

V.O. CHIDAMBARANAR PORT AUTHORITY



BID - II

Request for Proposal (RFP)

for

**MECHANIZATION OF NORTH CARGO BERTH-
III (NCB-III) FOR HANDLING DRY BULK
CARGO AT V.O.CHIDAMBARANAR PORT ON
DESIGN, BUILD, FINANCE, OPERATE AND
TRANSFER (DBFOT) BASIS**



FEBRUARY 2023

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Disclaimer

The information contained in this Bid II - Request for Proposals document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority (V.O. Chidambaranar Port Authority) or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Feasibility Report, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid 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 Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

Unless the context otherwise requires, the Terms used V.O.Chidambaranar Port Authority, VOCPA, The Port, The Concessioneing Authority or The Authority shall have the same meaning.

Glossary

Authority	As defined in Clause 1.1.1
Associate	As defined in Clause 2.1.14
Bid(s)	As defined in Clause 1.2.2
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
Application Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Bid Stage	As defined in Clause 1.2.1
Concession	As defined in Clause 1.1.5
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.1.14
Damages	As defined in Clause 2.1. 14
BOT	As defined in Clause 1.1.1
Estimated Project Cost	As defined in Clause 1.1.4
Feasibility Report	As defined in Clause 1.2.3
Government	Government of India
Highest Bidder	As defined in Clause 1.2.6
(b)	
LOA	As defined in Clause 3.3.5
Member	Member of a Consortium
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
RFQ	As defined in Clause 2.1.2
Royalty	As defined in Clause 1.2.6
Selected Bidder	As defined in Clause 3.3.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto hereinabove. The words and expressions beginning with capital letters and not defined herein, but defined in the RFQ, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

Invitation for Proposals

(V.O. CHIDAMBARANAR PORT AUTHORITY)

1. INTRODUCTION^{\$}

1.1 Background

- 1.1.1 The V.O. Chidambaranar Port Authority (the “Authority”) is engaged in the development of ports and as part of this endeavour, the Authority has decided to undertake the Mechanization of North Cargo Berth-III (NCB-III) for Handling Dry Bulk Cargo at V.O.Chidambaranar Port (the “Project”) through Public Private Partnership (the “PPP”) on , Build, Operate and Transfer (the “DBFOT”) basis, and has, therefore, decided to carry out the bidding process for selection of a private entity/ Public Sector Undertaking as the Bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

Name of the Project	Capacity	Indicative Project Cost (In Rs. cr.)
Mechanization of North Cargo Berth III (NCB-III) for Handling Dry Bulk Cargo at V.O. Chidambaranar Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis.	6.96 million tons per annum	265.15

- 1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the concession agreement (the “**Concessionaire**”), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the concession agreement (the “**Concession Agreement**”) to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

- 1.1.3 The scope of work will broadly include the following:

1. The concessionaire has to execute the following works:

- I. Design, Supply, installation, operation and maintenance of 2 nos of Shore Unloader at NCB III Berth.

II. Design, Supply, installation, operation and maintenance of conveyor system from NCB III Berth to Stackyard at Hare Island

III. Development of Stackyard at Hare Island

2. The Concessionaire has to handle only the following dry bulk cargoes:
 - i) Coal / Coke
 - ii) Limestone
 - iii) Gypsum
 - iv) Rock Phosphate
 - v) Copper Concentrate
3. The NCB III berth has been already constructed by the Port for a length of 306 m and width 22.90m. The berth is designed to handle 95,000 DWT vessels. The Concessioning Authority shall hand over the Project site / Assets as set out in Appendix 2 to the concessionaire for the project for a period of 30 years” after entering into Concession Agreement.
4. The Concessioning Authority shall deepen the basin in front of NCB III/ within dredge boundary of NCB III, to (-)15.10 m CD.
5. The concessionaire may be permitted to further deepen the basin to the required depth at their own cost and risk after obtaining the approval of the Concessioning Authority. The Concessioning Authority is having full rights to accept or reject the request of the concessionaire.
6. Further, Port is having full rights in maneuvering the vessels, Geotechnical investigation, bathymetry survey etc., in the basin in front of NCB III.
7. Concessionaire shall provide following suitable handling equipments in the terminal.
 - I. The concessionaire has to install two Rail Mounted Quay Gantry cranes of not less than 4000 TPH (2000TPH x 2 Un-loaders) with built-in chute and all joints forming edges will be ledged. The cargo unloaded will be conveyed to the Stack yards by a suitably designed Conveyor System (4000TPH). The output of unloaders/conveyors shall be 47,040 TPD. The concessionaire has to install the crane rail required for installation of two Rail

Mounted Quay Gantry crane and storm anchor etc., by dismantling the existing concrete at the berth wherever required.

8. The number and capacity of equipments proposed above are minimum, The concessionaire shall provide additional equipments /facilities at the cost of the concessionaires so as to achieve the desired capacity, with the approval of the Concessioneing authority. The concessionaire may make necessary design for installing the equipments.
9. Stackyard
 - a. The proposed stackyard area is located far from berth NCB-III at Hare Island area. The concessionaire has to develop stackyard for an area of about 1,26,000 Sq.m. The Concessionaire has to construct Boundary wall around the Stack Yard area. The bidder may inspect the berth, stack yard site and conveyor alignment location for assessing the actual site conditions.
 - b. One stacker with boom length of 42 m shall be installed in the stackyard. Yard conveyors transfer the cargo to the Stacker. The stackers shall prepare stockpiles having 40 m wide and 10 m in height. Stacker shall have stacking capacity of 4,000 TPH.
 - c. The storage area may be open to the elements with an effective system of pollution control and fire fighting measures.
 - d. The Stack Yards will be illuminated by High Mast Lights to provide the required illumination levels. Sprinklers will be installed not only to control dust pollution but also to guard against self-ignition.
 - e. Basic fire-fighting arrangements consisting of fire hydrants and fire pump will be provided for immediate fire control as the location is far away from the main port.
 - f. The Concessionaire shall make proper arrangements for drainage of the yards to be developed taking into consideration the present requirements for storage facilities. The drainage facility shall be so finalized/designed and constructed by the Concessionaire at its cost such that there is no stagnation of water within

Stack yard and catchments area of the drainage facilities.

10. Civil Works:

All civil works relating to piling for the conveyor, trestles, gallery supports for conveyors across the sea, conveyor galleries, transfer houses, drive houses, equipment tracks for the unloading equipment at stack yard, and stacking equipment, operational, administrative and welfare buildings and amenities, peripheral roads, Boundary wall around Stack yard, drainage and water supply, etc, shall be constructed by the Concessionaire subject to the prior written approval of the Concessioneing Authority

11. Support Facilities :-

The traffic management plan within and to the terminal shall be fine tuned in consultation with VOCPA after taking into consideration minimum disturbance to traffic to and from other adjacent terminals

12. Computer Communication:-

The Concessionaire shall install a computer system with adequate number of terminals for planning, including but not limited to, import, delivery, generation of reports, provision of information to Concessioneing Authority etc. Information about the movement of cargo should be fed to the computer immediately through walkie talkie or other suitable medium. The Concessionaire has to provide the direct access to their online system / servers for the Concessioneing Authority to verify the details of operations and Gross revenue collected.

13. Electrification :

i. General:

NCB III berth and the material handling system requires power round the clock for smooth operation of material unloading, transportation upto the stackyard by conveyor belts. In addition to this, power is required for lighting, fire pumps, jockey pumps, warning system e.g. sirens and PA system, battery charging, welding etc. All arrangements and installations for this shall be undertaken by the Concessionaire.

ii. Power supply to the facilities:

- a. 22KV supply shall be taken by the Concessionaire from the port's existing arrangement. This shall be further stepped down to 3.3 KV and 0.433 KV by using suitable transformers. To maintain power factor at 0.85 to 0.9 capacitor banks of suitable size shall be used. Voltage drop and frequency variation shall be maintained within permissible limit of $\pm 5\%$. A suitable substation has to be built by the Concessionaire.
- b. In addition to the conveyors, power supply to the unloaders is also required. The total required at 0.85 pf shall be 6250 KVA (5312 KW). To meet these load requirements, 8MVA, 22KV/3.45 KV. Dyn11 ONAN Transformer shall be provided
- c. The Concessionaire shall have to erect necessary Sub-Station and associated distribution-installations and works for meeting the power requirement of proposed equipments. The Concessionaire shall provide power supply to the lighting System from their own distribution system on award of the license. The Illumination level should be maintained as per the requirements of Dock safety Regulations.
- d. The 22KV H.T. Power Supply required for the facility will be extended from the Red Gate. However Concessionaire shall make his own arrangements for tapping 22KV power Supply from the port S.S. and also arrangements for incoming outgoing panels Breakers with protective systems, Transformers with auto online Tap-Changers for voltage regulations, Suitable Capacitor Banks with auto switching Units for Power Factor improvement and etc., to match the existing System. Since it is coming under the Indian Electricity rules, all the Electrical installations shall be certified by the Central Electricity Authority before energizing.
- a. The Concessionaire shall indicate in his offer the Maximum power to be availed from VOCPA sub-Station in Phased

manner for operating the Terminal to obtain appropriate approval from TANGEDCO/TNEB for MD increase in Contract Demand. All charges from application filing to obtaining approval from TANGEDCO for increase in Contract Demand shall be borne by the Concessionaire. All the related charges and deposits paid by VOCPA to TANGEDCO for availing power supply from TANGEDCO as per current contract demand shall be paid to VOCPA by the Concessionaire.

14. Water:-

Port is receiving water supply from Tamilnadu water and Drainage Board 3 MGD and 1MGD schemes at an average of 5000 KL per day. Though adequate supply is received, in view of shortage of supply during summer period the supply of water to ships is not resorted to. Water supply for project facilities and services shall be made available subject to availability. Water for fire fighting purposes of the terminal shall be drawn from sea.

15. Fire fighting requirements:-

- a. The Concessionaire shall plan and provide for adequate fire fighting equipment, fire hydrants etc. at the berths and in the stack yard area, keeping in view the need for maximizing dock safety and compliance with the prescribed regulations subject to the scale as stipulated by OISD guidelines or in compliance with applicable latest international codes/practices.
- b. The Concessionaire may, at its own cost, expenses and charges, install any communication link with the Concessioneing Authority's fire station. Mobile fire tenders of the Concessioneing Authority may also assist the Concessionaire in the event of a fire in the Licensed Premises at the Concessionaire's cost, charges and expenses. However, the Concessionaire agrees and undertakes to make suitable and adequate arrangements for fire fighting in the Licensed Premises including mobile fire tenders which should be available for dealing with any emergency in the Concessioneing Authority's area as well. The Concessionaire agrees and undertakes to make provision of fire fighting equipments in the

Licensed Premises in addition to the equipments and the facilities of the Concessioning Authority required if any.

16. Approach Road to NCB-III

The approach Road to NCB-III is running behind NCB-I, II & III from Yellow gate.

This approach is a common user facility for NCB-I, NCB-II & NCB-III.

17. Bunkering and Fuel Supply :

The Concessionaire shall make their own arrangements for bunkering & fuel supply.

18. Security Arrangements:

The security of the port is vested with Central Industrial Security Force (CISF). The Concessionaire shall abide by the security regulations/procedures as stipulated by the Concessioning Authority from time to time. However the Concessionaire shall make his own arrangements for security in their terminal at his own cost.

19. Security (Under ISPS Code) :

- a. The International Ship and Port Facility Security Code (ISPS) has been under implementation from July, 2004 and, India being a signatory to the IMO Resolution on this adoption of the Code, it is imperative that all Terminal Operators in VOCPA conform to the requirements of the Code. The Terminal will be termed as one of the port facilities of VOCPA wherein Deputy Conservator is the Port facility security officer. The Concessionaire/ operator is required to identify one of their officers as Deputy Port Facility Security Officer of that Terminal, who will be reporting to the Deputy Conservator directly for adoption and compliance of the Code.
- b. The additional security cost involved in providing any infrastructure in the area allotted to the Concessionaire (as required under the ISPS Code) shall be borne by the Concessionaire. Whenever additional Code on Port security is approved by the Indian Government, the Concessionaire will be required to comply with such code at his cost, such as installation of equipments, etc.

20. Compliance with environmental laws including obtaining and keeping in force throughout the concession period all required statutory clearances during the construction, operation and maintenance phases of the project shall be the

scope of the Concessionaire. Port shall obtain necessary Environmental Clearance for the berth. Obtaining Consent To Establish(CTE) and Consent To Operate(CTO) is the responsibility of the Concessionaire.

21. Planning, design, construction, operation and maintenance of all developmental works shall comply to the relevant Indian Standards and in the absence of Indian Standards, relevant International Standards shall be complied with. Safety precautions as per statutory requirements and IMO guidelines shall also be complied with.
22. The Concessionaire shall ensure compliance to Quality (ISO), Environmental (EMS), Occupational Health Safety and ISPS Codes.
23. Operation and maintenance of the facilities proposed throughout the concession period including attending to repairs and replacements of the infrastructure/facilities as may be needed during the concession period and handing over of the entire Project facilities and equipment at the end of the concession period or earlier, if so occasioned to the Concessioneing authority in satisfactory working condition in order to operate the project facilities and services without any discontinuation of operation and to meet out the Performance standard as defined in Draft Concecession Agreement (DCA).
24. The personnel and other related facilities should be capable of handling at least **6.96 million tons of cargo** in accordance with the Performance Standards set out in Appendix 14 of Draft Concession Agreement.

- 1.1.4 The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in Clause 1.1.1 above is indicative. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).

- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.7 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority, and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "Application **Due Date**").

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a Single stage - Two Bid system for selection of the Bidder for award of the Project. The Bid I (the "**Qualification** ") of the process involved pre-qualification of interested parties/ Consortia in accordance with the provisions of the RFQ. At the end of the Qualification process, Pre qualified Applicants may be subsequently informed about RFP opening date.

(The Government of India has issued guidelines (see Appendix-V of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.)

- 1.2.2 The bidder has to submit the Bid documents (RFQ and RFP) at single stage as specified at clause 1.2 of Bid I (RFQ). The Bid shall be valid for a period of not less than 180 (one hundred and Eighty) days from the Application Due Date.
- 1.2.3 The Bidding Documents include the draft Concession Agreement for the Project are enclosed. The Feasibility Report prepared by the Authority/ consultants of the Authority (the "**Feasibility Report**") is also enclosed. Subject to the provisions of Clause 2.1.3, the aforesaid

documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

1.2.4 Kindly refer Clause 1.2.4 of RFQ.

1.2.5 Before submission of Bids, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.

1.2.6 (a) Bids are invited for the Project on the basis of 'Royalty per ton of cargo handled for Foreign cargo' (the "**Royalty**") which would be indexed to variations in WPI annually.

(b) In this RFP, the term "**Highest Bidder**" shall mean the Bidder who is offering the highest Royalty. The concession period and other terms are pre-determined, as indicated in the draft Concession Agreement, and the Royalty shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 2.16, the Project will be awarded to the Highest Bidder.

1.2.7 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3.3.3 & 3.3.4 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.

1.2.8 The Concessionaire shall, in consideration of its investment and services, be entitled to levy and collect a pre-determined user fee .

1.2.9 Details of the process to be followed at this stage and the terms thereof are spelt out in this BID – II (RFP).

1.2.10 Any queries or request for additional information concerning this RFP shall be submitted along with queries for RFQ through e-mail to the officer designated in Clause 2.11.5 by the specified date (ref clause 1.3 of RFQ).

1.3 Schedule of Bidding Process

Refer clause 1.3 of Bid I - RFQ

1.4 Pre-Bid Conference

Refer clause 1.3 of BID – I (RFQ)

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the BID – I - Request for Qualification document for the Project (the “**RFQ**”) shall have the meaning assigned thereto in the RFQ.
- 2.1.3 The Feasibility Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Bid should be furnished in the format at Appendix–I, clearly indicating the bid amount in both figures and words, in Indian Rupees, and signed by the Bidder’s authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Bid shall consist of a Royalty on “per ton cargo handled”, basis which would be indexed to the variations in the WPI annually to be quoted by the Bidder. The Royalty shall be payable by the Concessionaire to the Authority, as per the terms and conditions of this RFP and the provisions of the Concession Agreement.
- 2.1.7 This Clause is deleted.
- 2.1.8 The validity period of the Bank Guarantee shall or Demand Draft, as the case may be, shall not be less than 180 (One Hundred and Eighty) days from the Application Due Date, with a claim period of 60

(sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 2.1.9 As required under clause 2.2.5 of Bid I, the Bidder should submit a Power of Attorney as per the format at Appendix–II of BID-I (RFQ), authorising the signatory of the Bid to commit the Bidder.
- 2.1.10 As required under clause 2.2.5 of Bid I, In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix–III.
- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.14 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification

shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the **"Subject Person"**) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or

- (vi) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

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

- 2.1.15 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the Application Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

- 2.1.16 This RFP is not transferable.

- 2.1.17 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.1.18 Other Bid conditions shall include:

- (i) Bidders shall provide such evidence of their continued eligibility for the Project to the satisfaction of the Authority as the Authority may reasonably request from time to time. Bidders may, if they deem fit, furnish such additional information about themselves which they think would be relevant for proving their continued eligibility for the Project before the due date of Bid Submission and subject to the request from the Authority after submission of Bid.
- (ii) Deleted.
- (iii) The Concessionaire shall be required to pay Upfront fee of Rs 5.00 crores towards infrastructure facilities already developed, which shall be non-refundable. This amount shall be payable by the selected bidder to the Port before signing of the Concession Agreement of the Project.
- (iv) In addition, the Concessionaire, as a bare licensee of the Project Site comprised in the Port's Assets, made available in accordance with Article 2.4 of the Draft Concession Agreement, pay to the Authority the annual sum of Re 1/- **along with the terms and conditions as set out in Appendix 2 and Cl. 9.1 of Draft Concession Agreement.**
- (v) Concessionaire shall fix the Tariff based on market conditions and on such other conditions, if any, as notified and made applicable as per "Tariff Guidelines, 2021 for the future PPP concessionaires" issued vide F.NO.PD-13/66/2020-PPP (Part-2)/e-347563 dated 21.12.2021.
- (vi) Charges on account of berth hire, port dues, pilotage & Dredging Levy and any other vessel related charges for vessels sailing to and from the terminal will be raised and recovered by the Concessioneing Authority from the users directly as per the Concessioneing Authority's scale of rates.
- (vii) In case the Selected Bidder has proposed to enter into an agreement with an entity having relevant O&M experience as per clause 2.2.3 of the Bid – I (Request for Qualification document), the bidder will be required to formalise the tie-up with O&M contractor through a legally binding agreement and

submit the same to the Authority not later than 4-weeks from the date of issue of the LOA.

- (viii) The Authority or any competent authority may levy a cess(s), as they deem appropriate, on handling cargo for the development of deep-drafted approach channel, roads connecting the Port to an expressway, standard/elevated highway for facilitating faster movement of cargo, or the development/ improvement/ expansion of any other infrastructure. The Concessionaire shall be liable to collect cess(s) on the cargo handled by him and remit the proceeds to the Authority along with the Royalty on monthly basis, in accordance with the prescribed procedure. The 100% cess(s) collected has to be passed on to the Authority within 7 days of the subsequent month.
- (ix) Members of the Consortium shall enter into a binding Joint Bidding Agreement (termed as Memorandum of Understanding in the RFQ document) for the purpose of submitting Bid. The Jt. Bidding Agreement shall, inter alia:
 - a. convey the intent to form an Special Purpose Vehicle (SPV) with shareholding/ ownership equity commitment(s) in accordance with the RFQ and this RFP, which would enter into the Concession Agreement and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - b. clearly outline the proposed roles and responsibilities of each member at each stage;
 - c. commit the minimum equity stake to be held by each member; and
 - d. include a statement to the effect that all members of the Consortium shall, till the occurrence of the Appointed Date/ Financial Close under the Concession Agreement, be liable jointly and severally for all obligations of the Concessionaire in relation to the Project.

2.1.19 Integrity Pact (IP) shall cover this RFP throughout its various phases, and IP would be deemed as a part of the contract. The Bidder should sign and submit a 'Pre-Contract Integrity Pact' to be executed between the Bidder and the Authority

as per the format at Appendix-VI, and shall be submitted along with the Bid Enclosure in the manner provided in this RFP. IP would be implemented through the following Independent External Monitor (“IEM”) for this Bid:

- (i) Shri A.Radhakrishna kini, IPS Rtd,
B91,Vishratika CGHS,
Setor3, Dwarka, Plot 5A,
New Delhi-110078
Phone No.9971722727
e-mail id: arvkini2004@yahoo.co.in
- (ii) Shri Arun Kumar, CSS, Rtd.
B-38,Vrindavan Apartment,
Plot No.1, Sector-6, Dwarka,
New Delhi-110075

Present Address

B 308, Third floor,
Aishwarya Opulence Apartment,
Outer Ring Road,
Marathahalli,
Bangalore-560 037
e-mail id: kumararun_53@rediffmail.com

2.2 Change in composition of the Consortium

(Refer clause 2.3 of Bid I (RFQ)

2.3 Change in Ownership

- 2.3.1 (a) By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the expiry of 1st anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; Selected bidder/consortium members together with its/their Associates hold not less than 51% of its issued and paid up equity until expiry of one (1) year after COD. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

(b) The “Lead Member” of the Consortium (original or new as the case may be) legally and beneficially holds at any time not less than 50% of the Consortium’s holding in the paid-up equity capital of the Concessionaire

- 2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the Bid I (RFQ), the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process. The cost towards Bid document fee shall be paid as detailed at clause 1.2 of Bid I (RFQ).

2.5 Site visit and verification of information

- 2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.
- 2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to BID - I & BID – II (RFP, RFQ), the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.6 Verification and Disqualification

2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the **BID - I & BID – II (RFQ, the RFP)** or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.6.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

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

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified / rejected, then the Authority reserves the right to:

- (i) invite the remaining Bidders to submit their Bids in accordance with Clauses 3.3.3 and 3.3.4; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.6.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

B. DOCUMENTS

2.7 Contents of the RFP

- 2.7.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid (**same as clause 2.2.5 of Bid I**)
- IV. Power of Attorney for Lead Member of Consortium (**same as clause 2.2.5 of Bid I**)
- IV. Guidelines of the Department of Disinvestment, Government of India.
- V. Proforma of Integrity Pact

- 2.7.2 The draft Concession Agreement and the Feasibility Report provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the Bidding documents (BID – I & BID – II) may notify the Authority in writing by e-mail in accordance with Clause 1.2.10. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but not later than 7 (Days) days prior to the Application Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the Application Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.9.2 Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders/ uploaded in the VOC Port website.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Application Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.10.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.
- 2.10.3 (a) Bid Security in the format at Appendix–VIII of RFQ (To be submitted in Bid I envelope as per clause 1.2 of Bid I) ;**
- (b) Power of Attorney for signing of Bid (As required under clause 2.2.5 of Bid I - **to be submitted in Bid I envelope**);

(c) If applicable, the Power of Attorney for Lead Member of Consortium (As required under clause 2.2.5 of Bid I- **to be submitted in Bid I envelope**)

2.11 Sealing and Marking of Bids (Bid II)

2.11.1 The Bidder shall submit the Bid – II (RFP) in the format specified at Appendix-I of BID-II (RFP), and seal it in an envelope 1 inside Bid II cover and mark the envelope as “ financial BID” as detailed at clause 1.2 of RFQ.

2.11.2 The documents accompanying the Bid shall be placed in a separate envelope 2 and marked as “Enclosures of the Bid – II (RFP) and put inside Bid II cover”. The documents shall include:

- (a) Deleted.
- (b) Deleted.
- (c) Deleted.
- (d) A copy of the Concession Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney.
- (e) Duly signed ‘Pre-Contract Integrity Pact’ to be executed between the Bidder and the Authority, as per the proforma at Appendix -VI

Bids not accompanied by the above documents as mentioned vide clause 2.11.1 & 2.11.2 shall be rejected.

2.11.3 A true copy of the documents accompanying the Bid, as specified in Clause 2.11.2 above, shall be bound together in hard cover (except spiral) and the pages shall be numbered serially. Each page thereof shall be initialled in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope 3 and marked “Copy of Documents”.

2.11.4 The three envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope stating Bid II cover, which shall be sealed. Each of the envelopes shall clearly bear the following identification:

“Bid for the “Mechanization of North Cargo Berth-III (NCB-III) for Handling Dry Bulk cargo at V.O. Chidambaranar Port On Design, Build, Finance, Operate and

Transfer (DBFOT) Basis” project and shall clearly indicate the name and address of the Bidder. In addition, the Application Due Date should be indicated on the right hand top corner of each of the envelopes.

2.11.5 Each of the envelopes shall be addressed to:

ATTN. OF:	Mr. V. Suresh babu
DESIGNATION	Chief Mechanical Engineer
ADDRESS:	Mechanical & Electrical Engineering Dept, Administrative Office, V.O.Chidambranar Port Authority, Tuticorin – 628 004, Tamilnadu.
TELEPHONE NO.	0461 2352270
E-MAIL ADDRESS	cme@vocport.gov.in

2.11.6 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.11.7 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.12 Application Due Date

2.12.1 Bids should be submitted before application Due Date as detailed at clause 1.3 of Bid-I (RFQ) at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.5.

2.12.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13 Late Bids

Bids received by the Authority after the specified time on the Application Due Date as detailed at clause 1.3 of Bid I (RFQ) shall not be eligible for consideration and shall be summarily rejected.

2.14 Contents of the Bid

2.14.1 The Bid shall be furnished in the format at Appendix–I and shall consist of a Royalty on “per ton of cargo handled” basis to be quoted by the Bidder, which would be indexed to the variation in the WPI annually,. The Bidder shall specify the Royalty offered by him, to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.

2.14.2 Generally, the Project will be awarded to the Highest Bidder.

2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this Bid II (RFP).

2.14.4 The proposed Concession Agreement shall be deemed to be part of the Bid.

2.15 Modifications/ Substitution/ Withdrawal of Bids

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

2.15.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

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

2.16 Rejection of Bids

2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and Eighty) days from the Application Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.18 Confidentiality

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

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority shall open the Bid II at the date to be declared after Bid I evaluation , at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.
- 3.1.2 The Authority will subsequently examine and evaluate the Bid II in accordance with the provisions set out in this Section 3.
- 3.1.3 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive if:
 - (a) it is received as per the format at Appendix-I;
 - (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.12.2;
 - (c) it is signed, sealed, bound together in hard cover (Except spiral binding) and marked as stipulated in Clauses 2.10 and 2.11;
 - (d) Deleted
 - (e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;
 - (f) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified) including 'Pre-Contract Integrity Pact' as per Appendix-VI;
 - (g) it does not contain any condition or qualification; and
 - (h) it is not non-responsive in terms hereof.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

3.3 Selection of Bidder

- 3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the highest Royalty offered to the Authority, shall ordinarily be declared as the selected Bidder (the **"Selected Bidder"**). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 3.3.2 In the event that two or more Bidders quote the same amount of Royalty (the **"Tie Bidders"**), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.3.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the **"first round of bidding"**), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the **"second round of bidding"**). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.3.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.3.3, the Authority may, in its discretion, invite fresh Bids (the **"third round of bidding"**) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.3.5 After selection, a Letter of Award (the **"LOA"**) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account

of failure of the Selected Bidder to acknowledge the LOA, cancel the bid and the next eligible Bidder may be considered.

- 3.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.4 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

3.5 Bid Parameter

- 3.5.1 The Bid shall comprise a Royalty, to be quoted by the Bidder in accordance with the provisions of this document.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or

indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.1.15 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

4.4 Independent External Monitor (IEM): The Bidder shall execute the Integrity Pact Agreement with VOCPA in the format provided in Appendix VI

5. PRE-BID CONFERENCE

5.1 Refer Chapter 5 of Bid I (RFQ).

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 The Bidding Documents and BID – I (RFQ) are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) the Bidding Documents – BID -II RFP;
 - (b) the BID – I - RFQ.
- i.e. the Bidding Documents at (a) above shall prevail over the BID – I (RFQ) at (b) above.

Appendices

APPENDIX-I

Letter comprising the Bid (Refer Clauses 2.1.5 and 2.14)

Dated:

To,

The Chief Mechanical Engineer,
Mechanical & Electrical Engineering Dept.
V.O Chidambranar Port Authority,
Tuticorin – 628 004

Sub: Bid for the “Mechanization of North Cargo Berth-III (NCB-III) for Handling Dry Bulk cargo at V.O. Chidambranar Port On Design, Build, Finance, Operate and Transfer (DBFOT) Basis” – Reg.

Dear Sir,

With reference to your RFP document dated, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. **I/ We certify that in the last three years, we/ any of the Consortium Members[£] or our/ their Associates have neither failed to**

[£] If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP document; and
 - (c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
 - (e) the undertakings given by us along with the Application in response to the RFQ for the Project were true and correct as on the date of making the Application and are also true and correct as on the Application Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their

Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. 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.[£]
14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-V thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/ We acknowledge and undertake that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the expiry of 1st anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; Selected bidder/consortium members together with its/their Associates hold not less than 51% of its issued and paid up equity until expiry of one (1) year after COD. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

[£] ^{\$} To be submitted in original. ^{\$} To be submitted in original. ⁸ These guidelines may be modified or substituted by the Government from time to time.

The “Lead Member” of the Consortium (original or new as the case may be) legally and beneficially holds at any time not less than 50% of the Consortium’s holding in the paid-up equity capital of the Concessionaire

17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further

acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Application Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the project site and the traffic. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. The documents accompanying the Bid, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid”.

25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
26. The Royalty has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs [and traffic] and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}
29. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Application Due Date specified in the RFP.
30. I/ We hereby submit our Bid and offer a Royalty on “per ton cargo handled” basis which would be indexed to the variation in the WPI annually is Rs(Rupees in words) as share of the Authority for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement:§
31. I/We hereby further submit that the Royalty quoted above is for foreign Cargo.

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

Yours faithfully,

Date: _____ (Signature, name and designation of the Authorised signatory)

§ To be submitted in original. § To be submitted in original. § These guidelines may be modified or substituted by the Government from time to time.

Place:
Bidder/Lead Member

Name and seal of

APPENDIX–II - Deleted

APPENDIX–III

Power of Attorney for signing of Bid^{\$}
(To be submitted in the Bid I envelope as per clause 2.13.2 of Bid I)

appendix–IV^{\$}
Power of Attorney for Lead Member of Consortium
(To be submitted in the Bid I envelope as per clause 2.13.2 of Bid I)

^{\$} To be submitted in original. ^{\$} To be submitted in original. ⁸ These guidelines may be modified or substituted by the Government from time to time.

^{\$} To be submitted in original. ⁸ These guidelines may be modified or substituted by the Government from time to time.

APPENDIX-V⁸

**Guidelines of the Department of Disinvestment
(TO BE SUBMITTED IN THE BID I ENVELOPE AS PER APPENDIX V OF BID
I)**

⁸ These guidelines may be modified or substituted by the Government from time to time.

APPENDIX – VI
PROFORMA OF INTEGRITY PACT

General

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on ____ day of the ____ (month and year) between, on one hand, the President of India, acting through Shri ____, [designation of the officer], V.O.Chidambaranar Port Authority, Government of India (hereinafter called the "PORT", which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/S ____ represented by Shri ____, (hereinafter called the "BIDDER/Seller" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the PORT proposes to execute the work **“Mechanization of North Cargo Berth-III (NCB-III) for Handling Dry Bulk Cargo at V.O.Chidambaranar Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis”** and the BIDDER/Seller is willing to offer/has offered the stores and

WHEREAS the BIDDER is a private company/public company/Government undertaking/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the PORT is a Ministry of the Government of India performing its functions on behalf of the President of India.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence / prejudiced dealings prior to, during and subsequent to the currency of the contract entered into with a view to:

Enabling the PORT to obtain the desired said work at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the PORT will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereby agree to enter into this Integrity Pact and agree as follows:

Commitments of the PORT

1.1. The PORT undertakes that no official of the PORT, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.

1.2. The PORT will, during the pre-contract stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.

1.3. All the officials of the PORT will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the PORT with full and verifiable facts and the same is prima facie found to be correct by the PORT, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the PORT and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the PORT the proceedings under the contract would not be stalled.

Commitments of BIDDERS

3. The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:

3.1. The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Port, connected directly or indirectly with the bidding process, or to any person, organization or third party related to

the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.

3.2. The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the PORT or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.

3.3. BIDDERS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.

3.4. BIDDERS shall disclose the payments to be made by them to agents/ brokers or any other intermediary, in connection with this bid/contract.

3.5. The BIDDER further confirms and declares to the PORT that the BIDDER is the original manufacturer / integrator / authorized government sponsored export entity of the stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the PORT or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

3.6. The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the PORT or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.

3.7. The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

3.8. The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

3.9. The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the PORT as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.

3.10. The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

3.11. The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

3.12. If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the PORT, or alternatively, if any relative of an officer of the PORT has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filing of tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act, 1956.

3.13. The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the PORT.

4. Previous Transgression

4.1. The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.

4.2. The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

5. Bid Security:

5.1. While submitting bid, the tenderer shall furnish a Bid Security of Rs.2.65 Crores (Rupees Two Crores and Sixty Five Lakhs only) in accordance with the provisions of 1.2.4 of Bid – I (RFQ) . The Bidder has the option to provide the Bid Security either as a Demand

Draft or in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix–VIII of RFQ (Bid – I).

5.2. The Bid Security / Performance Security shall be valid upto a period of 180 days in respect of Bid Security and a period of one year for performance security respectively with 30 days claim period or the complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER and the PORT, including warranty period, whichever is later.

5.3. In case of the successful BIDDER a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the PORT to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

5.4. No interest shall be payable by the PORT to the BIDDER on Bid Security / Performance Security for the period of its currency.

6. Sanctions for Violations

6.1. Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the PORT to take all or any one of the following actions, wherever required:

(i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.

(ii) The Bid Security (in pre-contract stage) shall be imposed and / or Security Deposit/Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the PORT and the PORT shall not be required to assign any reason therefor.

(iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.

(iv) To recover all sums already paid by the PORT, and in case of an Indian BIDDER with interest thereon at Bank Rate as defined in the Article 1.1 of draft Concession Agreement, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the PORT in

connection with any other contract for any other stores, such outstanding payment could also be utilised to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the PORT, along with interest.

(vi) To cancel all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the PORT resulting from such cancellation/rescission and the PORT shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.

(vii) To debar the BIDDER from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the PORT.

(viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.

(ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the PORT with the BIDDER, the same shall not be opened.

(x) Forfeiture of Performance Bond in case of a decision by the PORT to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

6.2. The PORT will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal Code, 1860, or Prevention of Corruption Act, 1988, or any other statute enacted for prevention of corruption.

6.3. The decision of the PORT to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the Independent Monitor(s) appointed for the purposes of this Pact.

7. Fall Clause

7.1. The BIDDER undertakes that it has not supplied/is not supplying similar product/systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry / Department of the Government of India or PSU and if it is found at any stage that similar product/systems or sub system was supplied by the

BIDDER to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the PORT, if the contract has already been concluded.

8. Independent Monitors

8.1. There shall be Independent Monitors (hereinafter referred to as Monitors) appointed by the PORT for this Pact in consultation with the Central Vigilance Commission. The Independent External Monitors appointed by Port are as follows:

1. Shri. A. Radhakrishna Kini, IPS (Retd.),
B91, Vishrantika CGHS,
Sector 3, Dwarka Plot 5A,
New Delhi – 110 078.
Mail id: arykini2004@yahoo.co.in
2. Shri. Arun Kumar, CSS (Redt.),
B308, Third Floor,
Aishwarya Opulence Apartment,
Out Ring Road,
Marathahalli,
Bangalore – 560 037.
Mail id: kumararun_53@rediffmail.com

8.2. The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.

8.3. The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.

8.4. Both the parties accept that the Monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.

8.5. As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the PORT.

8.6. The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the PORT including that provided by the BIDDER. The

BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.

8.7. The PORT 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 parties. The parties will offer to the Monitor the option to participate in such meetings.

8.8. The Monitor will submit a written report to the Foreign Secretary, Ministry of External Affairs, within 8 to 10 weeks from the date of reference or intimation to him by the PORT / BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

9. Facilitation of Investigation

In case of any allegation of violation of any provisions of this Pact or payment of commission, the PORT or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

10. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the PORT

11. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

12. Validity

12.1. The validity of this Integrity Pact shall be from the date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the PORT and the BIDDER/Seller, including warranty period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2. Should one or several provisions of this Pact turn out to be invalid, the remainder of this pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

13. The parties hereby sign this Integrity Pact at _____ on ____

PORT

Name of the Officer.

Designation

V.O.Chidambaranar Port Authority

Tuticorin

Witness

1. _____

2. _____

BIDDER

CHIEF EXECUTIVE OFFICER

Witness

1. _____

2. _____

**Certificate regarding Compliance with Restrictions under Rule 144 (xi) of
the General Financial Rules (GFRs)**

(To be submitted in the Bid I envelope as per Appendix VI of Bid I)