



Kamarajar Port Limited

Kamarajar Port – 600 001, Chennai (INDIA)

REQUEST FOR QUALIFICATION (RFQ)

for

SELECTION OF OPERATOR FOR UPGRADATION, EQUIPPING, OPERATIONS, MAINTENANCE, AND TRANSFER (UEOMT) OF GENERAL CARGO BERTH-1 (GCB-1) AT KAMARAJAR PORT THROUGH PUBLIC PRIVATE PARTNERSHIP (PPP) MODE

RFQ DOCUMENT CAN BE DOWNLOADED FROM CENTRAL PUBLIC PROCUREMENT (CPP) PORTAL (<https://eprocure.gov.in/eprocure/app>) BETWEEN **05th December 2025 to 20th January 2026**.

COST OF RFQ PROCESS IS INR 22,100 PLUS GST @18% i.e. **INR 26,078/-** (NON-REFUNDABLE). COMPLETED DOCUMENT IS TO BE SUBMITTED ONLINE BEFORE **1500 HOURS ON 19th January 2026** AND WILL BE OPENED ON **20th January 2026 AT 1600 HOURS ON THE SAME DAY**.

RFQ Document issued by:
General Manager (CS&BD),
Kamarajar Port Limited,
No.17, Rajaji Salai, Chennai-600001.

INVITATION OF REQUEST FOR QUALIFICATION

for

“Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode” for a Concession Period of 30 (thirty) years.

Kamarajar Port Limited (the “**Authority**”) invites applications from interested parties (the “**Applicants**”) in accordance with the Request for Qualification (**RFQ**) document in order to pre-qualify competent Applicants, subject to national security clearance, who may be subsequently invited to bid for the project.

The RFQ document containing instructions to Applicants and Criteria for Evaluation may be downloaded from the CPP Portal (<https://eprocure.gov.in/eprocure/app>) by the Applicants having Digital Signature Certificate (DSC) issued from any agency authorized by Controller of Certifying Authority (CCA), Govt. of India and which can be traced up to the chain of trust to the Root Certificate of CCA. The Applicants are responsible to download Addendums/ Amendments/ Replies to Queries etc., if any, issued by the Authority. No editing/ addition/ deletion of the downloaded documents shall be permitted. If such incident is observed at any stage, such Applications shall be liable for outright rejection.

The cost of the RFQ process is INR 26,078/- (Indian Rupees Twenty-Six Thousand and Seventy-Eight) only including GST. The Applicants are required to pay the above amount to the Authority on or before Application Due Date by way of NEFT/RTGS only. The Bank Account details of the Authority are as under:

A/C No: 9090 200 4175 2519

In favour of: Kamarajar Port Limited.

Branch: George Town Branch, Chennai 600 001

Name of the Bank: Axis Bank

RTGS Code: UTIB0000424

NEFT Code: UTIB0000285

The completed Application in the required format containing all information requested in RFQ document along with the e-payment transaction receipt for cost of the RFQ process shall be uploaded in the e-procurement portal (<https://eprocure.gov.in/eprocure/app>) on or before 1500 hours on 19th January 2026. The Applications will be opened on 20th January 2026 at 1600 hours.

Sd/-

Shri. Yatin Kishorbhai Patel,
General Manager (CS&BD),
Kamarajar Port Limited
Mail id: gm-csbd@kplmail.in,

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Disclaimer

The information contained in this Request for Qualification document (the “**RFQ**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this RFQ and such other terms and conditions subject to which such information is provided.

This RFQ is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFQ is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ (the “**Application**”). This RFQ 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 Applicant may require. This RFQ 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 RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ and obtain independent advice from appropriate sources.

Information provided in this RFQ to the Applicant(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 RFQ or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

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

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 RFQ.

The issue of this RFQ does not imply that the Authority is bound to select and pre-qualify the Applicants for Bid Stage 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 Applications or Bids without assigning any reasons whatsoever.

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

Glossary

Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Associate	As defined in Clause 2.2.9
Authority	As defined in Clause 1.1.1
Bids	As defined in Clause 1.2.3
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
BOT	Build, Operate and Transfer
Clean Cargo	As defined in Clause 1.1.1
Concessionaire	As defined in Clause 1.1.2
Concession Agreement	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
Eligible Experience	As defined in Clause 3.2.1
Eligible Projects	As defined in Clause 3.2.1
Estimated Project Cost	As defined in Clause 1.1.4
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of India
Highest Bidder	As defined in Clause 1.2.8
Jt. Bidding Agreement	As defined in Clause 2.2.6 (g)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.4 (ii)
O&M	Operation and Maintenance
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in Clause 1.2.1
RFQ	As defined in the Disclaimer
Royalty	As defined in Clause 1.2.8
SPV	As defined in Clause 2.2.6
Technical Capacity	As defined in Clause 2.2.2 (A)
Threshold Technical Capacity	As defined in Clause 2.2.2 (A)
UEOMT	Upgradation, Equipping, Operations, Maintenance, and Transfer

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

Invitation for Qualification

1. INTRODUCTION

1.1 Background

- 1.1.1 Kamarajar Port Limited (KPL) (the “**Authority**”) the 12th major port under Ministry of Ports, Shipping and Waterways, Government of India was commissioned in 2001. It is situated in the east coast about 24km North of Chennai Port. Since March 2020, it is a wholly owned company of Chennai Port Authority.

Presently the Cargo handling capacity of KPL is 58 .44 Million Tonnes with 9 operational berths. Out of the 9 operational berths, 3 berths are for handling bulk Coal, 2 berths are for handling Liquid Cargo (POL, LPG & LNG), 2 berths for Automobile export/import and associated capital goods and 1 berth each to handle Container and Multi Cargo. All the Terminals are equipped with ‘State of the Art’ infrastructure facilities with fully mechanized cargo handling operations for faster evacuation and pollution free environment.

Kamarajar Port had developed the General Cargo berth (GCB-1) for exports of cars and other general cargo, at a cost of Rs.140 crore and commissioned in January, 2012. This berth is able to accommodate the car carriers with capacity of 8,000 cars. Further, it was allotted with a back-up area of about 2,18,175 sq.m for parking of cars (14,700 cars capacity) which is the largest facility in any Indian Port. While the berth allotment and berthing of vessels in GCB-1 are carried out by the Port, the loading and unloading of cars and project cargoes are carried out by Stevedores engaged by OEMs.

A new General Cargo Berth-2 was developed and commissioned in January 2024 to handle exclusively export and import of cars and automobiles. Hence it was decided by KPL to shift the automobile (Ro-Ro) handling operations to GCB-2.

In view of this it is proposed to handle alternate commodities which are clean in nature at GCB-1 berth. In order to handle clean commodities at GCB-1, KPL intends to upgrade and mechanize the GCB -1 berth and develop the dedicated stackyard with covered storage and handling equipments through PPP mode.

BRIEF DETAILS OF THE PROPOSED PROJECT:

- The GCB-1 has a total physical length of 278m and width of 27.50m (The environmental clearance currently states the berth length as 250m and width as 35 m, the same can be modified post signing of the concession) The project is proposed to be developed under PPP mode for handling of **Clean Cargo**
- Clean Cargo shall mean unitized, palletized, bagged, break bulk (LO-LO) cargo including containerized cargo and project cargo of dust free and non-polluting nature, except any roll on – roll off cargo (including but not limited to automobiles, earth moving equipments, heavy vehicles, roll trailers, mafi etc)
- The Concession Period shall be 30 years from the date of Award of Concession which includes a construction period of 24 months.
- The Project refers to Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode (“the **Project**”)
- The Indicative Capital Cost of the Project is **INR 220.84 Crores (Indian Rupees)**

Two Hundred Twenty Crores and Eighty-Four Lakhs) only.

The Authority intends to pre-qualify suitable Applicants (the “**Bidders**”) who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

- 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 a concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire 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 upgradation, equipping the terminals, development of storage yard operations, maintenance and transfer of the General Cargo Berth -1 (GCB-1) with all allied facilities and equipment for handling of Clean Cargo. The construction period for the project will be 24 months.
- 1.1.4 Indicative capital cost of the Project (the “**Estimated Project Cost**”) will be revised and specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”).

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a two-stage bidding process (collectively referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/ consortium who make an Application in accordance with the provisions of this RFQ (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). Prior to making an Application, the Applicant shall pay to the Authority a sum of **INR 26,078/- (Indian Rupees Twenty-Six Thousand and Seventy-Eight)** only as the cost of the RFQ process by way of NEFT/RTGS. The account from which the cost of the RFQ process will be deposited should be in the name of Applicant. At the end of this stage, the Authority expects to announce a list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).

Government of India has issued guidelines (see Appendix-V) 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 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified by the Authority shall be invited to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to visit the site and familiarize themselves with the Project.
- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the “**Bids**”) in accordance with the RFP and other documents to be provided by the Authority (collectively the “**Bidding Documents**”). The Bidding Documents for the Project will be provided to the pre-qualified Bidders through the CPP Portal. The Bidders will be required to pay a RFP process fee which will be about four times the amount specified in Clause 1.2.1 to participate in Bid Stage. The Bid shall be valid for a period of not less than 180 days from the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security equivalent to about 1% (one per cent) of the Estimated Project Cost (the “**Bid Security**”), refundable no later than 60 (sixty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of demand draft, e-bank guarantee, insurance surety bond or a bank guarantee payable at Chennai and acceptable to the Authority. The validity period of bank guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case of Demand Draft, the authority shall encash the Demand Draft and shall initiate refund through bank transfer, in case of unsuccessful bidders. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 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 the 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, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.
- 1.2.6 During the Bid Stage, 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.
- 1.2.7 As part of the Bidding Documents, the Authority will provide a Draft Concession Agreement and feasibility report prepared by the Authority’s consultants and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids will be invited for the Project on the basis of the Royalty offered in the form of Royalty per MT of cargo (Rs. Per MT of Cargo) handled in a month (the “**Royalty**”),

to be paid on monthly basis to the Authority for award of the concession. For cargo with units other than metric tonne, the Royalty shall be calculated by multiplying the unit of cargo handled and the conversion factor assigned to it. The conversion factor shall be mentioned in the RFP document. The Royalty amount shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the highest Royalty. The Royalty), to be paid on the monthly basis to the Authority for award of the Concession would be indexed / escalated as per the variations in the Wholesale Price Index (WPI) annually.

In this RFQ, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Royalty.

- 1.2.9 The Concessionaire shall levy from the users of the Project, tariff as set by the Concessionaire based on market conditions and on such other conditions, if any, as may be notified and made applicable by a competent authority, under the provisions of the Tariff Guidelines, 2021 For The Future PPP Concessionaires, dated 21st December, 2021.
- 1.2.10 Details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.
- 1.2.11 Any queries or request for additional information concerning this RFQ shall be uploaded in the CPP Portal by the Applicant on or before the date specified in Clause 1.3 below.

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Event Description	Date
<u>Qualification Stage</u>	
1. Last date for receiving queries	30 th December 2025
2. Pre-Application Conference	5 th January 2026
3. Authority response to queries latest by	9 th January 2026
4. Application Due Date	19 th January 2026
5. Announcement of Pre-qualification	Shall be notified in CPP Portal and KPL website
<u>Bid Stage</u>	
1. Sale of Bid Documents	[To be specified]
2. Last date for receiving queries	[To be specified]
3. Pre-Bid Meeting	[To be specified]
4. Authority response to queries latest by	[To be specified]
5. Bid Due Date	[To be specified]

Kamarajar Port Limited

6.	Opening of Bids	On Bid Due Date
7.	Letter of Award (LOA)	Within 30 days of Bid Due Date
8.	Validity of Bids	180 days of Bid Due Date
9.	Signing of Concession Agreement	Within 30 days of award of LOA

1.4 Pre-Application Conference

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

Date: 30 days from date of RFQ

Time: 11.00 hours

Venue: Kamarajar Port Limited, No: 17, Jawahar Building, Rajaji Rd, Chennai, Tamil Nadu 600001

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

- 2.1.1 The Authority wishes to receive Applications for Qualification in order to pre-qualify Applicants for the Bid Stage.
- 2.1.2 Shortlisted Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

- 2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:

(a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.

(b) An Applicant may be a natural person, private entity, government-owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

(c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, 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 an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5 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 2.2.1(c), 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 Applicant is also a constituent of another Applicant; or
 - (iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
 - (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (v) such Applicant, or any Associate thereof has a relationship with another Applicant, 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 Application of either or each other; or
 - (vi) such Applicant, 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.
- (d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated 06 (Six) months prior to the date of issue of RFQ. 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.
- (e) Other eligibility conditions shall include:
- (i) While evaluating the Applications, regard would be paid to National Defense and security considerations. RFQ Application received from any Bidder may be summarily rejected on National Security considerations without any intimation thereof to the Applicant. The information required for obtaining security clearance may be furnished in accordance with Appendix-VI.

Explanation: In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

- 2.2.2 To be eligible for pre-qualification and shortlisting, an Applicant shall fulfil the following conditions of eligibility:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:
- (i) paid for, or received payments for, construction of Eligible Project(s) in Category 3 and/or Category 4 specified in Clause 3.2.1; and/ or
 - (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; and/ or
 - (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1,

such that the sum total of the above is more than **Rs.441.68 Crores** (Indian Rupees Four Hundred Forty One Crores and Sixty Eight Lakhs) only (the “**Threshold Technical Capacity**”).

Provided that at least one fourth of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.2.1.

- (B) **Financial Capacity:** The Applicant shall have a minimum Net Worth (the “**Financial Capacity**”) of **Rs. 55.21 Crores** (Indian Rupees Fifty Five Crores and Twenty One Lakhs) only at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and Net Worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 01 (one) year from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

- 2.2.3 **O&M Experience:** The Applicant shall, in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project, and has either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (O&M) of Category 1 projects specified in Clause 3.2.1, which have an aggregate capital cost equal to the Estimated Project Cost. In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience of its own or through its Associates. In the event that the Applicant does not have such experience, it should furnish an undertaking that if selected to undertake the Project, it shall for a period of at least 5 (five) years from the date of commercial operation of the Project, enter into an agreement for entrusting its operation & maintenance (O&M) obligations to an entity having the aforesaid experience, failing which the Concession Agreement shall be liable to termination. The Applicant shall submit the Undertaking in this regard as per the format at Appendix VII.

2.2.4 The Applicant shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- (i) Certificate(s) from its statutory auditors[§] or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 (five) years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) certificate(s) from its statutory auditors specifying the Net Worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid-up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.

2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 6 (six), but information sought in the Application may be restricted to 4 (four) members in the order of their equity contribution;
- (b) subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;

[§] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4(i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFQ.

- (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFQ, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of **01 (one) year** from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
 - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV, till 01 (one) year from the date of commercial operation of the Project; and
 - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and

- (h) except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.
- 2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium.
- 2.2.8 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant, Consortium Member or Associate. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.
- 2.2.9 In computing the Technical Capacity and Net Worth of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFQ, Associate means, in relation to the Applicant/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ 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.

- 2.2.10 The following conditions shall be adhered to while submitting an Application:
 - (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
 - (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other

associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;

- (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

- (i) (a) Where, on the date of the Application, 15% (fifteen per cent) or more of the aggregate issued, subscribed and paid-up equity share capital in an Applicant is held by persons resident outside India or where an Applicant is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Application, there is an acquisition of 15% (fifteen per cent) or more of the aggregate issued, subscribed and paid-up equity share capital or control, by persons resident outside India, in or of the Applicant;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Applicant.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

(ii)

I. Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020, which shall form an integral part of RFP and DCA.

II. **“Bidder”** (including the terms ‘tendered’, ‘consultant’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III **“Bidder from a country which shares a land border with India”** means:

- a) An entity incorporated, established or registered in such a country, or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose beneficial owner is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

IV. Beneficial owner for the purpose of (III) above means:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more judicial person, has a controlling ownership interest or who exercises control through other means

Explanation:

a) “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.

b) “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. The Selected Bidder/ Concessionaire shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in Clause III above.

Certificate regarding Compliance:

A certificate shall be required to be submitted by the bidders in the format prescribed at Appendix-VI.

It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

Validity of Registration:

In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within 3 (three) months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.3 Change in composition of the Consortium

2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.

2.3.2 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Authority during the Bid Stage, only where:

- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Consortium;
- (c) the substitute is at least equal, in terms of Technical Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification criteria for Applicants; and
- (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.

2.3.3 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing.

2.3.4 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement before the Bid Due Date.

- 2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4 Number of Applications and costs thereof

- 2.4.1 No Applicant shall submit more than one Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another Application either individually or as a member of any Consortium, as the case may be.
- 2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications 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.

2.5 Site visit and verification of information

Applicants are encouraged to submit their respective Applications 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.

2.6 Acknowledgement by Applicant

- 2.6.1 It shall be deemed that by submitting the Application, the Applicant has:
- (a) made a complete and careful examination of the RFQ;
 - (b) received all relevant information requested from the Authority;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above; and
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.7 Right to accept or reject any or all Applications/ Bids

- 2.7.1 Notwithstanding anything contained in this RFQ, the Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ 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.

2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:

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

If the Applicant/Bidder is a Consortium, then the entire Consortium 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 match the Highest Bidder/ submit their Bids in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.7.3 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 Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant/SPV 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 RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFQ, the Bidding Documents, the Concession Agreement or under applicable law.

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

B. DOCUMENTS

2.8 Contents of the RFQ

This RFQ comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Qualification

- Section 1. Introduction
- Section 2. Instructions to Applicants
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre Application Conference
- Section 6. Miscellaneous

Appendices

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium
- V. Guidelines of the Department of Disinvestment
- VI. Information required for obtaining Security Clearance
- VII. Undertaking for entering into O&M Agreement
- VIII. Pre-Contract Integrity Pact
- IX. Policy for preventing private sector monopoly in Major Ports
- X. Undertaking for prevention of corruption

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the RFQ may upload the same in the CPP Portal in accordance with Clause 1.2.11. They should upload in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be uploaded in the CPP Portal. The Authority will upload all the queries and the responses thereto, without identifying the source of queries.
- 2.9.2 The Authority shall endeavour to respond to the queries raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any query 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 query or to provide any clarification.
- 2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFQ. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFQ

- 2.10.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.

2.10.2 Any Addendum thus issued will be published in the CPP Portal.

2.10.3 In order to afford the Applicants 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 APPLICATION

2.11 Language

The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Applicant. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.12 Format and signing of Application

2.12.1 The Applicant shall provide all the information sought under this RFQ. The Authority will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.

2.12.2 The Applicant shall prepare the Application together with all the documents required to be uploaded in the CPP portal pursuant to this RFQ

2.12.3 The Application shall be typed or written in indelible ink and signed by the authorised signatory of the Applicant who shall also initial each page of the Application (including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover page shall be initialled. All the alterations, omissions, additions, or any other amendments made to the Application shall be initialed by the person(s) signing the Application. Each page of the Application shall be numbered serially.

2.13 Instructions for Online Applications

2.13.1 The Applicant shall upload its Application documents in the CPP Portal in two covers. The self-signed acknowledgement copy of payment towards the cost of RFQ process shall be uploaded in the first cover (Cover-1). The Application as per the format prescribed at Appendix-I, together with the documents specified in Clause 2.13.2 shall be uploaded in the second cover (Cover-2).

2.13.2 The following documents are required to be uploaded by the Applicant in Cover-2:

- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;

- (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- (iii) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) Copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (v) Copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) Copies of Applicant's duly audited balance sheet and profit and loss account for the preceding five years; and
- (vii) If applicable, Undertaking for entering into O&M Agreement as per the format at Appendix-VII.
- (viii) Appendix-VIII : Pre-Contract Integrity Pact duly signed
- (ix) Appendix IX: Policy for preventing private sector monopoly in Major Port
- (x) Appendix X: An undertaking that the Bidder has not made any payment or illegal gratification to any person/authority connected with the Bid process so as to influence the Bid process and has not committed any offence under the Prevention of Corruption Act in connection with the Bid; And a statement disclosing payment made/ proposed to be made to the intermediaries in connection with the Bid.
- (xi) Appendix XI: Signed Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)

2.13.3 The Communication Details of the Tender Inviting Authority (TIA)

ATTN. OF:	Shri Yatin Kishorbhai Patel
ADDRESS:	General Manager (CS&BD) Kamarajar Port Limited
E-MAIL ADDRESS:	gm-csbd@kplmail.in

2.13.4 The Applicants are required to submit soft copies of their Applications electronically on the CPP Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the applicants in registering on the CPP Portal, prepare their Applications in accordance with the requirements and submitting their Applications online on the CPP Portal.

More information useful for submitting online applications on the CPP Portal may be obtained at: <https://eprocure.gov.in/eprocure/app>.

(a) REGISTRATION

- i. Applicants are required to enroll on the e-Procurement module of the Central Public Procurement Portal (<https://eprocure.gov.in/eprocure/app>) by clicking on the link "Online Bidder Enrolment" on the CPP Portal which is free of charge.

- ii. As part of the enrolment process, the Applicants will be required to choose a unique user name and assign a password for their accounts.
- iii. Applicants are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.
- iv. Upon enrolment, the Applicants will be required to register their valid Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify/ nCode/ eMudhra etc.), with their profile.
- v. Only one valid DSC should be registered by an Applicant. Please note that the Applicants are responsible to ensure that they do not lend their DSCs to others which may lead to misuse.
- vi. Applicant can then log in to the site through the secured log-in by entering their user ID/password and the password of the DSC/e-Token.

(b) SEARCHING FOR TENDER DOCUMENTS

- i. There are various search options built in the CPP Portal, to facilitate applicants to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the applicants may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keyword set to search for a tender published on the CPP Portal.
- ii. Once the Applicants have selected the tenders they are interested in; they may download the required documents/ tender schedules. These tenders can be moved to the respective 'My Tenders' folder. This would enable the CPP Portal to intimate the Applicants through SMS/e-mail in case there is any corrigendum issued to the tender document.
- iii. The Applicant should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification/help from the Help desk.

(c) PREPARATION OF APPLICATIONS

- i. Applicant should take into account any corrigendum published on the RFQ before submitting their Applications.
- ii. Applicants are advised to go through the RFQ document carefully to understand the documents required to be submitted as part of the Application. Please note the number of covers in which the Application documents have to be submitted, the number of documents-including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the Application.
- iii. Applicants, in advance, should get ready the documents to be submitted as indicated in the RFQ and generally, they can be in PDF/XLS/RAR/DWF/JPG formats. The documents to

be submitted as part of the Application need to be scanned in any of the above formats and the Applicant should ensure that all the scanned documents are clearly legible.

- iv. To avoid the time and effort required in uploading the Application, a provision of uploading standard documents (e.g. PAN card copy, annual reports, auditor certificates etc.) has been provided to the Applicants. Applicants can use "MySpace "or" Other Important Documents" area available to them to upload such documents. These documents may be directly submitted from the "My Space" area while submitting an Application, and need not be uploaded again and again. This will lead to a reduction in the time required for Application submission process.

(d) SUBMISSION OF APPLICATIONS

- i. Applicant should log into the site well in advance for Application submission so that they can upload the Application in time i.e. on or before the Application submission time. Applicant will be responsible for any delay due to other issues.
- ii. While submitting the Applications online, the Applicant shall read the terms & conditions (of CPP portal) and accept the same in order to proceed further to submit their Application.
- iii. The Applicant has to digitally sign and upload the required documents one by one as indicated in the RFQ document.
- iv. Applicant should upload the scanned copy of payment acknowledgement of the RFQ process fee during Application submission. Otherwise the uploaded Application will be rejected.
- v. The server time (which is displayed on the Applicant's dashboard) will be considered as the standard time for referencing the deadlines for submission of the Applications by the Applicants, opening of Applications etc. The Applicants should follow this time during Application submission.
- vi. Applicants shall submit their Applications through online e-tendering system to the Tender Inviting Authority (TIA) well before the submission end date & time (as per Server System Clock). The TIA will not be held responsible for any sort of delay or the difficulties faced during the submission of Applications online by the Applicants.
- vii. All the documents being submitted by the Applicants would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of Application opening. The confidentiality of the Applications is maintained using the secured Socket Layer 128 bit encryption technology. Data storage encryption of sensitive fields is done. Any document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/ openers public keys. Overall, the uploaded documents become readable only after the opening by the authorized openers.
- viii. The uploaded documents become readable only after the opening by the authorized openers.

ix. Upon the successful and timely submission of Applications (i.e. After Clicking "Freeze Bid Submission" in the portal), the portal will give a successful Application submission message & a summary will be displayed with the Application No. and the date & time of submission of the Application with all other relevant details

2.13.5 Applications sent by hand delivery post, courier, fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.13.6 Along with the documents uploaded in the portal by the Applicant in Cover 2 as per Clause 2.13.2 above, the following hardcopy original documents shall be submitted to the Authority by the Applicant and shall reach the Authority in 7 (seven) days from the Bid Due Date.

- (i) Power of Attorney for signing the Application as per the format at Appendix-II;
- (ii) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iii) Copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;

2.14 Application Due Date

2.14.1 Applications should be submitted before 1500 hours IST on the Application Due Date in the CPP Portal.

2.14.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

Applications will not be accepted by the CPP Portal after the specified time on the Application due date.

2.16 Modifications/ substitution/ withdrawal of Applications

2.16.1 The Applicant is allowed to modify its Application any number of times before the Application Due date and time of submission. The Applicant shall have to log on to the CPP Portal and resubmit the documents as asked for by the system. In doing so, the Application already submitted by the Applicant will be removed automatically from the system and the latest Application only will be admitted. But the Applicant should avoid modification of Application at the last moment to avoid system failure or malfunction of internet or traffic jam or power failure. If the Applicant fails to submit his modified Application within the designated time of receipt, the Application already in the system shall be taken for evaluation.

2.16.2 The Applicant may withdraw its Application at any time before the final date and time of submission. However, withdrawal of the Application after the final date and time of submission is not allowed.

2.16.3 Any additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

- 2.17.1 The Authority shall open the Applications at 1600 hours IST on the Application Due Date.
- 2.17.2 The Cover-1 containing acknowledgement copy of payment towards the cost of RFQ process will be opened first and the payment details will be verified by the Authority. Cover-2 will be opened for those Applicants only whose payments are confirmed.
- 2.17.3 The Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Applicant is illegible, found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information from evaluation of Technical Capacity and/or Financial Capacity of the Applicant.
- 2.17.8 In the event that an Applicant claims credit for demonstrating Technical Capacity, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Technical Capacity, and may also, while computing the aggregate Technical Capacity of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the pre-qualified Applicants 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 Application, 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 Tests of responsiveness

2.19.1 Prior to evaluation of Applications, the Authority shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive if:

- (a) it is received as per format at Appendix-I;
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed and sealed as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (h) it contains payment acknowledgement towards the cost of the RFQ process as specified in Clause 1.2.1;
- (i) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

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

2.20 Clarifications

2.20.1 To facilitate evaluation of Applications, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

E. QUALIFICATION AND BIDDING

2.21 Pre-qualification and notification

After the evaluation of Applications, the Authority would announce a list of pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. At the same time, the Authority would notify the other Applicants that they have not been pre-qualified. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

2.22 Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are therefore advised to visit the site and familiarise themselves with the Project by the time of submission of the Application. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Authority.

2.23 Proprietary data

All documents and other information supplied by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Authority will not return any Application or any information provided along therewith.

2.24 Correspondence with the Applicant

Save and except as provided in this RFQ, the Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

2.25 National Security

The list of pre-qualified Applicants shall be subject to clearance from National Security perspective.

2.26 Prevention of Private Sector Monopoly in Major Ports

Ministry of Ports, Shipping & Waterways, Government of India vide its letter No. PD-24018/8/2009-PD.III dated 2nd August, 2010 has issued the policy to be followed by

all Major Ports while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. The aforesaid policy or any other applicable policy shall apply mutatis mutandis to this Bidding Process and the Authority shall be entitled to disqualify any Bidder in accordance with the aforementioned policy.

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

3.1.1 Only those Applicants who meet the eligibility criteria specified in Clauses 2.2.2 and 2.2.3 shall qualify for evaluation under this Section 3. Applications of firms/ consortia who do not meet these criteria shall be rejected.

3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity.

3.2 Technical Capacity for purposes of evaluation

3.2.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the "**Eligible Projects**"):

- Category 1: Project experience on Eligible Projects in Port sector that qualify under Clause 3.2.3
- Category 2: Project experience on Eligible Projects in Core sector that qualify under Clause 3.2.3
- Category 3: Construction experience on Eligible Projects in Port sector that qualify under Clause 3.2.4
- Category 4: Construction experience on Eligible Projects in Core sector that qualify under Clause 3.2.4

For the purpose of this RFQ:

- (i) Port sector would be deemed to include marine structures, on-shore and off-shore terminals, berths, jetties, quays, cargo handling system, bulk/liquid material handling system, port based terminal facilities, CFS/ICDs, storage tanks/tank farms, conveyors, pipelines within ports, warehousing, etc. and all associated with a sea port and
- (ii) Core sector would be deemed to include power, telecom, highways, airports, railways, metro rails, industrial parks/estates, logistics parks, petroleum and natural gas, pipelines, irrigation, water supply, sewerage and real estate development.

(Please note: Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Applicant)

3.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.

3.2.3 For a project to qualify as an Eligible Project under Categories 1 and 2:

- (a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
- (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
- (c) the capital cost of the project should be more than Rs. 44.20 Crores (Indian Rupees Forty Four crores and Twenty lakhs) only; and
- (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the prescribed eligibility as specified in Clause 2.2.2(A) Payments/receipts of less Rs. 44.20 Crores (Indian Rupees Forty-Four crores and Twenty lakhs) only shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

3.2.6 Deleted

3.2.7 Deleted

- 3.2.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.3 Details of Experience

- 3.3.1 The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.
- 3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.4 Financial information for purposes of evaluation

- 3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Application is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3 The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

3.5 Shortlisting of Applicants

- 3.5.1 The Applicants who fulfill the criteria as mentioned in Clause 2.2.2 and 2.2.3 shall be pre-qualified and shortlisted for the Bid stage. In case of a Consortium, the Aggregate Technical Capacity of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Technical Capacity of the Consortium. However, the pre-qualification of Bidders shall be subject to clearance from National Security perspective as per clause 2.25 of this RFQ document.

The credentials of Applicants, who meet the eligibility criteria as per clause 2.2 of this RFQ shall be termed as eligible Applicants (the “Eligible Applicants”).

- 3.5.2 Deleted

- 3.5.3 Deleted

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant 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, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant 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, 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 sub clause (d) of Clause 2.2.1, 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 Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application Conference of the interested parties shall be convened physically at the at the designated date, time and place. The prospective applicants shall be allowed to participate (maximum three representatives) in the Pre-Application Conference. Applicants who have downloaded the RFQ document from the Authority's website (www.kamarajarport.in) should submit a copy of the transaction details of RTGS/ NEFT / Bank Transfer etc. for the amount specified in Clause 1.2.1 towards the cost of the RFQ process, through their representative attending the conference.
- 5.2 During the course of Pre-Application Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts in Chennai 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 Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

Appendices

APPENDIX-I

Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To,
General Manager (CS&BD)
Kamarajar Port Limited,
Chennai,- 600 001.

Sub: Application for pre-qualification for **“Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode”**

Dear Sir,

With reference to your RFQ document dated, I/we, having examined the RFQ document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

1. I/ We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
2. This statement is made for the express purpose of qualifying as a Bidder for the development, design, construction, operation and maintenance of the aforesaid Project.
3. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
4. I/ We acknowledge the right of the Authority to reject our Application 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.
5. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, 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.
6. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority;
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document;

- (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ document, 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.
7. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.
 8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ document and am/ are qualified to submit a Bid.
 9. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
 10. 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.
 11. 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.
 12. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
 13. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ at Appendix-V thereof.
 14. I/We and any member of our consortium/ or any of their associates further certify that we or any of our Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the date of Application.

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 provisions of this RFQ, we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of Application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.
17. 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.
18. I/ We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3.
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 Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. I/ We agree and undertake to abide by all the terms and conditions of the “Policy for preventing private sector monopoly in Major Ports” of the RFQ document.
21. I/ We agree and undertake to abide by all the terms and conditions of the RFQ document.
22. I/ We certify that in terms of the RFQ, my/our Net Worth is Rs. Crores (in Words Rupees.....) and Technical Capacity is Rs..... Crores (in Words Rupees.....)
23. We 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.^{\$}

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

Yours faithfully,

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

Place: Name and seal of the Applicant/ Lead Member

^{\$} This Paragraph 24 shall be omitted if the Applicant is not a Consortium

ANNEX-I

Particulars of the Applicant

1. (a) Name:
- (b) Country of incorporation:
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Particulars of individual(s) who will serve as the point of contact/ communication for the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:

4. Particulars of the Authorised Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role ^{\$}	Percentage of equity in the Consortium ^{\$\$}
1.			
2.			
3.			
4.			

[§] The role of each Member, as may be determined by the Applicant, should be indicated in accordance with Clause 2.2.6 (d) and instruction 4 at Annex-IV.

^{§§}The percentage of equity should be in accordance with Clause 2.2.6 (a), (c) and (g).

6. The following information shall also be provided for the Applicant, including each Member of the Consortium:

Name of Applicant/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Applicant/ constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

7. A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

ANNEX-II

Technical Capacity of the Applicant[@]*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)*

Applicant type [#]	Member Code [¥]	Project Code ^{¥¥}	Category ^{\$}	Technical Capacity [£] (Equivalent Rs. crore) ^{\$\$}		
				Payments made/ received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Single entity Applicant		a				
		b				
		c				
		d				
Consortium Member 1		1a				
		1b				
		1c				
		1d				
Consortium Member 2		2a				
		2b				
		2c				
		2d				
Consortium Member 3		3a				
		3b				
		3c				
		3d				
Consortium Member 4		4a				
		4b				
		4c				
		4d				
Technical Capacity =Rs.....Cr.						

® Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.2.4. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

#An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.9, shall be provided.

¥Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

¥¥Refer Annex-IV of this Appendix-I. Add more rows if necessary.

§ Refer Clause 3.2.1.

\$\$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 85.95 (Rupees eighty five and ninety five paisa) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

ANNEX-III

Financial Capacity of the Applicant*(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFQ)***(In Rs. crore^{\$})**

Applicant type ^{\$\$}	Member Code [‡]	Net Cash Accruals					Net Worth ^{‡‡}
		Year 1 (3)	Year 2 (4)	Year 3 (5)	Year 4 (6)	Year 5 (7)	
(1)	(2)						
Single entity Applicant							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
TOTAL							

Name & address of Applicant's Bankers:

^{\$}For conversion of other currencies into rupees, see notes below Annex-II of Appendix-I.

^{\$\$}An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

[‡]For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

^{‡‡}The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.

Instructions:

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
6. The Applicant shall provide an Auditor's Certificate specifying the Net Worth of the Applicant and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.4 (ii) of the RFQ document.

ANNEX-IV

Details of Eligible Projects*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)***Project Code:****Member Code⁽⁴⁾:**

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	15	

Instructions:

- Applicants are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Application. Applicants should also refer to the Instructions below.
- For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
- A separate sheet should be filled for each Eligible Project.
- Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code.

5. Refer to Clause 3.2.1 of the RFQ for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to KPL, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of the Eligible Project. Refer to Clauses 3.2.3 and 3.2.4
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).

Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
11. Certificate from the Applicant's statutory auditor[§] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Applicant/ Member/Associate may provide the requisite certification.
12. If the Applicant is claiming experience under Categories 1 & 2[£], it should provide a certificate from its statutory auditor, in the format below:

[§] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

[£] Refer Clause 3.2.1 of the RFQ.

Certificate from the Statutory Auditor regarding PPP projects^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Applicant/Member/Associate*) is/ was an equity shareholder in (*title of the project company*) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%[€] of the total paid up and subscribed equity capital) of the project company from (*date*) to (*date*)[¥]. The project was/is likely to be commissioned on (*date of commissioning of the project*).

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which Rs. cr. (Rupees crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.2.1 and 3.2.3 (d) of the RFQ during the past five financial years were Rs. cr. as per year-wise details noted below:

.....

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation
 of the authorised signatory)

Φ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFQ.

€ Refer instruction no. 10 in this Annex-IV.

¥ In case the project is owned by the Applicant company, this language may be suitably modified to read: “It is certified that (name of Applicant) constructed and/ or owned the (name of project) from (date) to (date).”

13. If the Applicant is claiming experience under Category 3 & 4*, it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works^Φ	
Based on its books of accounts and other published information authenticated by it, {this is to certify that (name of the Applicant/Member/Associate) was engaged by (title of the project company) to execute (name of project) for (nature of project)} ^Ψ . The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that (name of the Applicant/ Member/ Associate) received/paid Rs. cr. (Rupees crore) by way of payment for the aforesaid construction works.	
We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the Applicant/Member/Associate received/paid Rs. cr. (Rupees crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ, during the past five financial years as per year-wise details noted below:	
.....	
<i>{It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.}</i> [♠]	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of the authorised signatory)
Date:	

* Refer Clauses 3.2.1 and 3.2.4 of the RFQ.

Φ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFQ.

Ψ In case the Applicant owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: “this is to certify that (name of Applicant/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the..... (name of Project company) when it undertook construction of the (name of Project) through (name of the contractor).

♠ This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

14. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Applicant should also provide a certificate in the format below:

Certificate from the Statutory Auditor/ Company Secretary regarding Associate[§]	
Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (<i>name of the Applicant/ Consortium Member/ Associate</i>) is held, directly or indirectly [£] , by (<i>name of Associate/ Applicant/ Consortium Member</i>). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFQ.	
A brief description of the said equity held, directly or indirectly, is given below:	
<i>{ Describe the share-holding of the Applicant/ Consortium Member and the Associate. In the event the Associate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein. }</i>	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of
Date:	the authorised signatory).

[§] In the event that the Applicant/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

15. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Technical Capacity.

ANNEX-V

Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant/ Lead Member of Consortium)

Ref:

Date:

To,
General Manager (CS&BD)
Kamarajar Port Limited,
Chennai,- 600 001.

Sub: “Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode”

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Application) satisfy the terms and conditions laid out in the RFQ document.

We have agreed that (insert member’s name) will act as the Lead Member of our consortium.^{\$}

We have agreed that (insert individual’s name) will act as our representative/ will act as the representative of the consortium on its behalf^{\$} and has been duly authorized to submit the RFQ. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

^{\$} Please strike out whichever is not applicable.

APPENDIX-II

Power of Attorney for signing of Application¹

(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the “Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode” (the “Project”) proposed or being developed by the Kamarajar Port Limited (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarised)

¹ To be submitted in original.

Accepted

.....
(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX-III

Power of Attorney for Lead Member of Consortium²

(Refer Clause 2.2.5)

Whereas the Kamarajar Port Limited (“the Authority”) has invited applications from interested parties for the “Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode” Project (the “Project”).

Whereas, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification document (RFQ), Request for Proposal (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our

² To be submitted in original.

said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX-IV

Joint Bidding Agreement

(Refer Clause 2.13.2)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20...

AMONGST

1. Limited, a company incorporated under the Companies Act, 1956/2013³ and having its registered office at (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. { Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. { Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “**Fourth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}[§]

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS,

- (A) Kamarajar Port Limited (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the “**Applications**”) by its Request for Qualification No. dated (the “**RFQ**”) for pre-qualification of

³ A Bidder who is registered abroad may substitute the words, viz “a company registered under the Companies Act, 1956/2013” by the words, viz “a company duly organised and validly existing under the laws of the jurisdiction of its incorporation”. A similar modification may be made in Recital 2, as necessary

[§] The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).

bidders for “Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode” (the “**Project**”) through public private partnership.

- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFQ document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and }

{(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ, RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till 01 (one) year from the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and Net Worth have been reckoned for the purposes of qualification of Applicants for the Project in terms of the RFQ.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the first anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV, till 01 (one) year from the date of commercial operation of the Project.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

6.6 The Parties undertake that the O&M Member shall subscribed and hold at least 10% (ten percent) of the subscribed and paid up equity share in the SPV in terms of Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
LEAD MEMBER by:

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND
DELIVERED

SECOND PART

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THIRD PART

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
FOURTH PART

(Signature) (Signature)
(Name) (Name)
(Designation) (Designation)
(Address) (Address)

In the presence of:

- 1.
- 2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX-V

Guidelines of the Department of Disinvestment
(Refer Clause 1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX-VI

Proforma for Security Clearance

(Refer 2.13.2)

Revised formats for seeking Security Clearance for Bidders to be provided in line with Ministry of Shipping letter vide F.No. PD-24018/2/2018-SCC dated 24/08/2018. Considering the same, all the interested Bidders for the above proposal have to register themselves in “e-SAHAJ” portal. Bidders then need to fill up the form, upload documents as instructed and download the self-generated Acknowledgement from ‘e-SAHAJ’, to be sealed and signed by the Authorized Signatory. The same shall be made part of RFQ Application in here as APPENDIX VI.

(To be attached along with the submission)

MOST IMMEDIATE

F.No.PD-24018/2/2018-SCC
Government of India
Ministry of Shipping
Ports Wing

1, Parliament Street,
Transport Bhawan,
New Delhi – 110 001
Date: 24.08.2018

To
Chairman,
All Major Ports

Subject:- Online submission of Security Clearance proposal to Ministry of Home Affairs through e-sahaj portal w.e.f. 1.9.2018-Regarding.

Sir,

I am directed to say that Ministry of Home Affairs(MHA) is one of the security agencies for according national security clearance to the bidders participating in PPP projects and dredging projects in Major Ports. Recently, MHA has developed "e-sahaj" portal for submission of security clearance proposal in respect of Ministry of Civil Aviation(MoCA) and presently functional. Now MHA has extended the "e-sahaj" portal to all Ministries/Departments who are seeking security clearance from them. This e-sahaj portal will be effective from 1.9.2018 and thereafter they will not accept security clearance proposal in physical form. However, in respect of Ministry of Defence(MoD) and Ministry of External Affairs(MEA) the proposal will continue to be sent in physical form..

2. All forms meant for submitting security clearance from MHA have been uploaded in e-sahaj portal. The process for submitting security clearance from MHA will be as followed:-

- (i) All bidders participating in PPP/dredging projects will have to register themselves in "e-sahaj" portal. The log-in id and password would be provided through email and SMS through Mobile No.(ISD/STD/Local).

Bidders then need to fill up the form, upload documents as instructed and then send to concerned Port.

- (ii) It is observed that PPP/dredging projects are mainly dealt by Chief Engineer(CE) or Chief Mechanical Engineer (CME). They would be the Nodal Officer for e-sahaj portal in their respective Port and their subordinates would be the Associate Officers. Each Port to intimate the details of Nodal Officers and Associate Officers such as their name, designation, mobile No. and official email id. On receipt of the above, NIC will be providing Log in id and password to each Nodal Officer and Associate Officer.
- (iii) Concerned Nodal Officer will get email/SMS alert of receiving security clearance proposal. Through login id and password, Nodal/Associate Officer will be able to see the application. Nodal Officer/Associate Officer after verifying the application would forward the proposal to Ministry of Shipping.
- (iv) Ministry of Shipping on receipt of the proposal would verify the application and if complete in all respect, forward the same electronically to MHA.

3. All Ports are therefore requested to nominate CE & CME as Nodal Officer and their subordinates as Associate Officer. Ports like JNPT, KPL where CE, CME Posts do not exist, may nominate officer holding equivalent post as Nodal Officer and Associate Officer. A proforma for nominating Nodal Officer and Associate Officer is enclosed as Annexure-A.

4. It is also informed that trial run of e-sahaj would be opened on 27.8.2018 and NIC in MHA and MoCA will be holding an interactive session tentatively on 29.8.2018 or 30.8.2018 for handholding the process. Initially, Nodal Officers/Associate Officers of JNPT, VoCPT and Haldia Dock Complex may be deputed for the above mentioned interactive session

5. All Major Ports are requested to provide the information enclosed at **Annexure-A by 27.8.2018** so that the same could be sent to MHA for generating unique login id and password for each Nodal Officer and Associate Officer. JNPT, VoCPT & HDC are requested to depute their Nodal Officer/Associate Officer to attend the interactive session. The exact date of the interactive session would be intimated on 27.8.2018.

6. This may be given **TOP PRIORITY**.

Yours faithfully,



[S.R. DATTA]

Under Secretary to the Government of India
Telefax: 011-23358128
Email: uspg@nic.in

Encl: as above.

Copy to MD, IPA. It has been observed that recently IPA is also seeking security clearance for procurement of Container Scanners. As this matter is being dealt by Shri B. Krishnamoorthy, Executive Director and Shri Rajeev Puri, Chief Administrative Officer in IPA, they may be nominated as Nodal Officer and Associate Officer respectively for e-sahaj portal. In case IPA wants any change in nominating Nodal Officer and Associate Officer the same may be intimated to the Ministry by **27.8.2018** alongwith Annexure-A for forwarding the same to MHA.



[S.R. DATTA]

Under Secretary to the Government of India

APPENDIX-VII

Undertaking for entering into Operation & Maintenance (O&M) Agreement

(To be submitted on the letter head of the Applicant/ lead member of the consortium)

UNDERTAKING

Ref:-

Date:

To
General Manager (CS&BD)
Kamarajar Port Limited,
Chennai,- 600 001.

Sub: Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode – Undertaking for entering into Operation & Maintenance (O&M) Agreement.

Dear Sir,

We hereby agree that we _____ (name of the Applicant/ Lead Member of Consortium and address of registered office) will irrevocably enter into an Operation and Maintenance (O & M) agreement with an entity having O & M experience as per the terms of the RFQ document dated for a period of at least 5 (five) years from Date of Commercial Operation of the Project in accordance with the clause no.2.2.3 of RFQ document.

We also confirm that the Operation & Maintenance Contractor shall meet with the O&M experience as set forth in clause no. 2.2.3 of RFQ document.

We shall further ensure that the Name and qualifications of the Operation & Maintenance Contractor shall be provided to Kamarajar Port Limited when required to be done so by Kamarajar Port for the purposes of evaluation and Security Clearance.

Thanking you

For and on behalf of (Applicant/ Lead Member):

Signature:

(Authorised Representative and Signatory)

Name of Person:

Designation:

APPENDIX VIII PROFORMA OF PRE CONTRACT INTEGRITY PACT

(The Integrity Pact agreement shall be executed in Rs 100/- non judicial stamp paper and shall be enclosed along with original Financial instrument and reach Kamarajar Port Limited (KPL) corresponding address before opening Technical bid as per date and time given in the Tender.)

GENERAL

This pre-bid pre-contract Agreement (herein after called the Integrity Pact)
BETWEEN

Kamarajar Port Limited, represented by the Chairman cum Managing Director, Kamarajar Port Limited, Chennai hereinafter referred to as “Concessioneing Authority”

AND

..... represented by Shri
..... hereinafter referred to as “The “BIDDER/
CONCESSIONAIRE”

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for (Name of the Contract / Project / Stores equipment / item). The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with the Bidder/s and Concessionaire/s.

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

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 to be entered into with a view to:-

Enabling the CONCESSIONING AUTHORITY to obtain the desired said stores / equipment 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 / CONCESSIONAIREs 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 CONCESSIONING AUTHORITY will commit to prevent corruption, in any form, by its officials by following transparent procedures.

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

Commitments of the CONCESSIONING AUTHORITY

The CONCESSIONING AUTHORITY undertakes that no official of the Concessioneing Authority 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 / CONCESSIONAIRE, either for themselves or for any person, organization 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.

The CONCESSIONING AUTHORITY will, during the pre-contract stage, treat all BIDDERS / CONCESSIONAIREs alike, and will provide to all BIDDERS / CONCESSIONAIREs the same information and will not provide any such information to any particular BIDDER / CONCESSIONAIRE which could afford an advantage to that particular BIDDER / CONCESSIONAIRE in comparison to other BIDDER / CONCESSIONAIRE and could obtain an advantage in relation to the tender process or the contract execution.

All the officials of the CONCESSIONING AUTHORITY will report to the Chairman cum Managing Director / Chief Vigilance Officer of Kamarajar Port Limited any attempted or completed breaches of the above commitments as well as any substantial, suspicion of such a breach.

If the CONCESSIONING AUTHORITY obtains information on the conduct of any of its employees with full and verifiable facts and the same is prima facie found to be correct which is a criminal offence under the Indian Penal Code / Prevention of Corruption Act, or if there be a substantive suspicion in this regard, the Principal will inform its Chief Vigilance Officer and in addition can initiate disciplinary actions.

Commitments of the BIDDER / CONCESSIONAIRE

The Bidder / Concessionaire commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the post contract stage.

- i. The Bidder / Concessionaire will not enter with other Bidder / Concessionaires into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- ii. The Bidder/Concessionaire will not commit any offence under the Indian Penal Code, 1860 / Prevention of Corruption Act, 1988 further the Bidder / Concessionaire will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, Technical proposals and business details, including information

- contained or transmitted electronically.
- iii. The Bidder / Concessionaire will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or any other advantage, commission, fees, brokerage or inducement to any official of the Concessioneing Authority, 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.
 - iv. The Bidder/Concessionaire further undertakes that it has not given, offered or promised to give directly or indirect any bribe, gift, consideration, reward, favour, any material or immaterial benefit or any other advantage, commission, fees, brokerage or inducement to any official of the Concessioneing Authority 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 Principal for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Principal.
 - v. The Bidder / Concessionaire of foreign origin shall disclose the name and address of the Agents /representatives in India, if any. Similarly the Bidder/Concessionaire of Indian Nationality shall furnish the name and address of the foreign principals, if any.
 - vi. Bidder / Concessionaires shall disclose the payments to be made by them to agents or any other intermediary, in connection with this bid/contract.
 - vii. The Bidder / Concessionaire further confirms and declares to the Principal/ Employer that the Bidder / Concessionaire 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 Concessioneing Authority or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder / Concessionaire, 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.
 - viii. The Bidder / Concessionaire, 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 Concessioneing Authority 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.
 - ix. The Bidder / Concessionaire 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.

- x. The Bidder / Concessionaire will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- xi. The Bidder / Concessionaire shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Concessioneing Authority as part of the business relationship, regarding plans, Technical proposals and business details, including information contained in any electronic data carrier. The Bidder / Concessionaire also undertakes to exercise due and adequate care lest any such information is divulged.
- xii. The Bidder / Concessionaire commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- xiii. The Bidder / Concessionaire will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- xiv. If the Bidder/Concessionaire or any employee of the Bidder/Concessionaire or any person acting on behalf of the Bidder/Concessionaire, either directly or indirectly, is a relative of any of the officers of the Concessioneing Authority, or alternatively, if any relative of an officer of the Concessioneing Authority has Financial interest / stake in the Bidder / Concessionaire's firm, the same shall be disclosed by the Bidder / Concessionaire 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.
- xv. The Bidder / Concessionaire 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 Concessioneing Authority.

Previous Transgression

The Bidder / Concessionaire 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 Enterprises in India or any Government Department in India that could justify Bidder / Concessionaire's exclusion from the tender process. If the Bidder / Concessionaire makes incorrect statement on this subject, the Bidder / Concessionaire can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Sanction for Violations

Any breach of the aforesaid provisions by the Bidder / Concessionaire or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder / Concessionaire shall entitle the Concessioneing Authority 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 / CONCESSIONAIRE, However, the

proceedings with the other BIDDER / CONCESSIONAIRE (s) would continue.

- (ii) The Earnest Money Deposit (in pre-contract stage) and / or Security Deposit / Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the CONCESSIONING AUTHORITY and the CONCESSIONING AUTHORITY shall not be required to assign any reason therefore.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER / CONCESSIONAIRE.
- (iv) To recover all sums already paid by the CONCESSIONING AUTHORITY, and in case of an Indian BIDDER / CONCESSIONAIRE with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India , while in case of a BIDDER / CONCESSIONAIRE from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER / CONCESSIONAIRE from the CONCESSIONING AUTHORITY in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash the advance bank guarantee and performance bond / warranty bond, if furnished by the BIDDER / CONCESSIONAIRE, in order to recover the payments, already made by the CONCESSIONING AUTHORITY, along with interest.
- (vi) To cancel all or any other Contracts with the BIDDER / CONCESSIONAIRE. The BIDDER / CONCESSIONAIRE shall be liable to pay compensation for any loss or damage to the CONCESSIONING AUTHORITY resulting from such cancellation/ rescission and the CONCESSIONING AUTHORITY shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER / CONCESSIONAIRE.
- (vii) To debar the BIDDER / CONCESSIONAIRE from participating in future bidding processes of the Principal for a minimum period of five years, which may be further extended at the discretion of the CONCESSIONING AUTHORITY.
- (viii) To recover all sums paid in violation of this Pact by BIDDER/CONCESSIONAIRE(s) to any middleman or agent or broker with a view to securing the contract.
- (ix) In cases where irrecoverable Letters of Credit have been received in respect of any contract signed by the CONCESSIONING AUTHORITY with the BIDDER / CONCESSIONAIRE, the same shall not be opened.
- (x) Forfeiture of Performance Bond in case of a decision by the CONCESSIONING AUTHORITY to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

- (xi) The Bidder / Concessionaire accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- (xii) If the Bidder / Concessionaire can prove that he has restored /recouped the damage caused by him and has installed a suitable corruption prevention system, in such a case, it will be discretion of the Principal to revoke the exclusion prematurely.
- (xiii) The CONCESSIONING AUTHORITY will be entitled to take all or any of the actions mentioned at Para (i) to (xii) above of this Pact also on the Commission by the BIDDER / CONCESSIONAIRE or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER / CONCESSIONAIRE), 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.
- (xiv) The decision of the CONCESSIONING AUTHORITY to the effect that a breach of the provisions of this Pact has been committed by the BIDDER / CONCESSIONAIRE shall be final and conclusive on the BIDDER / CONCESSIONAIRE. However, the BIDDER / CONCESSIONAIRE can approach the Independent Monitor (s) appointed for the purposes of this Pact.

Fall Clause

The BIDDER / CONCESSIONAIRE 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 Govt. of India or PSU and if it is found at any stage that similar product / systems or subsystems was supplied by the BIDDER / CONCESSIONAIRE to the Principal 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 / CONCESSIONAIRE to the CONCESSIONING AUTHORITY, if the contract has already been concluded.

Independent Monitors

The Concessioneing Authority has appointed two Independent External Monitors (hereinafter referred to as Monitors)

- 1. Shri Jatinderbir Singh, IAS (Retd)**
House No. 1186, Sector 77, Mohali-140 308
Punjab
Email: jatinderbir@gmail.com
- 2. Shri. Muvvala Kondala Rao, IFoS (Retd)**
201, Kalakunj-B,

Co-operative Society , Lane-6,
Dahanukar Colony, Kothrud,
Pune-411038
Email: mkraomuvvala@gmail.com

- (a) 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.
- (b) The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- (c) Both the parties accept that the Monitors have the right to access all the documents relating to the project / procurement, including minutes of meetings.
- (d) 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 Principal and the Chief Vigilance Officer of Kamarajar Port Limited.
- (e) The BIDDER / CONCESSIONAIRE(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the PRINCIPAL including that provided by the BIDDER / CONCESSIONAIRE. The BIDDER / CONCESSIONAIRE 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 / Concessionaire / Subcontractor(s) with confidentiality.
- (f) The Concessioneing Authority will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Concessionaire. The parties offer to the Monitor, the option to participate in such meetings.
- (g) The Monitor will submit a written report to the designated Authority of Concessioneing Authority / Chief Vigilance Officer of Kamarajar Port Limited within 8 to 10 weeks from the date of reference or intimation to him by the Concessioneing Authority / Bidder / Concessionaire and should the occasion arise, submit proposals for correcting problematic situation.
- (h) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or to take corrective action, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (i) If the Monitor has reported to the Principal substantiated suspicion of an offence under the Indian Penal Code, 1860 / Prevention of Corruption Act,1988 and the Concessioneing Authority has not, within reasonable time, taken visible action to proceed against such offence or reported to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

- (j) The word 'Monitor' would include both singular and plural.

Facilitation of Investigation

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

Other Provisions

Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

Law and Place of Jurisdiction

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

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.

Validity

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

If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by the Kamarajar Port Limited. 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.

Equal treatment of all Bidders / Concessionaires

- (a) The Bidder / Concessionaire undertake to demand from all sub-Concessionaires a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (b) The Principal will enter into agreements with identical conditions as this one with all Bidders / Concessionaires and Subcontractors.
- (c) The Principal will disqualify from the tender process all Bidder / Concessionaires who do not sign this pact or violate its provisions.

Kamarajar Port Limited

The parties hereby sign this Integrity Pact at _____ on _____.
The Principal represented _____
by the MD, Kamarajar Port Limited BIDDER / CONCESSIONAIRE

Name of the Officer
Designation

Name
Designation

Witness 1
Name & address

Witness 1
Name & address

Witness 2
Name & address

Witness 2
Name & address

Place:
Date:

Place:
Date :

APPENDIX IX: Policy for preventing private sector monopoly in Major Ports

Government of India
Ministry of Shipping
(Ports Wing)

No.PD-24018/8/2009 - PD.III New Delhi-1, dated the 2nd August, 2010

To

The Chairman, All Port Trusts

Sub:- Policy for preventing private sector monopoly in Major Ports.

Sir,

In pursuance of private sector participation guidelines, 1996 for the Port Sector and with a view to ensure healthy competition and smooth award of the projects for capacity augmentation at the Major Ports, the Central Government hereby directs all Major Ports under Section 111 of the Major Port Trusts Act, 1963, to follow the following Policy while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. This policy is in supersession of this Ministry's letters No.PD-25021/13/2002-Pvt dated 11th November, 2002, No.PD-12013/2/2005-JNPT dated 26th September, 2007 and No.PD-11015/2/2006-VPT dated 1st October, 2008.

2. Policy

If there is only one private terminal/berth operator in a port for a specific cargo, the operator of that berth or his associates shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same port.

For the purpose of this policy, the terms

- (i) 'Operator' includes consortium members of the bidder;
- (ii) 'Associates' means, in relation to the Applicant/Consortium member, a person who controls, is controlled by, or is under common control with such Applicant/Consortium Member (the Associate). As used in the definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, or 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.
- (iii) 'Berth' shall have the same meaning as "Wharf" given in Section 2 (za) of the MPT Act, 1963.

(iv) 'Specific Cargo' means (i) containers (ii) liquid bulk, (iii) dry bulk or (iv) multipurpose/other general cargo.

3. The policy shall be applicable with immediate effect and shall apply to Request for Qualification (RFQs) issued on or after this date.

4. It is also directed that the above provisions may be incorporated by the Major Ports in the Request for Qualification & Request for Proposal to give effect to the policy in relevant cases.

5. This issues with the concurrence of the Ministry of Law and Justice, Department of Legal Affairs and approval of Hon'ble Minister of Shipping.

Yours faithfully,

(Geetu Joshi)
Director
Tel No. 23321672

APPENDIX–X
Undertaking for prevention of corruption
(Refer Clauses 2.13.2 (x))

Dated:
To,
General Manager (CS&BD)
Kamarajar Port Limited,
Chennai,- 600 001.

Sub: Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode – Reg

Dear Sir,

I / We, , the Bidder undertake that I / We have not made any payment or illegal gratification to any person/authority connected with the Bid process so as to influence the Bid process and has not committed any offence under the Prevention of Corruption Act in connection with the Bid.

Yours faithfully,

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

Place: Name and seal of Bidder/Lead Member

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

To
General Manager (CS&BD)
Kamarajar Port Limited,
Chennai,- 600 001.

Sub: Selection of Operator for Upgradation, Equipping, Operations, Maintenance, and Transfer (UEOMT) of General Cargo Berth-1 (GCB-1) at Kamarajar Port through Public Private Partnership (PPP) Mode

Dear Sir,

With reference to your RFQ document dated *** **\$, I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub- contracting to contractors from such countries;

I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub- contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

Notes:

{Where applicable, evidence of valid registration by the Competent Authority shall be attached}

In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Order (Public Procurement No. 1)

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

Attention is invited to this office OM no. 6/18/2019-PPD dated 23rd July 2020 inserting Rule 144 (xi) in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 (xi) on the grounds stated therein:

Requirement of registration

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Annex I.
2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under Annex II.

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -
 - a) *In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed:* No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
 - b) *If the tendering process has crossed the first exclusionary qualificatory stage:* If the qualified bidders include bidders from such countries, the

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entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
 - a. to all Autonomous Bodies;
 - b. to public sector banks and public sector financial institutions; and
 - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

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- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose *beneficial owner* is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

- (i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation—

- a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

- (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

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(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

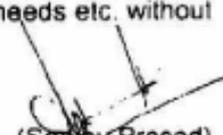
Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

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Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as Annex III. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to this Department.


(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

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Annex I: Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.
- B. The Registration Committee shall have the following members*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

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- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

- i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of **political and security clearance as per para D shall remain and no registration shall be granted without such clearance.**
- ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

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Annex II: Special Cases

- A. Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

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Annex III

Model Clause /Certificate to be inserted in tenders etc.

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

 - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

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- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. *[To be inserted in tenders for Works contracts, including Turnkey contracts]* The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the

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Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

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Appendix XII Project Description

About Kamarajar Port

Kamarajar Port (also referred as KPL), located on the Coromandel Coast about 24 km north of Chennai Port, Chennai, is the 12th major port of India, and the first port in India which is a public company. The port was declared as a major port under the Indian Ports Act, 1908 in March 1999 and incorporated as Ennore Port Limited under the Companies Act, 1956 in October 1999. Since March 2020, it is a wholly owned company of Chennai Port Authority.

Kamarajar Port currently has a maximum draft of 16.5 meters, poised to expand to accommodate mega-ships with drafts of 18 meters and above. It has 9 operational berths and has plan to develop several other berths as part of its masterplan.

Berths & Cargo handling Capacity

Kamarajar Port has a cargo handling capacity of 58.44 MTPA. KPL now has 9 operational berths as detailed out below: -

- **3 (Three)** berths are for handling bulk Coal (for TANGEDCO cargo – 2 Berths and 1 berth operated by Ennore Coal Terminal Pvt. Ltd.)
- **2 (Two)** berths are for handling Liquid Cargo (POL, LPG & LNG)
2 (two) berths named GCB-1 and GCB-2 for General cargo, Automobile export/import and associated capital goods
- **1 (One)** container berth operated by Adani Ennore Container Terminal Pvt. Ltd.
- **1 (One)** Bulk terminal named Ennore Bulk Terminal Pvt. Ltd. for Bulk and Break Bulk cargo

Cargo Handled at Kamarajar Port in MTPA (Terminal Wise)

The overall cargo traffic handled at Kamarajar port was 48.41 million tonnes in FY25. The berth wise traffic handled at Kamarajar port is as shown below:

Sl. No.	Berth	Traffic Handled in FY25 (in MTPA)
1	Coal Berth 1	8.46
2	Coal Berth 2	6.93
3	Common User Coal Terminal	10.19
4	Marine Liquid Terminal 1	4.17
5	General Cargo Berth 1	0.89
6	General Cargo Berth 2	1.28
7	Container Terminal (Phase 1, Stage 1)	13.15
8	Multi Cargo Terminal	2.12
9	LNG Terminal	1.22
Total		48.41

General Cargo Berth – 1

Kamarajar Port Limited (KPL) developed General Cargo Berth-1 (GCB-1) for car exports and for other general cargo, at a cost of Rs. 140 crore and commissioned in January 2012. A new General Cargo Berth-2 is developed and commissioned in January 2024 to handle exclusively export and import of cars and automobiles. KPL wishes to upgrade GCB-1 berth

through PPP mode and handle alternate cargo mainly in the **Clean Cargo** as the adjacent GCB-2 berth is being dedicated to handle export import of automobiles.

Cargo handling and equipment at GCB -1:

The handling of cargo at GCB-1 is carried out by the OEMs by engaging stevedores and necessary equipments are arranged by the exporters and importers as the berth doesn't not have any permanent equipment installed.

The GCB-1 has a total physical length of 278m and width of 27.50m (The environmental clearance currently states the berth length as 250m and width as 35 m, the same can be modified post signing of the concession) The project is proposed to be developed under PPP mode for handling of **Clean Cargo only (except Ro-Ros)**. During monsoon period, under moderate weather conditions, the vessels at berth have experienced slight surging for a few days.

The projected cargo that is envisaged to be handled at the berth includes Steel, Container, Project Cargo and other commodities which are clean in nature as defined in this document under definition of Clean Cargo. The traffic envisaged to be handled at this berth is around 3 MTPA.



KPL will also provide backup storage area of around **8.44 hectares** inside the port premises, as shown in the indicative image above. This area identified for the stackyard belongs to Kamarajar Port. The area measures to be around 84,437 square meters, i.e., 8.44 hectares. Presently the area allocated for development of the stackyard is paved with some portions having fully rigid pavement & remaining area with flexible pavement.

Project facilities envisaged: -

The concessionaire is expected to upgrade the berth, replacement of fenders, provide all necessary accessories required at berth, develop the yard, provide necessary cargo handling

equipments, covered storage, stackyards, admin builds, firefighting, utilities, IT, security, construction and maintenance of sewage treatment plant and effluent treatment plant and other necessary facilities for smooth operation of the terminal.

Equipments envisaged to be installed:-

Mobile Harbour Crane

Reach stacker

Forklifts

Tractor Trailers etc.

Project Cost: -

The Indicative Capital Cost of the Project is INR 220.84 Crores (Indian Rupees Two Hundred Twenty Crores and Eighty-Four Lakhs) only.

KPL invites bids to select the Concessionaire for the development and operation of the Project under Upgrade, Equip, Operate, Maintain, Transfer (UEOMT) format. This approach entails KPL providing the berth and storage area on as is where is basis, while the private sector takes charge of upgrading, equipping, operating, maintaining, and eventual transfer of the terminal. The Concessionaire shall be responsible for fixing the tariff for the services provided based on the market driven rates.

Further the Concessionaire shall pay Royalty to KPL. The concession period will be 30 years which will include the construction period of 2 years and the operation period of 28 years.