may suo moto issue the notice referred to hereinabove.
- 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.
- c) Subject to the provisions of Clause 14.9, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Concessioneing Authority, the Preservation Costs shall be borne by the Concessioneing Authority.
- d) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the project completion schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessioneing Authority accordingly whereupon the Concessioneing Authority shall extend such project completion schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

6.7 Issue of Completion Certificate

- a) At least 60 (sixty) 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 the Concession Agreement 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) All Tests shall be conducted in accordance with the Concession Agreement at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with specifications and standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the specifications and standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. 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. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or caused to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with specifications and standards.
- 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 the Concession Agreement;
- d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in the Concession Agreement (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. Upon completion of all Punch List items, the Independent Engineer shall conduct tests, if required and issue the Completion Certificate. 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 the Total Project Cost will be reduced to the same extent. Upon such reduction of Total Project Cost, 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. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to 5% of the Total 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% of the Total 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 thereunder (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 the Independent Engineer 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, in so far 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% 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 Concessing Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessing Authority shall disburse to the Concessionaire after deducting Pro-rata 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 equipment following an order for a Change of Scope;

- g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessing 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% of the bid amount to the Concessing 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% thereof; It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Concessing Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 6.8 (g) if such works or services cause a Material Adverse Effect on the Concessionaire.
- 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/or improved Project Facilities and Services, it shall by notice in writing request the Concessing Authority to consider such Change of Scope. The Concessing Authority shall respond within 45 (forty-five) days of receipt of such notice, either accepting such Change of Scope with modifications, if any, or inform the Concessionaire in writing of its reasons for not accepting 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 Concessing 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 and delays for reasons not attributable to the Concessing Authority, the Concessionaire shall pay to the Concessing 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. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Total 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. Provided further that in the event COD is achieved on or before the Scheduled Completion Date, the damages paid under this Clause 6.9 shall

be refunded by the Concessioneing Authority to the Concessionaire, but without any interest thereon. 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 Total 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.

APPENDIX 6

DESIGNS AND DRAWINGS

Concessionaire shall prepare Designs & Drawings for the following items but not limited to:

A. Civil and Structural Work: -

- (i). Layout plans of Project Facilities and Services.
- (ii). Detailed structural drawings for all project facilities inter alia for the components of the Project Facilities indicated in Appendix- 4 (Scope of Work) like Civil & Structural Works, Development of Back up area, Road and Railway Network, Allied facilities, etc.

B. Handling Equipment

C. Electric Work

- (i). Single Line Diagram for all the electrical installations at the Berth and Allied Facilities

D. Fire Fighting Facility

- (i). Detailed Layout plan for FSE not limited to Fire Hydrants, Fire Alarms, Sprinkler system across the facility.
- (ii). HAZOP for the entire facility to be discussed and finalized with the Concessioneing Authority in accordance with the stipulated guidelines

The Concessionaire shall also prepare detailed report on analysis and structural design of Project Facilities & Services along with the aforementioned Designs & Drawings.

The Concessionaire shall within a period of 45 (Forty-Five) days from date of the award of concession shall prepare preliminary Designs & Drawings and report on analysis and structural design of Project Facilities and Services. The Concessionaire shall submit the same for review to the Independent Engineer and Concessioneing Authority Independent Engineer after taking into account Concessioneing Authority's comment shall send its comment to the Concessionaire.

Concessionaire shall incorporate comments of the Independent Engineer wherever feasible to conform to the Construction Standards.