

**Request for Proposal
(RFP)**

**For Appointment of Contractor
For**

**Management, Operation & Maintenance of Port & IWT
Terminal at Sittwe & IWT Terminal at Paletwa under Kaladan
Multi-Modal Transit Transport Project.**

Tender No. IWAI/KPMU/45/2019

Inland Waterways Authority of India

(Ministry of Shipping, Govt. of India)

A-13, Sector -1, NOIDA, Dist. Gautam Budh Nagar - 201 301 (U.P.)

Ph No. 0120- 2530058 Fax No. 0120- 2530058,2544041

Web Site:- www.iwai.gov.in ; E-mail:- ce.iwai@nic.in, kpmu.iwai@nic.in

INR 5,000/-



DISCLAIMER

1. This RFP document is neither an agreement nor an offer by “AUTHORITY” to the prospective bidders or any other person. The purpose of this RFP is to provide information to the interested parties that may be useful to them in the formulation of their Bid pursuant to this RFP.
2. The “Authority” does not make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFP document and it is not possible for “Authority” to consider particular needs of each party who reads or uses this RFP document. This RFP includes statements, which reflect various assumptions, and assessments arrived at by the “Authority” in relation to the Management, Operation & Maintenance. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder / JV may require. Each prospective Bidder / JV should conduct its own investigations and analysis to check the accuracy, reliability and completeness of the information provided in this RFP document and the Bidder / JV are advised to obtain further independent information from appropriate sources.
3. The “Authority” will not have any liability to any Contractor / Bidder/Applicant or any other person in any laws (including without limitation the law of contract, tort), the principles of equity, restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP document, any matter, deemed to form part of this RFP document, the award of the Assignment, the information and any other information supplied by or on behalf of the “Authority” or their employees, any consultants or otherwise arising in any way from the selection process for the Assignment. The “Authority” will also not be liable in any manner whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon any statements contained in this RFP.
4. The “Authority” will not be responsible for any delay in receiving the Bids. The issue of this RFP does not imply that the “Authority” is bound to select a contractor/bidder or to appoint the Successful Applicant, as the case may be. The “Authority” reserves the right to accept / reject any or all of Bids submitted in response to this RFP document at any stage without assigning any reasons whatsoever. The “Authority” also reserves the right to withhold or withdraw the process at any stage with intimation to all who submitted the RFP Application.
5. The information given is not an exhaustive account of statutory requirements and

should not be regarded as a complete or authoritative statement of law. The “Authority” accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

6. The “Authority” reserves the right to change / modify / amend any or all provisions of this RFP document. Such revisions to the RFP / amended RFP will be made available on the website of NIC/ CPPP /IWAI.

Table of Contents

Title/clause	Page No
DISCLAIMER	2-3
SECTION - I: NOTICE INVITING E-TENDER	8-10
SECTION - II: INSTRUCTIONS TO BIDDERS (ITB)	
Background	12-14
Introduction	14
Bidder's Eligibility Criteria	14-19
Pre-bid Meeting	19-20
Clarifications and Addendums to RFP	20-21
Preparation of Bids	21
EMD	21-22
Tender Fee	22
Bank Solvency	22
Taxes	22
Currency	22
Language	22-23
Bid Validity	23
Number of Bids and cost thereof	23
Conflict of Interest	23-24
Acknowledgement by Bidder	24-25
Guidelines for e-submission of the Bids	25-28
Due date & Submission of Bids	28-31
Extension of Bid submission date	31
Late Proposals	31

Liability of the Authority	31
Modification/Substitution/ Withdrawal of Bids	32
Bid opening and evaluation process	32-34
Bid evaluation	35
Award of Contract	36
Insurance	36
Indemnity	36
Fraud and Corrupt Practices	36-37
Ownership of Document and Copyright	37
SECTION - III: DATA SHEET	38-41
SECTION - IV: TECHNICAL BID STANDARD FORMS	
FORM 4A: Form of Tender	43
FORM 4B (I): Technical Capacity of the Applicant	44
FORM 4B (II): Details of Eligible Projects	45
FORM 4B (III): Certificate regarding annual traffic throughput details of the project.	46
FORM 4C: Financial Capacity (Average Annual Turnover) of Applicant	47-48
FORM 4 D: Power of Attorney for signing of the RFP by the Authorised person of the bidder	49-50
FORM 4E: Power of Attorney for Lead Member of the JV	51-52
FORM 4F: Joint bidding Agreement	53-57
FORM 4G: Declaration by the Bidders	58
FORM 4H: Bidder information sheet	59
FORM 4I: Format for Pre-Bid Queries	60
FORM 4J: Statement of Legal Capacity	61
FORM Fin – 1: Financial Bid Submission Form	62

SECTION - V: FINANCIAL BID STANDARD FORMS	
FORM Fin – 2: Quoted Costs (per month basis)	64-65
SECTION - VI: TERMS OF REFERENCE (ToR)	
Scope of Work	67-71
Duration of Contract	72
Tariff	72
Revenue & Sharing	72
Escrow Arrangement	73
Site Organisation	73
Obligations and Responsibility / Inputs by Authority	73
Mode of Payment	73-74
Insurance	74
Supervising Body	75
Liquidated damages	75-76
SECTION - VII: STANDARD FORM OF CONTRACT	
Conditions of Contract	78-81
Commencement, Completion, Extension, Modification and Termination of Contract.	82-84
Obligations of the Contractor	85-86
Obligations and Responsibility / Inputs by Authority	86
Security Deposit/performance guarantee	86-87
Payment Terms	87
Arbitration	87
Defect liability period	88
Laws Governing the Contract	88
Miscellaneous Provisions	88-89
SECTION - VIII: ANNEXES	
ANNEX - I: Bank guarantee form for performance security	91-93

ANNEX - II: CONTRACT AGREEMENT FORM	94-96
ANNEX - III: DETAILS OF BANK ACCOUNT	97
ANNEX - IV: BANK CERTIFICATION	98
ANNEX - V: TENDER ACCEPTANCE LETTER	99
ANNEX - VI: WARRANTY FORM	100
ANNEX - VII: TENDER SUBMISSION LETTER	101-102
ANNEX – VIII: INTEGRITY PACT	103-108
ANNEX – IX BANK GUARANTEE FORM FOR EMD	109-110
ANNEX - X: MAP OF KALADAN MULTIMODAL TRANSIT TRANSPORT PROJECT	111
ANNEX - XI: INDEX MAP OF KALADAN PROJECT	112
ANNEX - XII: MAP SHOWING SITWE LAYOUT PLAN	113
ANNEX - XIII: MAP SHOWING PALETWA LAYOUT PLAN	114

SECTION-I: NOTICE INVITING E-TENDER

INLAND WATERWAYS AUTHORITY OF INDIA

(Ministry of Shipping, Govt. of India)

A-13, Sector -1, NOIDA, Distt. Gautam Budh Nagar - 201 301 (U.P.)

Ph No. 0120- 2530058 Fax No. 0120- 2530058,2544041

Web Site:- www.iwai.gov.in E-mail:- ce.iwai@nic.in, kpmu.iwai@nic.in

Tender No. IWAI/KPMU/ 45/2019

NOTICE INVITING E-TENDER

Introduction:

- a) Inland Waterways Authority of India (IWAI), on behalf of MEA, invites ONLINE Tenders/Bids from reputed Indian Company or JV with Indian and Myanmar company as JV partner with an Indian company as the mandatory lead partner, having capabilities of management, operation & maintenance of ports/harbor including marine activities and terminal with associated infrastructures and equipment in two bid systems (Cover I-Technical Bid and Cover II - Financial Bid) under **Kaladan Multi-Modal Transit Transport** Project for:

“Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project.”

- b) Critical Data Sheet: -

Interested parties may down load the tender document on line from the site <https://eprocure.gov.in/eprocure/appand> IWAI website “www.iwai.nic.in” and are required to pay Rs. 5,000/- (Rupees Five Thousand only) as the cost of RFP document deposited into IWAI’s Account.

Document Download Start Date	23-04-2019
Last Date of Seeking Clarifications	15-05-2019
Pre-Bid Meeting	16-05-2019
Bid submission last date	10-06-2019
Bid Opening date	11-06-2019
Cost of Tender Document	Rs. 5,000/-
EMD	Rs. 50,20,000/-

- c) Scope of work: - The Scope of work shall be as per the Terms of Reference mentioned in Section- VI. The contractor shall execute the entire work to the satisfaction of Engineer In- charge and stipulated in this Bid document.
- d) Method of Selection: - Bidders meeting the eligibility criteria and quoting “lowest



fees” will be selected as per procedures described in this RFP.

e) Clarifications:

Clarification/Query if any, on the RFP shall be obtained from the following address:

The Chief Engineer (Tech)
Inland Waterways Authority of India
A-13, Sector -1, Noida, Gautam Budh Nagar,
Uttar Pradesh- 201301,
Ph: 0120-2522971
Fax: 0120-2543973
Email id: kpmu.iwai@nic.in, kpmuiwai@gmail.com, ce.iwai@nic.in

f) The “Authority” reserves the right to accept or reject any or all Tenders without assigning any reason and no correspondence shall be entertained in this regard.

Chief Engineer (Tech)
IWAI, Noida

SECTION-II: INSTRUCTIONS TO BIDDERS (ITB)

1.0 Background:

1.1 **The Kaladan Multimodal Transit Transport Project (KMTTP)** was jointly identified by India and Myanmar to create a multi modal mode of transport for shipment of cargo. KMTTP envisages a waterway trade route from Sittwe Port to Paletwa (158 Kms) along the river Kaladan and road route from Paletwa to India-Myanmar border of 110Kms.

1.2 **The Ministry of External Affairs, (MEA)** Government of India (GoI), has appointed **Inland Waterways Authority of India (IWAI)** as the Project Development Consultant (PDC), for “Kaladan Multimodal Transit Transport Project” in Myanmar.

1.3 **Inland Waterways Authority of India (IWAI)**, is Government of India body under the Ministry of Shipping, having its registered office at A-13, Sector 1, Noida, Uttar Pradesh (201301), India is the PDC (Project Development Consultant) appointed by MEA.

1.4 Brief History and information on Present Infrastructure and operations:

The work of construction of port and IWT components is completed, which includes fairway development and sea dredging in Sittwe port area, port and IWT terminal at Sittwe, Fairway development and dredging at Sittwe – Paletwa stretch of Kaladan River, IWT terminal at Paletwa, 6 nos. IWT vessels of capacity 300 T each.

Indian origin or any other origin cargo will be unloaded at Sittwe, reloaded on to the Inland transport vessels/barges for Paletwa and thereafter transported to its inland destination in Myanmar or to Mizoram, India by road or vice versa i.e. any cargo originating from Mizoram or Myanmar hinterland can be transported by road to Paletwa, then to Sittwe by IWT mode, unloaded at Sittwe and reloaded on to the sea going vessels for exports.

1.5 Current status:

1.5.1 Passage from Sea to Sittwe port:

- The navigational channel from the Sea to Sittwe Port is dredged up to 7.9 m below Chart Datum for the safe navigation of 6,000 DWT Vessels.
- Navigational aids provided.

1.5.2 Salient features of the project at Sittwe:

- | | |
|--|----------------|
| a) Dredging channel dimensions (Width x Depth below CD) | 52.15m x 7.9 m |
| b) Dimensions of approach jetty for both the ports & IWT jetty | 136 m x 9.8 m |
| c) Dimensions of Port jetty | 219 m x 15.2 m |

- d) Dimensions of IWT jetty 54 m x 15.2 m
- e) Construction of back up facilities Structures at Sittwe
- i) Port Office (322 sq m) & IWT Office (195 sq m) 1 no
- ii) Covered Storage Shed (24 m x 36 m) 3 nos
- iii) Canteen and Rest Room (240 sq m) 1 no
- iv) Open storage area (40m x 30m) & (20m x 30m) 1 no
- v) Truck Parking area (20m x 25m) 1 no

1.5.3 Salient features of the project at Paletwa:

- a) Dredging channel dimensions (Width x Depth below CD) 37.5m x 2.0 m
- b) Dimensions of approach to the IWT jetty 74.45 m x 9.8 m
- c) Dimensions of IWT jetty 70.9 m x 19.2 m
- d) Construction of back up facilities Structures at Paletwa
- i) IWT Office (195 sq m) 1 no
- ii) Covered Storage Shed (24 m x 36 m) 1 no
- iii) Canteen and Rest Room (240 sq m) 1 no
- iv) Open storage area (30m x 20m) 1 no
- v) Truck Parking area (50m x 12m) 1 no

1.5.4 Cargo Handling Equipment at Sittwe & Paletwa:

The following cargo handling equipment are available: -

Sl. No.	Name of equipment	Port Sittwe	IWT Sittwe	IWT Paletwa
1	Level Luffing crane with 10 Ton capacity 25.5m outreach	1	-	-
2	Tractors 40 HP	4	2	-
3.	4Ton Tractor Trailers	16	8	-
4	3Ton Fork Lifts	4	2	2

5	10Ton Mobile crane 12 m outreach	-	-	1
6	10Ton capacity trucks	-	-	4

1.5.5 Road from Paletwa to Zorinpui (also known as Zochachuah) (Indo Myanmar Border) Distance (110 KM):

- Road from Paletwa to Indo-Myanmar border is under development. The work has been awarded in May 2017 with a completion period of three years.
- The work on National Highway NH54 from Zorinpui to Lawngtai distance 100 KM is in progress.

1.5.6 There is no container movement existing in the Sittwe Port presently.

1.5.7 Coastal cargo movement (traditionally) exists between Yangon to Sittwe and Limited cargo between Sittwe and Paletwa.

1.5.8 Map showing sea route, IWT passage, road passage and both ports is attached at Annex X and XI. Maps showing Sittwe layout and Paletwa layout plan are attached at Annex XII and XIII.

2.0 INTRODUCTION

2.1 The “Authority” will select a Contractor in accordance with the method of selection specified in clause 16 Section- II: Instruction to Bidder (ITB).

2.2 The name of the Assignment/Job has been mentioned in Section - III: Data Sheet. Detailed scope of the Assignment/Job has been described in Section - VI: Terms of Reference and Scope of Service.

2.3 The date, time and address for submission of the Bids have been given in Section - III: Data Sheet.

2.4 Bidder shall bear all costs associated with the preparation and submission of their Bids and contract negotiation. The “Authority” is not bound to accept any Bid and reserves the right to annul the selection process at any time prior to contract award, without thereby incurring any liability to the Bidder.

3 Bidder Eligibility Criteria

For determining eligibility of bidder the following shall apply:

3.1 Bidder should either be an Indian Company or JV of Indian and Myanmar Company



- with Indian partner as the lead member, capable of carrying out management, operation & maintenance of port/harbour, terminal with associated infrastructures.
- 3.2 The bidder may be a single entity of sole identity or of JV comprising maximum two entities (the “Joint Venture”) coming together to implement the Project. However, no bidder applying individually or as a member of a JV, as the case may be, can be member of another JV. The term bidder used herein would apply to both a single entity and a JV.
- 3.3 The Bidder shall meet the Technical Qualification criteria of successful completion of similar works as mentioned in clause 16 of ITB. The Bidder shall indicate the value of the order executed by him together with the details of name of the party, order value, scope of work / component breakup, completion period stipulated in the order and actual completion period. The completion certificate, awarded by the client on its letter head should have a mention of start date, date of completion and value of the work executed by the Bidder. In case the work was performed by the Bidder in a JV, the same shall be supported by a Client Certificate enumerating the claimant share also. In case the work was performed by the bidder as a Sub-Contractor, the bidder shall submit similar completion certificate awarded to it by the main Contractor and countersigned by the Employer / Client of the main Consultant.
- 3.4 Copy of work order / letter of award / letter of work agreement alone shall not suffice bidders claim for executing the similar work as defined in Section III data sheet. Submitting completion certificate from the client on its letter head is mandatory.
- 3.5 The similar work experience of parent company / subsidiary / sister Company of the Bidder shall not be considered unless the parent company / subsidiary / sister Company is part of the JV participating in the Bid.
- 3.6 Average Annual Turnover during the last three (03) years ending 31st March of the previous financial year should be as mentioned in Clause 16 of ITB. The Bidders shall provide financial turnover of the firm for the last three years duly certified by statutory auditors.
- 3.7 Any entity which has been barred by the Central Government, any State Government, a Statutory Employer or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Bid submission, would not be eligible to submit the Bid.
- 3.8 Bidder should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial Employer or a judicial pronouncement or arbitration award against the Bidder, nor been expelled

from any project or agreement nor have had any agreement terminated for breach by such Bidder. Declaration in this regard has been incorporated at S. No. 8 of Form 4G. However, hiding of the facts or non-compliance by the Bidder in this regard would be punishable under existing law and would lead to rescinding or termination of the work if information relating to debarment or disqualification or non-compliance of order is brought to the knowledge of the Employer even during the currency of the contract brought forward at a later stage also.

3.9 The Bidder shall also indicate following:

- i. The Bidder shall have adequate resources for successful execution of works and should be financially solvent. Bidder shall provide a solvency certificate from any nationalized / scheduled bank in India for an amount as indicated in Section - III: Data Sheet.
- ii. The Bidder shall be income tax assessee and accordingly the Bidder shall submit copy of Income Tax Return (ITR) filed by the Bidder for the last three financial years.

3.10 Bids by Joint venture / consortium

- (a) The Joint Venture / consortium can be entered between two firms only.
- (b) The lead member shall be a legal Indian Entity and should have atleast 51% share of participation in a JV / Consortium.
- (c) The minimum share of the Lead member shall be atleast 51% and the minimum share of the 2nd member shall be atleast 25%, with a total share of all the JV / Consortium members being 100%. However, JV / Consortium will have to be registered under the provisions of Company Act 2013. Further, the clause shall be read in conjunction with Clause 16.1.1 of ITB.
- (d) There shall be a Joint Venture Agreement / Memorandum of Understanding specific for the contract between the constituent firms, indicating clearly, amongst other things, the proposed distribution of responsibilities both financial as well as technical for execution of the work amongst them. A copy of the Joint Venture Agreement / MOU in accordance with requirements mentioned shall be submitted along with the bid. The Bidder has to submit documentary proof of "intent of forming JV / consortium" on INR 100 /- registered stamp paper at the time of submission of bid. The bidder is required to submit the Letter of Intent to enter into a JV / Consortium agreement should contain at least the following:

- Name of the Lead Partner
- Clearly mentioned Percentage share of JV / Consortium members adhering to Clause 3.10 (c) mentioned above.
- All the partners shall jointly and severally liable for the execution of the Contract in accordance with the Contract terms.

However, successful bidder is required to submit proof of registration of JV / consortium after issue of Letter of Intent and before signing of agreement. The members of JV / Consortium shall incorporate a special purpose vehicle as Contractor under the provisions of Companies Act, 2013, to execute the Project, if awarded to the JV / Consortium.

- (e) Lead partner's authorization shall be evidenced by submitting a power of attorney, duly registered, signed by the legally authorized signatories of all the partners / members of JV / Consortium.
- (f) The Lead Partner shall be authorized to incur liabilities and to receive instructions for and on behalf of the partners of the Joint Venture, whether jointly or severally, and entire execution of the Contract (including payment) shall be carried out exclusively through the partner-in-charge. A copy of the said authorization shall be furnished in this Bid.
- (g) In the event of default by any partner, in the execution of his part of the Contract, the Employer shall be so notified within 30 days by the Lead Partner, or in the case of the Lead Partner being the defaulter, by the partner nominated as partner-in-charge of the remaining Joint Venture / consortium, the partner-in-charge shall, within 60 days of the said notice, assign the work of the defaulting partner to any other equally competent party acceptable to the Employer to ensure the execution of that part of the Contract, as envisaged at the time of bid. Failure to comply with the above provisions will make the Contractor liable for action by the Employer under the Conditions of Contract. If the most experienced i.e. Lead Partner defined as such in the Communication approving the qualification defaults, it shall be construed as default of the Contractor and Employer will take action under the Conditions of Contract.
- (h) Notwithstanding the permission to assigning the responsibilities of the defaulting partner to any other equally competent party acceptable to the Employer as mentioned in sub clause 3.10 (g) above, all the partners of the Joint Venture / consortium will retain the full and undivided responsibility for the performance of their obligations under the Contract and / or for satisfactory completion of the Works.

- (i) The bid submitted shall contain all relevant information for each member of JV / consortium as per the requirement stipulated under Clause 10.1 of ITB.
- (j) Lead member should have stake in the Joint Venture / consortium as stipulated in clause 3.10 (c) of Instruction to Bidder (ITB). However, the JV / consortium member together shall meet the overall qualification Criteria stipulated in Clause 16.1 of ITB.

3.11 Change in composition of the JV

- 3.11.1 Change in the composition of a JV will not be permitted by the Authority after due date of submission of RFP.

3.12 Site visit and verification of information

Applicants are encouraged to submit their respective RFP after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other infrastructure including weather data, applicable laws and regulations and any other matter considered relevant by them. MEA/IWAI shall not be liable for any implications due to the bidder not being aware of site conditions.

3.13 Right to accept or reject any or all RFP/ Bids

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

- 3.13.2 The Authority reserves the right to reject any RFP or Bid if:

- (a) in case of any, strategic/business conflict of interest
- (b) at any time, a material misrepresentation is made or uncovered, or
- (c) the Applicant (bidder) does not provide, within the time specified by the Authority, the supplementary information sought by the Authority for evaluation of the RFP.

Then, the Applicant or if the Applicant is a JV, then the entire JV may be disqualified/ rejected.

- 3.13.3 In case it is found during the evaluation or at any time before signing of the Contract Agreement or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Authority, that one or

more of the qualification conditions have not been met by the Applicant(bidder) , or the Applicant (bidder) has made material misrepresentation or has given any materially incorrect or false information, the Applicant (bidder) shall be disqualified forthwith if not yet appointed as the Contractor either by issue of the LOA or entering into of the Contract Agreement, and if the Applicant/ JV Company has already been issued the LOA or has entered into the Contract Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Applicant(Bidder), 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 RFP, the Bidding Documents, the Contract Agreement or under applicable law. EMD is liable to be forfeited as a consequence of such any fraudulent omission or commission.

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

3.14 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the 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.

4.0 Pre-bid Meeting

A Pre-Bid meeting shall be held as per the date and time mentioned in Section III - Data Sheet. Bidders willing to attend the pre-bid should inform the IWAI before hand in writing / e-mail and submit their queries as per FORM 4I. The maximum number of participants, who choose to attend the pre-bid meeting, shall not be more than two (02)

per bidder. The representatives attending the pre-bid meeting must carry an authority letter duly signed by the authorized signatory of his/her organization permitting the representatives to attend the pre-bid meeting on behalf of the respective bidder.

During the course of Pre-Bid meeting the applicant will be free to seek clarifications and make suggestions for consideration by the “Authority”. The “Authority” will endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive selection process.

5.0 Clarifications and Amendment to RFP

- 5.1 Bidders may request a clarification on any clause of the document up to the number of days indicated in Section - III: Data Sheet before the Bid submission date. Any request for clarification must be sent in writing, or by e-mail to the IWAI address indicated in Section - III: Data Sheet.
- 5.2 The Authority will respond to the queries raised by the Bidders (including an explanation of the query but without identifying the source of query) along with any amendment which would be published on the website and e-procurement portal. The Authority shall use the following procedure mentioned hereunder:
- (a) At any time before the submission of Bids, the Authority may amend the tender document by issuing an addendum / corrigendum (amendment). The amendment / clarification, if any, to the document will be available on <https://eprocure.gov.in/eprocure/appand>, IWAI’s website www.iwai.nic.in and MEA’s website www.mea.gov.in. All Bidders participating in the Bid shall be deemed to have kept them informed and updated about each such amendment/clarification which is posted on the above website from time to time.
 - (b) The Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
 - (c) The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFP. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

- d) At any time prior to the deadline for submission of RFP, the Authority may, for any reasons whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP by the issuance of Addendum.

6.0 Preparation of Bids

In preparing their Bid, Bidders are expected to examine in detail the documents comprising the RFP. Material deficiencies in providing the requested information may result in rejection of the Bidder's Bid.

Bidders shall adhere to the requirements mentioned below:

6.1 EMD

- 6.1.1 Bidders shall furnish EMD of the amount as mentioned in Section III Data Sheet in the form of bank guarantee from any nationalized/scheduled bank in India having validity for six months or more from the last date of submission of bids. In case of a JV, the EMD shall be furnished by the Lead Member.
- 6.1.2 Bids not accompanied by the requisite EMD shall be rejected as non-responsive.
- 6.1.3 The EMD of the unsuccessful bidders would be returned within one month of signing of the Contract Agreement with successful bidder.
- 6.1.4 The EMD of a successful bidder will be returned after the receipt of the Performance Bank Guarantee (PBG) and its due confirmation.
- 6.1.5 EMD in the form of Bank Guarantee shall be deposited as per attached Bank Guarantee format (Annex IX).
- 6.1.6 The EMD shall be forfeited by the "Authority" in the following events:
- (i) If Bid is withdrawn during the validity period or any extension agreed by the Bidder thereof.
 - (ii) If the Bid is varied or modified in a manner not acceptable to the "Authority" after opening of Proposal during the validity period or any extension thereof.
 - (iii) If the Bidder tries to influence the evaluation process.
 - (iv) If the First ranked (Lowest) Bidder withdraws the proposal during negotiations (failure to arrive at consensus by both the parties shall not be construed as withdrawal of the proposal by the Bidder/ JV).
 - (v) In case the Bidder, submits false certificate in terms of any documents supported to such Tender.

- (vi) If the Bidder fails to sign the contract in accordance with conditions of contract on receipt of award of contract.
- (vii) If the Bidder fails to furnish the PBG in accordance with conditions of the contract.
- (viii) In case of a Bidder revoking or withdrawing his/her Tender or varying any terms in regard thereof without the consent of the “Authority” in writing.

6.2 **Tender Fee**

All Bidders are required to pay INR 5,000/- (INR five Thousand only) towards Tender Fees in the form of Demand Draft payable at New Delhi, India as per the details mentioned in clause 8 of the Data Sheet. The tender fee is non-refundable.

6.3 **Bank Solvency**

All bidders shall submit bank solvency certificate from a nationalized / scheduled bank in India for the amounts as mentioned in Section III Data Sheet.

The solvency certificate submitted by the bidder shall not be older than one (01) year from the Bid Submission Last Date. In case bidder does not adhere to this criterion, his bids shall be considered non-responsive and shall not be considered for further evaluation process. In case of a JV / Consortium, the solvency certificate should be in the name of the Lead Member.

6.4 **Taxes**

The Bidders shall fully familiarize themselves with the applicability of all types of taxes (applicable on the jurisdiction of the work place and on the jurisdiction from the where the RFP is being invited) and all such taxes, as prevailing on date of submission of the bid, must be included by the Bidder in the Financial Proposal.

6.5 **Currency**

Bidders shall express the price (offer) of their Assignment/job in Indian Rupees (INR) only and payment shall be made in same currency. No compensation shall be entertained on account of any currency fluctuations.

6.6 **Language**

The Bid as well as all related correspondence exchanged between the Bidders and the “Authority” shall be in English language and shall be strictly as per the formats attached in this RFP. The “Authority” will evaluate only those Bids that are received in the specified formats and are complete in all respects. Any supporting documents submitted

by the Bidder with its Bid or subsequently, in response to any query/ clarification from the “Authority” shall be in English and in case any of these documents are in another language, same must be accompanied by an accurate translation of all the relevant passages in English language, and in such case, for all purposes of interpretation of the Bid, the translation in English language shall prevail.

The bidder shall bear all cost of translation to the English language and all risks of the accuracy of such translation provided by bidder.

6.7 Bid Validity

The Section – III: Data Sheet indicates for how long the Bids submitted by the bidders must remain valid after the submission date. During this period, Bidders shall maintain the availability of Professional staff nominated in the bid and also the amount quoted for the services in the Financial Bid shall remain unchanged. The “Authority/Owner” will make its best effort to complete negotiations, if any, within this period. Should the need arise; however, the “Authority/Owner” may request Bidders to extend the validity period of their Bids. Bidders who agree to such extension shall confirm the validity period of their Bids. Bidders who agree to such extension shall confirm that they will maintain the availability of the Professional staff Proposed in the Bid and that their financial Bid will remain unchanged. The bidders have the right to refuse to extend the validity of the bids and bids of such bidders, who do not extend the validity of their bids, shall not be considered for further evaluation.

6.8 Number of Applications (Bids) and costs thereof

6.8.1 No Applicant (bidder) shall submit more than one bid for the Project. An applicant (bidder) applying individually or as a member of a JV shall not be entitled to submit another bid either individually or as a member of any other JV, as the case may be.

6.8.2 The bidders shall be responsible for all of the costs associated with the preparation of their Applications (bid) 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.

6.8.3 A bidder can submit one bid only. In case a bidder submits or participates in more than one bid, the application of the bidder shall be rejected summarily and the bidder shall be disqualified from subsequent bidding in MEA projects.

7.0 Conflict of Interest

7.1 “Authority” requires that selected bidder (Contractor) provides professional, objective,

and impartial advice and at all times holds the “Authority” interests paramount, strictly avoids conflicts with other assignment(s)/job(s) or his/her own corporate interests and act without any consideration for future work.

7.2 Without limitation on the generality of the foregoing, Bidders, and any of their affiliates, shall be considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below: -

(a) **Conflicting assignment/job:** A Contractor {including its personal and sub contractor(s)} or any of its affiliates shall not be hired for any assignment/ job that by its nature may be in conflict with another assignment/ job of the Contractor to be executed for the same or for another Employer, for example a Contractor hired to execute to carry out O & M of Port operations shall not be engaged to do this contract and a Contractor assisting an Employer in the privatization of public assets shall not purchase nor advise purchasers of such assets.

(b) **Conflicting Relationship:** A Contractor {including its personal and sub contractor(s)} that has a business or family relationship with a member of the Owner's /IWAI's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment/job (ii) the selection process for such assignment/job or (iii) supervision of the Contract, may not be awarded a Contract unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Authority throughout the selection process and the execution of the contract.

7.3 Contractor have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of “Authority” or that may reasonably be perceived as having this effect. Any such disclosure shall be made as per the standard forms of technical proposal provided herewith. If the contractor fails to disclose said situations and if the “Authority” comes to know about any such situation at any time, it may lead to the disqualification of the contractor during bidding process or termination of its Contract during execution of assignments.

7.4 No agency or current employees of the “Authority” shall work as Contractor under their own ministries, departments or agencies.

8.0 **Acknowledgement by Bidder:**

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

8.1 Made a complete and careful examination of the Tender for Management, Operation & Maintenance of Port/terminal including marine activities (pilotage, Tug assistance and mooring/unmooring services) & Terminal facilities with Infrastructure and equipment in

Navigational Channel in Port / Harbour area in Sittwe/ Paletwa and in between Sittwe to Paletwa in Kaladan river along with maintenance of Navigational aids.

- 8.2 Received all relevant information requested from the “Authority.”
- 8.3 Satisfied itself about all matters and necessary information required for submitting a competitive bid.
- 8.4 Acknowledged that it does not have a Conflict of Interest.
- 8.5 Accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the “Authority” relating to any of the matters referred herein the RFP.
- 8.6 Agreed to be bound by the undertakings provided here under and in terms hereof.
- 8.7 Agreed that the “Authority” shall not be liable for any omission, mistake or error in respect of any matter or anything arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by the “Authority”.

9.0 Guidelines for e-submission of the Bids

- 9.1 The Bids should be submitted through Central Public Procurement Portal for e-Procurement <https://eprocure.gov.in/eprocure/app>.
- 9.2 Possession of valid Digital Signature Certificate (DSC) and enrolment/registration of the Contractors/Applicants on the e-procurement/e-Tender portal is a prerequisite for e tendering.
- 9.3 Applicant should enroll on e-procurement site using the <https://eprocure.gov.in/eprocure/app> option available “Enroll Here” on the home page portal. Enrolment is free of charge. During enrolment/registration, the Applicants should provide the correct/true information including valid e-mail id. All the correspondence shall be made directly with the Contractors/Applicants through email id provided.
- 9.4 Applicants need to login to the site through their user ID/password chosen during enrolment/registration.
- 9.5 Then the Digital Signature Certificate (Class - II or Class - III Certificates with signing key usage) issued by SIFY/TCS/node/e-Mudra or any Certifying Employer recognized by CCA India on e-Token/Smart Card, should be registered.
- 9.6 Only the registered DSC should be used by the Applicant and should ensure safety of

- the same.
- 9.7 Bidder /JV may go through the Tenders published on the site and download the required tender documents/schedules in which the Applicant is interested.
- 9.8 After downloading/getting the Tender document/schedules, the Applicant (bidder) should go through them carefully and then submit the documents as asked.
- 9.9 If there are any clarifications, this may be obtained ONLINE through the Tender site, or should also take into account the addendum/corrigendum published before submitting the RFP/Bids ONLINE.
- 9.10 Then the Applicant may log into the site through the secured log in by giving the user id/ password chosen during enrolment/registration and then by giving the password of the E-Token/Smart card to access DSC.
- 9.11 Applicant selects the tender which he/she is interested in by using the search option & then moves it to the 'my favorites' folder.
- 9.12 From the favorite's folder, he selects the tender to view all the details indicated
- 9.13 It is construed that the Applicant has read all the terms and conditions before submitting their offer. Applicant should go through the RFP schedules carefully and upload the documents as asked; otherwise, the bid will be rejected.
- 9.14 Applicant, in advance, should get ready the Bid documents to be submitted as indicated in the RFP document / schedule and generally and they can be in general PDF/xls/rar/jpg formats. If there is more than one document, they can be clubbed together and can be provided in the requested format. Each document to be uploaded ONLINE should be less than 2 MB. If any document is more than 2MB, it can be reduced through zip/rar and the same can be uploaded, if permitted.
- 9.15 The Applicants can update well in advance, the documents such as certificates, annual report details etc., under My Space option and these can be selected as per RFP requirements and then sent along with Bid documents during Bid submission. This will facilitate the Bid submission process making it faster by reducing upload time of Bids.
- 9.16 Applicant should submit the cost of the RFP for the amount as specified in Section-III: Data Sheet. The original payment instruments should be posted/couriered/given in person to the Authority within the due date as mentioned in this RFP document. SCANNED copy of the instrument should be uploaded as part of the offer.
- 9.17 while submitting the Bids ONLINE, the Applicant should accept the Terms & Conditions and proceed further to submit the Bid packets.

- 9.18 The Applicant has to select the payment option as offline to pay the cost of the RFP process as applicable and enter details of the instruments.
- 9.19 The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the SCANNED copy and the data entered during Bid submission time. Otherwise submitted Bid will not be acceptable.
- 9.20 The Applicant has to digitally sign and upload the required Bid documents one by one as indicated. Applicants to note that the very act of using DSC for downloading the Bids and uploading their offers shall be deemed to be a confirmation that they have read all sections and pages of the Bid document including conditions of contract without any exception and have understood the entire document and are clear about the tender requirement.
- 9.21 The Applicant has to upload the relevant files required as indicated in the cover content. In case of any irrelevant files, the Bid will be automatically rejected.
- 9.22 The Applicants are requested to submit the Bids through ONLINE e-tendering system to the Tender Inviting Authority (TIA) well before the Bid 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 ONLINE submission of Bids by the Applicants at the eleventh hour.
- 9.23 After the Bid submission, the acknowledgement number, given by the e-tendering system should be printed by the Applicant and kept as a record of evidence for ONLINE submission of Bid for the particular RFP and will also act as an entry pass to participate in the Bid opening date.
- 9.24 The Applicant should ensure/see that the Bid documents submitted are free from virus and if the documents could not be opened, due to virus, during Tender opening, the Bid is likely or liable to be rejected.
- 9.25 The time settings fixed in the server side & displayed at the top of the Tender site, will be valid for all actions of requesting, bid submission, Bid opening etc., in the e-Tender system. The Applicants should follow these time settings during Bid submission.
- 9.26 All the data being entered by the Applicants would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered will not be viewable by unauthorized persons during Bid submission & not be viewable by any one until the time of Bid opening.
- 9.27 Any Bid 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/Bid opener's public keys. Overall, the uploaded Tender documents become readable only after the Tender opening by the authorized Bid openers.

- 9.28 The confidentiality of the Bids is maintained since the secured Socket Layer 128 bit encryption technology is used. Data storage encryption of sensitive fields is done.
- 9.29 The Applicant should logout of the Tendering system using the normal logout option available at the top right-hand corner and not by selecting the (X) exit option in the browser.
- 9.30 Any queries relating to the Tender document and the Terms and Conditions contained therein should be addressed to the Tender Inviting" Authority" or the relevant contact person indicated in the Tender.
- 9.31 Any queries relating to the process of ONLINE Bid submission or queries relating to CPP Portal in general may be directed to the 24x7 CPP Portal Helpdesk. The contact number for the helpdesk is **1800 233 7315 or** as given on the site helpdesk.

10.0 Due Date and Submission of Bids

The Hard Copy of original instruments in respect of cost of Tender document and Earnest Money Deposit must be delivered to the office of Chief Engineer (Tech), IWAI, A-13, Sector-1, Noida, Distt, Gautam Budh Nagar – 201301 (U.P) on or before Bid closing Date & Time. Bids submitted without original payment instrument like Tender document fee & EMD, against the submitted Bid shall automatically become ineligible and shall not be considered.

The Technical and Financial Bids, complete in all respects, should be submitted as per sequence mentioned below. Bids should be submitted in Two Covers:

10.1 Cover-I: Technical Bid

10.1.1 Enclosure – I

- a) SCANNED copy of the proof of cost of the tender fees as specified in Section-III: Data sheet
- b) SCANNED copy of the proof of EMD as specified in Section – III: Data sheet. Original BG for EMD shall be submitted before bid opening.
- c) SCANNED copy Proof of bank solvency as specified in Section – III: Data Sheet
- d) SCANNED copy of Tender Acceptance Letter duly filled and signed by the authorized

- signatory of the Bidder as per Annex – V
- e) SCANNED copy of Warranty Form duly filled and signed by the authorized signatory of the Bidder as per Annex – VI
 - f) SCANNED copy of Tender Submission Letter duly filled and signed by the authorized signatory of the Bidder as per Annex – VII
 - g) SCANNED copy of Form 4A: Form of Tender.
 - h) SCANNED copy of Form 4G: Declaration by the bidders.
 - i) SCANNED copy of Form 4D: Power of Attorney for the authorized person of the bidder.
 - j) SCANNED copy of Form 4E: Power of Attorney for Lead Member of JV.
 - k) SCANNED copy of Form 4F: Joint bidding Agreement
 - l) SCANNED copy of Form 4H: Bidder information sheet.
 - m) SCANNED copy of Form 4I: Pre-bid queries format
 - n) SCANNED copy of Form 4J: Statement of Legal Capacity
 - o) Composition/Ownership/Shareholding pattern of the organization
 - p) Board Resolution, details of top management (Board members), key officials with documentary evidence, Articles of Association / memorandum of association of the company.
 - q) Registration/incorporation certificate of the bidder /JV.
 - r) Any other certification as mentioned in the ToR
 - s) Original tender document (RFP) with all addendums and corrigendum issued till date duly stamped and signed by the authorized signatory of the bidder.
 - t) SCANNED copy of Form 4B(I): Technical Capacity of the Applicant
 - u) SCANNED copy of Form 4B(II): Details of Eligible Projects
 - v) SCANNED copy of Form 4B (III): Certificate regarding annual traffic throughput details of the project.
 - w) Provide list of litigation history, if any.

10.1.2 Enclosure – II

- a) SCANNED copy of Form 4C: Financial Capacity of the Applicant (Annual Turnover)
- b) SCANNED copy of the Annual Report/Audited balance sheets, for the last three financial years ending 31st March of the previous financial year.
- c) SCANNED copy of Goods & Services Tax (GST) Registration certificate.
- d) SCANNED copy of PAN card of the Applicant.
- e) SCANNED copy of IT returns filed for last three financial years.
- f) SCANNED copy of Bank account details, along with a cancelled cheque, for transaction through e-payment in format given at Annex- III & Annex – IV.
- g) Integrity agreement duly signed by bidder's Authorized Signatory as per Annex – VIII. Original copy is required to be submitted along with hard copy of bid.
- h) Scanned copy of form Fin - 1: Financial Bid Submission form, which shall be used in case the bidder is technically qualified.

NOTE: - In case of JV Member is a Myanmar company the above documents (from s.no 10.1.2(a) to 10.1.2(e)) issued as per their country norms shall be submitted.

It may be noted that Technical Bid shall not contain any reference to any fee or charges.

All the submission enumerated under Enclosure-I and Enclosure –II shall be submitted by all the JV partners separately.

10.2 Cover-II: Financial Bid

- a) Financial Bid in excel format provided along with this RFP as BoQ shall be used for quoting prices.

NOTES:

While working out Quotes, following points should be noted:

- a) Contractor/JV will have to make their own arrangements transport/accommodation/TA/DA of their personnel assigned to this work. However, available office space shall be provided to the bidder free of cost but Authority may earmark some portion of office space for its own use.
- b) Prices quoted in FIN -2 would deem to have included all the incidental charges/expenses.

c) All duties, taxes including those payable in Myanmar, royalties and other levies payable by the Contractor under the Contract, or for any other cause, shall be included in the rates, prices, and total Bid price submitted by the Bidder. The Bidder has to submit breakup cost of work and taxation in support of the financial bid. The rates and prices quoted by the Bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment. Further, any variation in the statutory taxes shall be accounted for the payment of differential tax amount, against submission of proof of change in Tax on work done amount. However, this would be entertained only if the bidder has submitted its breakup with effective weightage, otherwise it would be presumed that the bidder would absorb the same in his quote.

10.3 In case there is difference in submission made by the Bidder, ONLINE and in the submission made in hard copies, the ONLINE submission shall prevail over hard copy submission and the same shall be considered for evaluation.

10.4 The total duration of contract period shall be as specified in Section – III: Data sheet.

11.0 Extension of Bid submission date

The authority may extend the date of submission of bids and shall inform all the bidders by issuing an addendum and uploading the same in website.

12.0 Late Proposals

Proposals received by the Employer after the specified bid submission date or any extension thereof, pursuant to Clause 11, shall not be considered for evaluation and shall be summarily rejected.

13.0 Liability of the Authority

The bidders are advised to avoid last moment rush to submit bids online and they should upload their bids well in advance before the bid submission deadline. The authority shall not be liable for failure of online submission of bids by the bidder that may arise due to any reason whatsoever. It shall be construed that the guidelines for online submission of bids, mentioned under Clause 9 of ITB, have been read and understood by the bidder. The hard copy of the bids submitted by the bidder shall not be treated as a substitute to online bids submission and in case a bidder fails to submit bids online due to any reason, the hard copies of the bids shall not be considered for evaluation.

14.0 Modification/Substitution/ Withdrawal of Bids

The tender once submitted may be modified, substituted or withdrawn by the bidders before the submission deadline through e-Procurement Mode as mentioned in NIT of this tender document.

No bid shall be modified after the deadline for submission of bids.

15.0 Bid opening and evaluation process

15.1 The Authority shall open the technical bids at the time, date and place specified in this RFP and in the presence of the bidders who choose to attend.

15.2 The Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in clause 16.0.

15.3 Applicants are advised that qualification of bidder / JV 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.

15.4 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.

15.5 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.

15.6 If any information furnished by the bidder / JV is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion exclude this from computation for eligibility.

15.7 In the event that a bidder / JV claims credit for an Eligible Experience, 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 Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid in accordance with the provisions of in this RFP.

15.8 From the time the Proposals are opened to the time the Contract is awarded, the Bidders/JV should not contact the “Authority” or “PDC” on any matter related to its Technical and/or Financial proposal. Any effort by bidder to influence the “Authority” or

“PDC” in the examination, evaluation, ranking of Proposals and recommendation for award of Contract may result in the rejection of the Bidder’s Proposal.

- 15.9 The “Authority” will constitute a Tender Evaluation Committee (TEC), which will carry out the evaluation process.
- 15.10 ONLINE Bid opening shall be carried out in two stages. Firstly, '**Technical Bid**' of all the ONLINE Bids received shall be opened on the date and time mentioned in Section – III: Data Sheet. '**Financial Bid**' of those Bidders whose Technical Bid has been determined to be responsive and on evaluation fulfills the criteria as stipulated in the RFP, shall be opened on a subsequent date, which will be notified to such Bidders. In the event of the specified date for the submission of bids being declared a holiday for “Authority”, the Bids will be opened at the appointed time and location on the next working day. Bids for which a notice of withdrawal has been submitted in accordance with Clause 14 shall not be opened.
- 15.11 The TEC (Tender Evaluation Committee) shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and by applying the evaluation criteria, sub-criteria specified Clause 16. In the first stage of evaluation, a Proposal shall be rejected if it is found deficient or found not meeting the minimum eligibility criteria as mentioned in clause 3, clause 16.1 of ITB and other relevant clauses contained in RFP. Only responsive Proposals shall be further taken up for evaluation. A Bid shall be considered responsive only if:
- 15.11.1 It is received by the Bid submission date and time including any extension thereof, pursuant to Clause 11.
- 15.11.2 It is accompanied by the Earnest Money Deposit as specified in Clause 6.1;
- 15.11.3 It is received in the forms specified in section IV (Technical Proposal) and in section V (Financial proposal);
- 15.11.4 It is accompanied by the Power of Attorney as specified as per Form 4D, and in the case of a JV, the Power of Attorney as per Form 4D and Form 4E ;
- 15.11.5 It contains all the information and documents (complete in all respects) as requested in this RFP;
- 15.11.6 It is accompanied by the Joint Bidding Agreement (for JV), specific to the Project, as stipulated in Clause 3.10(d);
- 15.11.7 It does not contain any condition or qualification.
- 15.11.8 Proof of payment of tender fee.

15.11.9 It is not non-responsive in terms hereof.

15.12 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. Provided, however, that the Authority may, in its discretion, allow the Applicant to rectify any infirmities or omissions if the same do not constitute a material modification of the Application.

15.13 Clarifications:

15.13.1 To facilitate evaluation of Applications, the Authority may, at its sole discretion, seek clarifications from any bidder/JV 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.

15.13.2 If an Applicant does not provide clarifications sought under Clause 15.13.1 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.

15.14 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.

15.15 Correspondence with the Applicant

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

15.16 The “Authority” shall inform the Bidders, whose Technical Bids are found responsive, of the Date, Time and Place of opening of the Financial Bids. The Bidders so informed, or their Representative may attend the meeting of ONLINE opening of ‘Financial Bids’.

15.17 At the time of the ONLINE opening of the ‘Financial Bids’, the names of the Bidders, whose Bids were found responsive and the Bid prices, the total amount of each Bid, and such other details as the “Authority” may consider appropriate will be announced by the “Authority” at the time of Bid opening.

16.0 **Qualification Criteria and Bid evaluation**

16.1 **Qualification Criteria**

To qualify for this tender, the Bidder must satisfy each of the qualifying criteria stipulated in Clauses below. Not satisfying any of the qualification criteria will render the bid non-responsive and financial bids of such bidders will not be opened.

- (A) **Qualification Criteria for Similar Works:-** For demonstrating technical capacity and experience (the “**Similar Works**”), the bidder shall, over the past 5 (five) years, preceding the date of issuance of the RFP, have experience in

“Management, Operations and Maintenance of port(s)/terminals with minimum throughput of 2,00,000 MT (or equivalent TEUs @12Tons/TEU) per annum, for atleast two years in the past 5 years preceding to the date of issuance of the RFP”.

In the event of a Joint Venture, all parties combined shall together meet the requirement of similar work.

- (B) **Qualification Criteria for Average Annual Turnover for Last three financial year’s i.e 2014-15, 2015-16 and 2016-17.**

The Bidder shall have an at-least Average Annual Turnover of INR 13.40 Crores.

In the event of a Joint Venture, all parties combined shall together meet the requirement of Average annual turnover.

In case a bidder fails to meet the above-mentioned Eligibility and qualification criteria, the further process of evaluation will not be carried out and such bids shall be treated as non-responsive.

16.5 **BID Evaluation**

The Bidder / JV who quote the lowest total fixed management fee (evaluated) for all the activities as stated in RFP shall qualify for the award of the contract.

17.0 **Award of Contract**

- 17.1 After completing negotiations (if any), the “Authority” shall issue a Letter of Award to the selected Bidder and shall promptly notify all other Bidders who submitted their bids about the decision taken.

- 17.2 The Successful Bidder will sign the contract after fulfilling all the formalities/pre-conditions mentioned in the Standard Form of Contract in Section VII, within 45 days of issuance of the Letter of Award in case of JV and within 30 days of issuance of Letter of

Award in case of Single Entity. The Contract Agreement will be signed between MEA and the successful Bidder.

- 17.3 The selected Bidder is expected to commence the Assignment/job on the date and at the location specified in RFP.

18.0 Insurance

- 18.1 The contractor shall maintain at its own cost, personal and accident insurance for all his/her Personnel and property as well as 3rd party risk as considered satisfactory by the “Owner” to cover any risks arising from work and services to be rendered by the Contactor/JV under this Agreement. Owner shall not be responsible for any such events or effects thereof.

- 18.2 The contractor/JV will also comply with insurance requirements as specified in ToR

19.0 Indemnity

- 19.1 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the “Authority/Owner”, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

20.0 Fraud and Corrupt Practices

- 20.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this Tender for Management, Operation & Maintenance, the “Authority” shall reject a Bid without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”) in the Selection Process.

In such an event, the “Authority” shall, without prejudice to its any other rights or remedies, forfeit the EMD or PBG, towards damages payable to the “Authority” for, inter alias, time, cost and effort of the “Authority”, in regard to the Tender for Management, Operation & Maintenance, including consideration and evaluation of such Bidder’s Proposal.

20.2 Without prejudice to the rights of the “Authority” under Clause 18 (Insurance) hereinabove and the rights and remedies which the “Authority” may have under the LOA or the Agreement, if a Bidder or Contractor is found by the “Authority” to have directly or indirectly or through an agent, engaged or indulged in any prohibited practices during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Bidder or Contractor shall not be eligible to participate in any tender or Tender for O & M issued by the “Authority” during a period of two years from the date such Bidder or Contractor, as the case may be, is found by the “Authority” to have directly or through an agent, engaged or indulged in any prohibited practices, as the case may be.

21.0 Ownership of Document and Copyright

All the deliverables and study outputs including primary data shall be compiled, classified and submitted by the Contractor to the “Authority” in hard copies and editable soft copies in addition to the requirements for the reports and deliverables indicated in the Terms of Reference.

The study outputs shall remain the property of the “Authority” and shall not be used for any purpose other than that intended under these Terms of Reference without the prior written permission of the “Authority”. In the case of any deliverables by Contractor consisting of any Intellectual Property Rights (“IPR”) rights of the Contractor, the Contractor shall provide the “Authority” with necessary irrevocable royalty-free license to use such IPR. Further, for the avoidance of any doubt, it is clarified that any intellectual property developed during the course of, or as a result of, the services rendered in relation to the consultancy, shall be and remain property of the “Authority”.

SECTION-III: DATA SHEET

DATA SHEET

CLAUSE NO. OF DATA SHEET	REF OF ITB	PARTICULARS	DESCRIPTION
1.(a)	-	Employer	Ministry of External Affairs, New Delhi
1.(b)	-	Authority	Inland Waterways Authority of India
2.	2.2.	Name of the Assignment /Job	Management, Operation & Maintenance of Port & IWT Terminal at Sittwe & IWT Terminal at Paletwa in Myanmar Including Pilotage, Tug assistance and Mooring facilities in Port/Harbour area of Sittwe & in Kaladan River between Sittwe to Paletwa including Maintenance of Navigational Aids under Kaladan Multi-Modal Transit Transport Project.
3	2.1	Method of Selection	Lowest financial bid of technically qualified bidder.
4	2.3	Date & time and address for submission of Bid	Date: 10.06.2019 up to 1500 Hrs. (IST) ONLINE submission INLAND WATERWAYS AUTHORITY OF INDIA (Ministry of Shipping, Govt. of India) A-13, Sector -1, NOIDA, Dist. Gautam Budh Nagar, U.P - 201 301.Ph No. 0120- 2530058 Web Site:- www.iwai.gov.in Email: , ce.iwai@nic.in , kpmu.iwai@nic.in ,
5	4	A pre-Bid meeting will be held on	Date: 16.05.2019 Time: 1430hrs. INLAND WATERWAYS AUTHORITY OF INDIA (Ministry of Shipping, Govt. of India) A-13, Sector -1, NOIDA, Dist. Gautam Budh Nagar, U.P - 201 301.Ph No. 0120- 2530058 Web Site:- www.iwai.gov.in E-mail:- kpmu.iwai@nic.in , ce.iwai@nic.in
6	5.1	Last date for seeking clarifications	Date: 15.05.2019 Time: 1400 hrs. Email ID: kpmu.iwai@nic.in , ce.iwai@nic.in
7	6.1	EMD	INR 50,20,000/- (Rs. Fifty Lakhs Twenty

			Thousands only)
8	6.2	Tender Fee	INR 5000/- (Rs. Five Thousand only) Tender fee for the amount mentioned above shall be submitted in the form of Demand Draft in the favor of: Pay and Account Officer, Ministry of External Affairs , Payable at New Delhi, India.
9	6.3	Bank Solvency	INR 16,08,00,000 /- (Rs. Sixteen Crores and Eight Lakhs only)
10	6.7	Bid Validity	180 days from the RFP due date
11	-	JV allowed	Yes
12	-	The formats for the Technical Bid	FORM 4A: Form of Tender FORM 4B(I): Technical Capacity of the Applicant FORM 4B(II): Details of eligible Projects FORM 4B (III): Certificate regarding annual traffic throughput details of the project. FORM 4B (IV): Certificate regarding annual traffic throughput details of the project. FORM 4B(V): Certificate regarding experience in providing pilotage, mooring / unmooring and tug assistance to vessels in Port of INDIAN SUBCONTINENT OR ASEAN REGION FORM 4C: Average Annual Turnover of Applicant FORM 4 D: Power of Attorney for signing of the RFP by the Authorised person of the bidder FORM 4E: Power of Attorney for Lead Member of the JV FORM 4F: Joint bidding Agreement FORM 4G: Declaration by the Bidders FORM 4H: Bidder information sheet

			FORM 4I: Pre-Bid Queries
			FORM 4J: Statement of Legal Capacity
13		The Formats for the financial Bid	FORM Fin 2: Quoted Costs (per month basis)
14	-	Contract Period	03 (Three) years and at sole discretion of Authority for two extensions of one (01) year each at the same terms & condition.
15	15.3	Bid Opening date and time	Date: 11.06.2019 Time: 1530 hrs.

SECTION-IV: TECHNICAL BID STANDARD FORMS

FORM 4A: Form of Tender

To,
The Chief Engineer (Tech),
Inland Waterways Authority of India
A-13, Sector 1, Noida,
Uttar Pradesh (201301),

Dear Sir,

We (M/s----- of-----
)having read and fully understood the specification, conditions of Tender and conditions of the contract hereby Tender for **Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project** in accordance with and so forth in Notice Inviting Tender, Conditions of Contract. The Tenders have been submitted in Cover-I and Cover-II as stipulated in your Tender Notice.

We hereby agree that the said specification, conditions of Tender and Conditions of the Contract together with the acceptance thereof in writing by or on behalf of the “Authority” shall constitute the contract.

We have submitted with the Chief Engineer (Tech), Inland Waterways Authority of India, A-13, Sector- 1, Noida, Uttar Pradesh-201301, BG of Rs. (in words) vide BG No.of..... Bank dated..... as Earnest Money. Should Authority ask for a break up of our price, we shall submit the same forthwith giving adequate justification to establish its veracity, failing which the Authority may cancel our Tender and forfeit the Earnest Money submitted by us.

We agree that you are not bound to accept the lowest or any Tender you may receive and that you reserve the right to accept any offer either as a whole or in parts and that you are not bound to give any reasons for the decision.

(Duly authorized to sign the Tender on behalf of the Bidder)

Witness_____

Name

Signature_____

Designation

Name_____

Name of Bidder/ Lead Member of

JV_____

Date_____



FORM 4B (I): Technical Capacity of the Applicant@

Applicant type#	Annual throughput of port(s)/terminals				
	Year 1	Year 2	Year 3	Year 4	Year 5
Single entity Applicant					
JV Member 1					
JV Member 2					

#An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled JV Member. In case of a JV, the row titled Single entity Applicant may be ignored.

FORM 4B (II): Details of Eligible Projects

Project Code:

Member Code:

Item	Particulars of the Project
Name of Project	
Location	
Description including the annual minimum throughput handled	
Start Date of Operation Period	
End Date of Operation Period	
Nature of Involvement (please specify details of the operation and maintenance work undertaken within the Eligibility Period)	
Counter Party	
Equity shareholding (with period during which equity was held)	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	

Instructions:

please provide details of all the relevant projects.

FORM 4B (III): CERTIFICATE REGARDING ANNUAL TRAFFIC THROUGHPUT (MT)

DETAILS OF THE PROJECT

[APPLICABLE FOR MANAGEMENT OPERATIONS AND MAINTENANCE EXPERIENCE]

[On the letterhead of the Client of the Applicant]

Subject: Submission of Bid for the [Insert Project Name]

This is to certify that [●] (insert name of the project) had an annual traffic throughput of at least [●] TEU's/MT during the past 5 (five) constitutive year period of [●] (insert name of the project), as per the details provided below:

Particulars	Annual throughput of Cargo Handled (MT)
Year – 1, [●]	
Year – 2, [●]	
Year – 3, [●]	
Year – 4, [●]	
Year – 5, [●]	

(Signature of Authorised Signatory)

Name of Authorised Signatory:

Designation of Authorised Signatory:

Date:

Place:

FORM 4C: Average Annual Turnover of the Bidder

(In Rs. Crore\$)

Applicant type \$\$	Annual Turn Over			Average Annual Turnover ££
	Year 1 (3)	Year 2 (4)	Year 3 (5)	(6)
Single entity Applicant				
JV Member 1				
JV Member 2				
TOTAL				

\$For conversion of other currencies into rupees, see notes below FORM 4B (IV).

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

Instructions:

1. The Applicant/ its constituent JV Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Application Due Date. The financial statements shall:
 - (a) Reflect the financial situation of the Applicant or JV 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. The Applicant shall provide an Auditor's Certificate specifying the Annual Turnover of the Applicant.

FORM 4 D: Power of Attorney for signing of RFP by the authorized person of the bidder

(To be executed on Non-Judicial Stamp Paper of Rs.100 and duly notarized)

Know all men by these presents, we..... (name of organization and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr. /Ms.son/daughter/wife and presently residing at who is presently employed with/retained by us and holding the position ofas our true and lawful attorney (hereinafter referred to as the “Authorised Representative”), with power to sub- delegate to any person, 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 Bid for:

Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project.

The selection of Contractor for Ministry of External Affairs (the “Owner”) including but not limited to signing and submission of all applications, Bids and other documents and writings, participating in pre-bid and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority , signing and execution of all contracts and undertakings consequent to acceptance of our 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 till the entering into of the Contract with the Owner.

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

IN WITNESS WHEREOF WE THE ABOVE-NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ... DAY OF 2019

For

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.



Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

1. 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.
2. Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution / power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.
3. For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostille certificate.

FORM 4E: Power of Attorney for Lead Member of JV

(To be executed on Non-Judicial Stamp Paper of Rs.100 and duly notarized)

Whereas “The Authority” has invited applications from interested parties for **Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project.**

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, M/shaving our registered office at..... and M/s..... 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 JV, as the Lead Member and true and lawful attorney of the JV (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 JV and any one of us during the bidding process and, in the event the JV 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 JV, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the JV 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 bidder’s and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the JV and generally to represent the JV 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 JV’s bid for the Project and/or upon award thereof till the Management 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 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/ JV.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF2017

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

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 Apostille certificate.*

FORM 4F: Joint Bidding Agreement

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 2019 for the intent of formation of JV entity with following details:-

AMONGST

1. Limited, a company incorporated under the Companies Act, 1956/2013^Y 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)

The above-mentioned parties of the FIRST and SECOND are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS,

Ministry of External affairs (MEA), Inland Waterways Authority of India (IWAI) (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 Proposal No. dated (“**RFP**”) for qualification and proposal of bidders for

- (A) Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa including pilotage, tug assistance & mooring/unmooring services and Maintenance Dredging of Navigational Channel in Port/Harbour area of Sittwe & in Kaladan River between Sittwe to Paletwa including Maintenance of Navigational Aids under Kaladan Multi-Modal Transit Transport Project (“The Project”)
- (B) The Parties are interested in jointly bidding for the Project as members of a JV and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

- (C) It is a necessary condition under the RFP document that the members of the JV 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 RFP.

2. Joint Venture

2.1 The Parties do hereby irrevocably constitute a Joint Venture (the “JV”)_____ (Name of JV) 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 JV and not individually and/ or through any other JV 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 JV is declared the selected Bidder and awarded the Project, it shall incorporate a Joint Venture company in INDIA for entering into a Contract Agreement with the MEA and for performing all its obligations as the Contractor in terms of the Contract 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 JV and shall have the power of attorney from all Parties for conducting all business for and on behalf of the JV during the Bidding Process and until the Appointed Date under the Contract Agreement when all the obligations of the Joint Venture Company shall become effective;
- (b) Party of the Second Part shall be (the 2nd Member of the JV)

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 RFP and the Contract Agreement.

6. Shareholding in the operating company

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

First Party:

Second 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 JV company shall, at all times throughout the period of agreement, be held by the Parties of the First, {Second} Part whose experience and “Average Annual Turn Over” have been reckoned for the purposes of qualification and proposal of bids for the Project in terms of the RFP.

6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Contract 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 JV 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, judgment, 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 start of the operations of the Project and in accordance with the Contract Agreement, in case the Project is awarded to the JV. However, in case the JV is neither qualified for the Project nor selected for award of the Project, this Agreement will stand terminated upon return of the Bid Security by the Authority to the Bidder.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

FORM 4G: Declaration by the Bidders

Date:

The Chief Engineer (Tech),
Inland Waterways Authority of India,
A-13, Sector 1, Noida,
Uttar Pradesh (201301),

Tender Reference No.: _____

Dear Sir,

This is with reference to the above-mentioned Tender document.

We hereby make the following declarations:

1.	<input type="checkbox"/>	No alteration has been made in any form in the downloaded Tender document.
2.	<input type="checkbox"/>	I/We have not been banned or de listed by any Government or quasi Government agency or public sector undertaking.
3.	<input type="checkbox"/>	I/We accept the payment terms of Terms of Reference.
4.	<input type="checkbox"/>	I/We provide our acceptance to all Tender Terms and Conditions.
5.	<input type="checkbox"/>	Acknowledgment by Bidder as per Clause 8 of ITB
6.	<input type="checkbox"/>	I/We confirm that neither we have failed nor we have been expelled from any project or agreement during the last 03 years
7.	<input type="checkbox"/>	I/We agree to disqualify us for any wrong declaration with respect to the submissions made by us for this tender and reject my/our tender summarily
8.	<input type="checkbox"/>	I/We agree to disqualify us from this tender and black list us for tendering in IWAI projects in future, if it comes to the notice of IWAI that the documents/submissions made by me/us are not genuine
9.	<input type="checkbox"/>	I / We confirm that I/we have noted / updated ourselves of all amendments / corrigendum / response to pre-submission queries etc. and bid is submitted incorporating the same.

Yours Faithfully

(Signature of the Bidder, with Official Seal)

Note: Please tick the appropriate box in the above table.

To be signed and submitted by each Member of the JV.

FORM 4H: Bidder information sheet

Bidder name: <i>[insert full name]</i>
Bidder's Party name: <i>[insert full name]</i>
Bidder's Party country of registration: <i>[indicate country of registration]</i>
Bidder's year of constitution: <i>[indicate year of constitution]</i>
Bidder's legal address in country of constitution: <i>[insert street/ number/ town or city/ country]</i>
Bidder's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above <input type="checkbox"/> In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

FORM 4I: FORMAT FOR PRE BID QUERIES BY BIDDERS
(To be submitted in Bidders Letter head)

Name of Bidder:

Date of Submission:

Pre – Bid Queries

S. No.	Section No. Clause, Sub Clause No and Page No.	Tender clause	Query
1.			
2.			
3.			
4.			
5.			
6.			
.			
.			
.			
.			

FORM 4J: STATEMENT OF LEGAL CAPACITY

(To be forwarded on the letterhead of the Bidder)

Ref. Date:

To,
Chief Engineer (Tech)
Inland Waterways Authority of India
A-13, Sector-1,
NOIDA – 201 301
Uttar Pradesh
India

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the tender document.

We have agreed that (*insert individual's name*) will act as our representative and has been duly authorized to submit the tender document. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same. All actions / representations of the Authorized Signatory shall be legally binding on us.

Thanking you,

Yours faithfully,

(*Signature, name and designation of the authorized signatory*)

For and on behalf of.....



FORM Fin - 1: Financial Bid Submission Form

Date:

To:

The Chief Engineer (Tech),
Inland Waterways Authority of India,
A-13, Sector- 1, Noida, Gautam Budh Nagar,
Uttar Pradesh -201301.

Dear Sir:

We, the undersigned, offer to provide the Management, Operation & Maintenance of Port & IWT Terminal at Sittwe & IWT Terminal at Paletwa in Myanmar including pilotage, tug assistance & mooring/unmooring facilities and Maintenance Dredging of Navigational Channel in Port/Harbour area in Sittwe/Paletwa & in Kaladan River in between Sittwe to Paletwa including Maintenance of Navigational Aids in accordance with your Request for Bid dated **[Insert Date]** and our Technical Bid. Our attached Financial Bid is for the sum of amount as quoted in BoQ. This amount is inclusive of all applicable taxes as on date.

We hereby confirm that the financial Bid is unconditional and we acknowledge that any condition attached to financial Bid shall result in rejection of our financial Bid.

Our Financial Bid shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Bid,

We understand you are not bound to accept any Bid you receive.

We remain,

Yours sincerely,

Authorized Signature [In Full and initials]:

Name and Title of Signatory :

Name of Bidder / Lead Member of the JV :

SECTION – V: FINANCIAL BID STANDARD FORMS



FORM Fin – 2: Quoted Costs (per Month basis)

Sr.No.	Particulars	UNIT	QTY	Amount (in Figures) INR	Amount (in Words) INR
1	Maintenance cost for Port Facilities including equipment at Sittwe Port and IWT Jetty				
2	Operation and Management Fee for Sittwe Port				
3	Operation and Management Fee for IWT Jetty at Sittwe Port				
4	Maintenance cost for Port Facilities including equipment at IWT Paletwa				
5	Operation and Management Fee for IWT Jetty at Paletwa				
6	Operation and Management fee for Marine Services (pilotage, tug assistance & mooring/unmooring).				
7	Maintenance of Channel for Operation of vessels including maintenance of Navigational Aids for Upkeep of safe operation of Vessels. (excluding dredging)				
8	Periodic (Monthly) Hydrographic Survey of navigational channel along with assessment of Dredging Quantity required for Upkeep of safe operation of Vessels.				

9	PMC activity for dredging around Port/ terminal and River channel				
10	Taxes as applicable				
	Gross Total for three years				

Note: Bidders while quoting should account for following factors: -

- (1) While operations, bidders are required to collect operation revenue and the same shall be deposited to Escrow account on monthly basis as per terms and conditions defined in the tender document.
- (2) Revenue deposited shall be shared with the owner and contractor in a ratio of 75:25 respectively.
- (3) The above quote shall not include cost of dredging. However, for dredging, clause 2.1, Section VI: Terms of Reference shall be referred.

Authorized Signature

Name :

Designation :

Name of Bidder :

Address :

SECTION-VI: TERMS OF REFERENCE (ToR)

1.0 Introduction:

- 1.1 Refer Section II Instruction to bidders.
- 1.2 To ensure smooth transition for safe custody and operation, the handing over, will be done in presence of representatives of both the parties for condition survey of all the port facility, terminal, infrastructure, equipments, navigational aids, cargo handling gears, offices, warehouses, canteen etc. The report shall be prepared by operator which will be approved by all authority/owner and exchanged. The same process will be followed at the time of taking over at the end of the contract.
- 1.3 On appointment of Port Contractor, the port, IWT Terminals and associated facilities will be made available to the Port Contractor through Myanmar Port Authority (MPA), GOM for operational functions (safe custody of all equipment and infrastructure and keep all the facilities in operation throughout the contract period and shall return to authority in working conditions).
- 1.4 Government of Myanmar (GOM) shall take care to get statutory permissions from customs & immigration at Sittwe port, to get letter of declaration for International Port issued by customs department, hydrographic survey, berthing/un-berthing, pilotage and channel marking.
- 1.5 The conservancy charges shall be exempted by GOM during the period.

2.0 Scope of the Work:

- 2.1 a)** The scope of work includes Management, Operation & Maintenance of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa in Myanmar including pilotage ,tug assistance & mooring/unmooring services and supervision of Maintenance Dredging works of Navigational Channel at port / harbour area of Sittwe and in river Kaladan between Sittwe to Paletwa including maintenance of navigational aids under Kaladan Multi-Modal Transit Transport Project and in accordance with the provisions of the Contract Agreement (the “Contract Agreement”) to be entered into between the selected bidder (“The Contractor”) and the Authority in the form provided by the Authority.
- b)** The Contractor is required to carry out Hydrographic survey on monthly basis in order to maintain the depth of waterways, which includes approach channel / river / jetties. Wherever required depth is not available, the Contractor needs to arrange for joint detailed cross - section survey, to assess the quantity of dredging. The authority shall prepare the estimated cost put to tender.
- c)** Upon receiving the approval of the Authority for the dredging quantity and estimated cost, the O&M Contractor shall appoint a dredging contractor by duly following tender process with due approval of authority at each stage of tender.

d) The Contractor shall carry out supervisions and monitoring of the dredging works at sites as per the specifications of the contract including the navigational channel marking, topographic, hydrographic, pre-dredging and post dredging surveys for the field measurement of works and maintain up to date record, verify physically 100% of the measurements taken by the Dredging Contractor for dredging, issue of interim quantity certificates for processing contractors invoice and certification of bills, settlement of all claims amicably, contract management, works dispute resolution & overall project performance management etc.

e) Owner shall reimburse the cost of dredging to the O&M contractor based on the approved rate and completion of dredging quantity as certified by authority.

f) Depth of dredging shall be 7.9 M, however authority/owner has the right to vary the depth of dredging and O&M contractor shall not claim any compensation in this regard.

g) The Contractor is required to carry out marketing and business development for the Port in order to spread awareness regarding the port.

h) The Contractor has to take care of customs & immigration facilities at Sittwe Port, mooring / unmooring, tug assistance and channel navigation, etc.

i) The Contractor has the option to sub-contract, with due approval of the “Authority”, the following activities, however the sub-contracted activities shall not exceed 40% of the contract value.

i) Maintenance of all Navigational aids during currency of contract for safe navigation from port and harbor area of Sittwe and from Sittwe to Paletwa in river Kaladan.

ii) Providing Pilotage, Tug assistance and Mooring / Unmooring services at Port Facilities.

j) Carrying out inspection during the currency of the contract at site through Owner visit/ inspection is a routine activity for better implementation of the contract provisions. Hence, the Contractor shall be providing logistics support for the same at any point of time.

k) The Contractor shall maintain activity log for maintenance schedule as instructed by EIC for each of the activities monthly and shall submit the same along with the Monthly invoice.

2.2 Without prejudice to the contractor’s obligation, the responsibility of leading and managing all affairs related to the ports for commercial operations, including management, planning, repair and maintenance of structures/superstructures, installations/equipment including all civil, mechanical & electrical maintenance, safety, protection, sanitation and environment protection, human resource management and other related affairs are to be borne directly by the contractor (at

own expense) and contractor shall have the powers required for execution of his/her duties under this contract and within applicable rules and regulations of local, national & international prevailing at present. In the same line, the contractor shall improve the level of its services and facilities to the required standards through using the modern know-how, employing qualified manpower, planning, and providing necessary trainings, using modern and state of art hardware and software including those provided by the contractor and their effective manpower are proceed with established customer-oriented system.

- 2.3 The contractor undertakes to comply with all rules, regulations, conventions and codes of India and Myanmar regarding the subject contract.
- 2.4 The contractor undertakes to comply with all related standards, conventions, codes and executive guidelines approved by the maritime organization, which are related to Health, Safety and Environment (HSE), firefighting, security, its repair and maintenance of superstructures and infrastructures as well as its facilities and equipment of the ports subject of the contract.
- 2.5 The contractor shall apply the related rules and regulations with respect to own personnel. Those individuals who are employed by the contractor during the execution of this Contract are considered as contractor's personnel and the owner shall assume no responsibility with respect to payrolls, insurance, Social Security etc. and compliance with principles of safety, work accidents including firing, incapacity, disability and death during the execution of the Contract or after its expiration.
- 2.6 The Contractor undertakes to, upon commencement of operation of the subject Contract, implement and execute an operational software system to be approved by the authority, for multipurpose cargo at its own expense.
- 2.7 In addition to being responsible against the owner, the Contractor shall be directly responsible and liable for its own performance against third parties as per applicable rules & regulation of India & Myanmar. Contractor shall regularly inform the owner of its measures in this respect.
- 2.8 Under this contract, the Contractor is recognized as the goods receiving party and according to the rules and regulations of India & Myanmar, all port duties and responsibilities for taking delivery, warehousing and delivering of the goods at the ports/terminals shall be the responsibility of the Contractor. The compensation of damages to the goods within the area of Terminal services shall be borne by the Contractor.
- 2.9 The Contractor undertakes to provide the Authority with progress reports of the operating performance, repair and maintenance of installations, premises and equipment for the month along with report of manpower deployed on 1st week of every succeeding month. Further, if Authority requires any ad-hoc reports, the Contractor shall provide them within reasonable time and as specified by the "Authority".

- 2.10 The Contractor undertakes at his/her own responsibility and expense, obtain certificate of operation safety certificate for the equipment used from the competent institutes acceptable to the “Authority” and shall provide the “Authority” with the verified copies of such certificates and maintain validity of these certificates till the end of Contract Period.
- 2.11 The Contractor undertakes to send all electronic data of the vessels/barges, goods including the information on vessels’ /barges’ arrival and departure, loading, handling and storage of goods and also issue invoices (according to the structure and format agreed between the Owner & Contractor) to the Owner/Authority in due time and shall provide the “Authority/Owner” access to the information of the operational software used in the aforesaid ports.
- 2.12 The Contractor undertakes, immediately after signing of the Contract introduce his/her representative to the “Authority” with a sample of their signature responsible for execution of the Contract provisions. The Contractor shall update the “Authority” of any changes to such representative along with the sample of signature of new representatives, from time to time.
- 2.13 The Contractor undertakes to provide optimal protection of the contract subject ports and fully co-operate with the “Authority” and Port execution of security regulations and codes issued by the Organization (ISPS Code). The Contractor undertakes to ensure observation of national security considerations to the “Authority” as well as ISPS Code or any other obligations notified by the government authorities based on the circumstances. Also undertakes to prepare Contingency plan for safety and security, firefighting, thefts, accidents, hospitalization, Marine casualty, ships grounding, Marine pollution, Adverse weather conditions, Cyclone, floods, Solid Waste Management Plan and Disaster Management Plan (DMP).
- 2.14 In order to optimize operation of the Equipment, Port and Terminals subject of this Contract, the Contractor undertakes to employ well-trained qualified personnel, who hold valid certificates for operation of such equipment. The Contractor shall, employ/replace white-collar staff who are Indian or Myanmar’s nationals with the approval of the authority. However, the contractor on its discretion employ the blue-collar staff, preferably be the Myanmar’s national.
- 2.15 The Contractor shall control access to the requisite portions of the Area of Terminals subject of the Contract and use of all roads constructed by the Owner within the Area of Terminals subject to the Contract (Which are not designated as public roads) and shall have authority to reasonably restrict access in the interest of safety, security and non-interference with the Project. Access, if required shall be granted in co-ordination with Port Security Facility Officer. Officials authorized by the statutory body shall not be denied access.

- 2.16 The Contractor undertakes to carry out maintenance of navigational aids in navigational channels / approaches to port, in port and in Kaladan river at his/her own responsibility and expenses.
- 2.17 The Contractor undertakes to provide overall repairs of the jetties and associated equipment located within the assigned area, public utilities and installation passing through the area of the Terminals at Sittwe & Paletwa, subject of the Contract, at his/her own responsibility and expenses.
- 2.18 The Contractor undertakes to provide the required logistic for O&M of assets and also for inspection by MEA/IWAI/representatives of IWAI/MEA including speed boat with OBM engine along with fuels, public utilities required by the owner including water, electricity, telephone line, networking and cabling for IT system, CCTVs, data transferring, use of fuel for running the generator for power etc. The Contractor shall remain responsible for any further addition/deduction of utilities/connections within the Area of the operation as per contract.
- 2.19 The Contractor undertakes to make available all records and information promptly upon request made by the Owner, including assessing of books and records and it's audit by the owner with reference to the collection of operational revenue' and expenditure incurred on O&M by the Contractor, as it may possess in relation to terminal infrastructure facilities and the ports subject to the Contract. The contractor shall be liable to produce all supplementary records for verification of revenue accrual and reconcile with the remittance of Escrow account as directed by the supervising agency enumerated at Clause 10.0 of Terms of reference.
- 2.20 The contractor undertakes to operate the Contract subject as per Good Performance Practice.
- 2.21 The Contractor undertakes to liaison with authorities at both ports.
- 2.22 All Marine related activities such as inward/outward pilotage, mooring / unmooring services tugs / launches assistance will be provided by contractor.
- 2.23 Security of the terminal premises shall be the obligation of and borne by the Contractor.
- 2.24 The agency handling the O&M contract will be granted the right to operate all the facilities under the premises of the Authority, subject to condition that they are debarred from subletting/leasing/creating any kind of encumbrance etc. on any of the land and/or property of the authority.
- 2.25 Geological/Archaeological finds during the course of the contract performance should invariably be reported and deposited with the authority and the contractor should not have rights/interest in the underlying minerals/ fossils/antiquities/ structures/other remnants discovered from vicinity of any of the terminals/ports.

3.0 Duration of the contract:

The period of Contract Agreement will be 3 years (with two extensions of 1 year each at sole discretion of Authority based on satisfactory performance)

4.0 Tariff:

- a) It will be responsibility of the Contractor to raise the invoice electronically and collect all Revenue including cargo related charges in separate bank account designated for this purpose.
- b) All Cargo Related Charges (CRC) includes on-board stevedoring and onshore services, cargo handling services, terminal handling services, storage/warehousing services and miscellaneous services.
- c) All tariffs will be levied and collected as per MPA tariff schedule and guidelines declared from time to time by Govt. of Myanmar.
- d) Where Tariff is not available for the services provided by the port and IWT, then tariff has to be advised such rates which has to be issued according to the Government of Myanmar related procedures.

5.0 Revenue & Sharing:

- A) The revenue to the Contractor under this Agreement will accrue from the following elements:-

(a) Fixed fee as quoted by contractor and agreed by the authority, payable subject to deductions as per relevant clauses of contract.

(b) 25% of the Gross Revenue collected by contractor from CRC.

- B) The contractor shall share **75% of the Gross Revenue** collected by contractor with the Owner.

The Gross Revenue means all the revenue collected by Contractor by use of the infrastructure/ facilities under this contract. The gross revenue shall be deposited in escrow account as per clause 6.0.

- C) Any violation of the above clauses resulting in leakage/spillage/misappropriation of collected revenue will be considered as a breach of contract leading to invocation of suitable contract clauses in this regard for action.

6.0 Escrow Arrangement

- 6.1. The gross revenue collected from use of infrastructure/facilities under this contract, shall be deposited in escrow account to be opened and maintained at Myanmar by contractor.
- 6.2. All the statutory fees levied by the local authorities, taxations etc. shall be deposited directly to the concerned authority and the balance revenue shall be fully deposited to the escrow account, which has to be opened with the permission from the Central Bank of Myanmar-CBM (The opening of the Escrow account is subject to the CBM's approval whether it will be in Myanmar or not). Due deposit amount to escrow account shall not be adjustable against any claim of operator on any account.
- 6.3. The conditions of periodic release of operator's share of revenue and detailed terms and conditions of maintenance of escrow account shall be finalized after award of work.

7.0 Site Organization

The contractor undertakes to provide site Organogram with details such name, rank, age, etc. periodically to authority.

8.0 Obligations and Responsibility/Inputs by the "Authority"

The Authority shall assist to the Contractor to obtain all necessary permissions for the Carrying out the work from the various government departments in Myanmar. However, it shall be on the part of contractor to get all these permissions. The Contractor has to pay all the necessary fees for such permission.

9.0 Mode of Payment:

The complete invoices in all respects, duly certified by PDC/Authority's representative, is to be raised monthly by the Contractor and submitted to 'The Chief Engineer (Tech), Inland Waterways Authority of India, A-13, Sector-1, Gautam Budh Nagar, Noida, Uttar Pradesh- 201301, who shall process the same after due verification and forward it to MEA. The payment shall be paid at the earliest through RTGS/NEFT by MEA, in favor of contractor.

The Invoices shall be raised for satisfactory maintenance/ performance of components against the defined scope of work as mentioned under Section VI Clause 2 of this tender document and also reflected by the following matrix of deliverables carrying equal weightage along with the monthly activity log for each activity.

S.No	Details of the sub documents to be submitted with the bill
Activity – 1	Submission of Log books for Maintenance of Mechanical equipment for each month (Cranes, Trucks, Forklifts, tractor with trailers and Generators etc)
Activity – 2	Submission of Activity log for Maintenance of Civil Structures (Jetties, Storage Sheds, Roads, Bank protection, buildings)
Activity – 3	Submission of Activity Log for Maintenance of Approach Channel at Siitwe port and kaladan river between Siitwe and Paletwa, Navigational Aids.
Activity – 4	Submission of Activity log for Maintenance of utilities viz water supply, firefighting, Electric connection / appliances, coordination with local authorities.
Activity – 5	Submission of activity log for Security of the terminal premises at Siitwe, Paletwa, terminal entry / exit regulation, vessel berth mooring, maintaining of assets against safety, theft pilferage, damage for inclement weather, cyclone etc.

No interest will be payable on the payments.

10. Insurance

- 1.1 The selected Contractor shall arrange, secure and maintain insurance as may be necessary and for all such amount to protect his/her interest and the interest of the owner, against all risks for the subject assignment/works. The responsibility to maintain adequate comprehensive insurance coverage on all risks basis at all times during the period of contract shall be that of the selected bidder alone. The selected bidder's/contractor's failure in this regard shall not relieve him/her of any of his/her contractual responsibilities and obligations. The insurance cover to be taken by the Contractor shall be in joint name of the Owner (MEA) and the Contractor. The Contractor shall, however, be authorized to deal directly with the insurance company and shall be responsible with regard to maintenance of all insurance cover. Any loss or damage to the equipment, during handling, transporting, testing shall be to the account of the Contractor. The Contractor shall be responsible for all claims and make good for the damage or loss by way of repairs and / or replacement of the portion of the works damaged or lost.
- 1.2 The selected Contractor/ JV shall arrange Insurance cover for all the properties, infrastructure and equipments taken over by him for execution of this contract.

11.0 SUPERVISING BODY

- a) In order to ensure the execution of the Contract provisions including proper operation of the Contract subject, suitable maintenance of the area assigned by the Contract, observance of the binding conventions in relation to Port/Terminal Services, establishment and enactment of codes related to efficiency enhancement, achievement of vessels/barges productivity indices (observance of loading/unloading norms), increase in customer satisfaction, increase of safety, health and environment protection. The Authority will appoint a supervising body to monitor the performance of the Contractor's activities on a regular basis and give directives to implement the same.
- b) According to the provisions of the Contract, the Authority assigns supervision of the Contractor's good performance of obligations to the Supervisory Body and the Owner shall introduce in writing.
- c) The Contractor shall implement all reasonable recommendations / deficiencies observed by the Supervisory Body and advised to the Contractor. The Contractor shall provide the Owner and the Supervisory body with the reports of the remedial action taken.
- d) Except when there is a possibility for accidents, the inspections, surveillance plans and monitoring measures of the Supervisory Body shall not in any manner affect operations or result in any intervention in the Contractor's routine duties and operations.
- e) Even after repeated reminders all reasonable recommendations / deficiencies observed by the Supervisory Body is not rectified, than keeping public interest in view and avoid life and safety threat, authority/owner may engage third party for the same on risk and cost of operator. This provision shall be over and above Liquidated damage clause.
- f) The "Authority" shall immediately after Contract Date, introduce to the Contractor, his/her representatives for execution of the provisions of the Contractor and responding against their duties, along with a specimen of their signatures. The Owner shall update the Contractor of any changes to such representative, along with the sample of signature of the new representatives from time to time.

12.0 Liquidated Damages

- a) If contractor's fail to commence the work within the period specified under the Contract agreement, the contractor shall pay to the Authority as fixed and agreed liquidated damages and not as penalty @ 0.5% of the contract value for each week of delay or part thereof to be computed on per day basis.

- b) If it is observed that the deficiencies due to non-maintenance/ non-performance are not rectified within agreed time then penalty of 2% (of the monthly billing for that component) per month or part thereof to be computed on per day basis, will be levied for non –performance till it is rectified.
- c) In case of continued non-performance for two continuous months the monthly payment for that component will be stopped.
- d) Due to any reason of non-performance on the part of the contractor mentioned in FIN-2 :-1 (a) to 1(i), if any cargo handling/ port/terminal operation is delayed for more than 7 days then LD will be imposed @ 1% of the Contract value for per week of delay to be computed on per day basis, on the Contractor.
- e) The aggregate maximum of liquidated damage payable to the “Authority” under this clause shall be subject to a maximum of 10% of the total contract value.

SECTION –VII: STANDARD FORM OF CONTRACT

1.0 **Conditions of Contract**

1.1 **Definitions:** Unless the context otherwise requires, the following terms whenever used in this RFP have the following meanings:

- 1.1.1 “Owner” or “Employer” means the Ministry of External Affairs (MEA).
- 1.1.2 “Authority” refers to Inland Waterways Authority of India (IWAI) and “Myanmar Port Authority” (MPA) at all places where the word ‘Authority’ has been used, it has to be construed as ‘IWAI’ or ‘MPA’.
- 1.1.3 “PDC” refers to Inland Waterways Authority of India (IWAI) who the Project Development Consultant is appointed by MEA
- 1.1.4 “Contractor” means any entity or person or association of person who provides the Services to the “Authority” under the Contract.
- 1.1.5 “Contract/Agreement” means the Contract signed by the Parties and all the attached documents that is the Conditions of contract, the Annexure/Appendices and any modifications thereof subsequently agreed to in writing by both Parties. The terms “Agreement” or “Contract” or “O & M Agreement” are interchangeable.
- 1.1.6 “Instructions to Bidders” means the document, which provides Bidders with information needed to prepare their technical and financial Bids.
- 1.1.7 “NIT” means the notice inviting e-tender that is being advertised by the “Authority” to the Bidders.
- 1.1.8 “Assignment /Job” means the work/services to be performed / provided by the Contractor pursuant to this Contract.
- 1.1.9 “GCC” mean General Conditions of Contract.
- 1.1.10 “Accepted” means accepted in writing by the “Authority” including subsequent written confirmation on previous verbal acceptance, if any and Acceptance means acceptance in writing including as aforesaid.
- 1.1.11 “Applicable Laws” means the laws and any other instruments having the force of laws in India as well as Myanmar as they may be issued and in force from time to time.
- 1.1.12 “Approved” means approved by the “Authority” in writing and Approval means approval by the “Authority” as aforesaid.
- 1.1.13 the word “tender” is synonymous with “bid”, and “Tenderer” with “Bidder”
- 1.1.14 “Owner’s Representative(s)” means the Representative(s) appointed by the “Authority”.
- 1.1.15 “Bidder” means a private company/public company/partnership/ joint venture constituted under the relevant laws and who applies for this O & M Tender.
- 1.1.16 “INR”, or Rs. means Indian Rupees.
- 1.1.17 USD means United States Dollar
- 1.1.18 “Key Personnel” means professionals staff provided by the Contractor
- 1.1.19 “Party” means the “Authority” or the Contractor, as the case may be, and Parties Means both of them.
- 1.1.20 “Support Personnel” means the staffs that support the Key Personnel.
- 1.1.21 “Third Party” means any person or entity representing other than the “Authority” & Contractor
- 1.1.22 “Bid” means the Technical and Financial Bids as mentioned under this tender.
- 1.1.23 “Terms of Reference” (ToR) means the document included as under Section VI which explains the objectives, scope of work, activities, tasks to be performed, and expected results and deliverables of the Assignment/job.

- 1.1.24 “Work Order” means the Letter of Award issued by the “Authority” conveying the acceptance of the tender/offer subject to such reservations as may have been stated therein.
- 1.1.25 “Day” means a calendar day beginning and ending at mid-night.
- 1.1.26 “Week” means seven consecutive calendar days
- 1.1.27 “Month” means the one Calendar month.
- 1.1.28 “O & M Services” means O & M Services/Works to be executed in accordance with the signed agreement.
- 1.1.29. Project Development Consultant (PDC) means IWAI, the word The Chief Engineer (Tech) means, Inland Waterways Authority of India, A-13, Sector-1, Gautam Budh Nagar, Noida, Uttar Pradesh- 201301.

1.2 Interpretation

- a) In interpreting these conditions of contract, singular also means plural, male also means female or neutral and the other way around, Headings have no significance. Words have their normal meaning under the language of the contract unless specifically defined.
- b) The documents forming the contract shall be interpreted in the following order of priority.
- i. Contract Agreement
 - ii. Letter of Acceptance, notice to proceed with the work.
 - iii. Contractor’s Bid.
 - iv. Conditions of Contract.
 - v. Any other document listed in the contract data as forming part of the agreement.
- c) These regulations for tenders and contracts shall be read in conjunction with the conditions of the contract which are referred to herein and shall be subject to modifications, additions, suppression by special conditions of the contract and/or special specifications if any annexed to the tender form.
- d) (i) PARTIES:
The parties to the contract are the contractor and the “Authority”.
- (ii) REPRESENTATIVES OF THE CONTRACTOR SIGNING THE CONTRACT ON BEHALF OF THE CONTRATOR:
A person signing the tender or any other document in respect of the contract on behalf of the contractor shall produce authorization letter from the contractor who has been short listed for the award of contract. If it is discovered at any time that the person so signing had no consent of the contractor to do so, the Chairman on behalf of “Authority” may, without

prejudice to any other right or remedy of the “Authority”, cancel/terminate the contract.

(iii) ADDRESS OF THE CONTRACTOR; NOTICES AND COMMUNICATIONS ON BEHALF OF THE “Authority”

For all purposes of the contract including arbitration there under, the address of the contractor mentioned in tender shall be the address to which all communication addressed to the contractor shall be sent, unless the contractor has notified a change by a separate letter.

The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the matter aforesaid.

Unless otherwise agreed by the Parties, all notices to be given under this Contract, including without limitation a notice of waiver of any term or related to breach of any term, shall be in writing and in English. Notices shall be given by hand delivery, recognized international courier, mail, or facsimile transmission and delivered or transmitted to the Parties at their respective addresses or such other address, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

1.4 CONDITIONS OF CONTRACT SHALL ALSO INCLUDE:

The Contractor shall carry out the O & M services in accordance with accepted bid and tender conditions mentioned hereunder:

- i) Contractors are advised to understand & apprise themselves the scope, nature of the work involved, if any, requirement of experienced personnel, and liaison for delivering the desired result.
- ii) The successful Bidder/JV will have to execute a “Contract Agreement” with MEA on Rs. 100/- stamp paper (non-judicial) within 30 days from the date of issue of LOA. Format of Contract Agreement is placed at Annexure-II. The conditions of the agreement shall be binding on the contractor/ JV.
- iii) The acceptance of tender shall rest with the “Authority”. The “Authority” reserves the right to reject any or all tenders received without assigning any reasons whatsoever.

- iv) The right to award, split up work and to reject the offer without assigning any reason is reserved with the “Authority”,
- v) Any breach of conditions of contract shall be brought to the notice of the contractor and he/she shall be given an opportunity to explain the fact, but the “Authority” has right to withdraw in full or part of the work of the contractor. In such event, payment shall be made in proportion to the extent of service rendered by the contractor till such time.
- vi) The contractor shall insure all their personnel working on this project and keep “Authority” indemnified of all liabilities, loss, etc.
- vii) The Contractor shall be fully responsible for the correctness and accuracy of all the data, analysis, facts and documents etc.
- viii) The contractor shall observe all care & diligence while executing the work taking into consideration the similar Act of developed countries, prevailing condition/status of IWT sector in the Myanmar, the technological development in this sector as on date & future as well as the suggestion, views and comments obtained from the stake holders in this sector.
- ix) The contractor shall not without the prior written approval of the “Authority”, concede, transfer or sublet partially or fully the right and obligation under this contract or any part thereof to the third parties otherwise the “Authority” shall have right to terminate this contract without assigning any reasons except for notifying the contractor of such termination in writing. The contractor in such case shall have no right to claim for compensation for any harm due to this termination. However, the contractor shall still remain responsible in case the “Authority” approves to his/her conceding, transferring or subletting to the third parties fully, individually and jointly with the parties to whom the work has been conceded, transferred or sublet.
- x) The contractor shall make their own arrangements at their own cost for the transport, accommodation, TA/DA of their personnel assigned to this contract work, visiting IPGL/IWAI/MEA offices / Officers of the statutory Authorities, stake holders including State/Central Govt. Dept., embassy, in India as well as in Myanmar, as may be required in connection with this contract work.
- xi) O & M agreement fees quoted for the work would deem to have included all the incidental costs including cost of all maintenance, reports, schemes, documents, workshops, public meetings, etc. which would be required to be carried out by the contractor during the course of the assignment.
- xii) In the event of Contractor/JV closing its business, “Authority” shall have the right to employ any other agency to complete the work at the risk and cost of the Contractor. In this regard, decision of representative of the authority or the authority shall be final and binding on the contractor.

2.0 Commencement, Completion, Extension, Modification and Termination of Contract.

2.1 Commencement & Completion of Contract: The contractor shall commence carrying out the services as per ToR immediately after completion of handing over process as stated in ToR. Handing over will be completed within 45 days of issuance of the Letter of Award in case of JV and within 30 days of issuance of Letter of Award in case of Single Entity (letter of award).

2.2 Duration of Contract Period:

The period of Contract Agreement will be 3 years (with two extensions of 1 year each at sole discretion of Owner based on satisfactory performance).

2.3 Modifications or variations:

Any modification or variations of the terms and conditions of this contract, including any modification or variation of the scope of the services, may only be made by written mutual agreement between the parties. However, any such variation shall not result in a change in the agreed total O & M service fee or substantial changes to the ToR.

2.4 Force Majeure

2.4.1 Definition

a. For the purposes of this contract, Force Majeure means an exceptional event or circumstances which is beyond the reasonable control of a party, is not foreseeable, is unavoidable and not brought about by or at the instance of the party claiming to be affected by such events and which has caused the non-performance or delay in performance and which makes party's a performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to war, riots, civil disorder, earthquake, fire, tsunami, explosion, storm, flood or other extreme adverse weather conditions, strikes ,lockouts or other industrial action (except where such party invoking force majeure to prevent), confiscation or any other action by government agencies.

b. Force majeure shall not include (i) any event which is caused by the negligence or intentional action of a party or by or of such party's Sub-Consultants or agents or employees (ii) any event which a diligent party could reasonably have been expected both to take into account at the time of the conclusion of this contract and avoid or overcome in the carrying out of its obligations hereunder.

2.4.2 Measures to be taken:

a. A party affected by an event of force majeure shall continue to perform its obligations under the contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of force majeure

- b. A party affected by an event of force majeure shall notify the other Party of such event as soon as possible and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause if such event and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- c. During the period of their inability to perform the services as a result of an event of force majeure, the contractor/JV, upon instructions by the “Authority” shall either:
 - i. Demobilize
 - ii. Continue with the services to the extent possible
- d. In the case of disagreement between the parties as to the existence or extent of force majeure, the matter shall be settled according to clause on dispute resolution/arbitration.

2.5 Suspension:

The “Authority” may, by written notice of suspension to the contractor, suspend all payments to the contractor hereunder if the contractor fails to perform any of its obligations under this contract, including the carrying out of the assignment, provided that such notice of suspension (i) shall specify the nature of the failure and (ii) shall allow the contractor to remedy such failure, if capable of being remedied, within a period not exceeding thirty (30) days after receipt by the contractor of such notice of suspension.

2.6 Termination

2.6.1 By the “Authority”: the “Authority” may terminate this contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this clause.

- a) If the contractor fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension, within thirty (30) days of receipt of such notice of suspension or within such further period as the “Authority” may have subsequently approved in writing.
- b) If the contractor fails to comply with any final decision reached as a result of arbitration proceedings.
- c) If the contractor, in the judgment of the “Authority” has engaged in corrupt or fraudulent practices in competing for or in executing this contract.
- d) If the contractor submits to the “Authority” a false statement which has a material effect on the rights, obligations or interests of the “Authority”.
- e) If the contractor places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the “Authority”.

f) If the “Authority” in its sole discretion and for any reason whatsoever, decided to terminate this contract.

2.6.1.1 In such an occurrence the “Authority” shall give a not less than thirty (30) days written notice of termination to the contractor.

2.6.2 **By the Contractor:** The contractor may terminate this contract, by not less than thirty (30) days written notice “Authority” , in case of the occurrence of any of the events specified in paragraphs (a) through (b) of this clause.

a) If, as the result of force majeure, the contractor/JV is unable to perform a material portion of the services for a continued period of not less than three hundred sixty-five (365) days.

b) If the “Authority” fails to comply with any final decision reached as a result of arbitration.

2.6.3 Cessation of services: Upon termination of this contract by notice pursuant to clauses 2.6 of conditions of contract hereof, the contractor shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

2.6.4 Payment upon termination: Upon termination of this contract pursuant to clauses 2.6.1 hereof, the “Authority” shall make the following payments to the contractor:

a) If the contract is terminated pursuant to clause 2.6.1, sub clauses (a) to (e), O & M

Contract fee for services satisfactorily performed prior to the effective date of termination, less:

i. The amount of performance security:

ii. Advance payments, if any, received by the contractor up to the date of the issue of the termination notice less other recoveries due in terms of the contract, less taxes due to be deducted at source in accordance with applicable law and However, if the contract is terminated under sub-clause (g) 2.6.1 at the sole discretion of the “Authority” , the amount payable to the contractor shall be for services satisfactorily performed prior to the effective date of termination, less advance payments, of any, received by the contractor up to date of the issue of the termination notice, less other recoveries due in terms of the contract, less taxes to be deducted at source in accordance with applicable law.

2.6.5 Disputes about events of termination: If either party disputes whether an event specified in paragraphs (a) to (g) of clause 2.6.1 hereof has occurred such party may within fifteen (15) days after receipt of notice of termination from the other party, refer the matter for dispute resolution.

3. Obligations of the Contractor

3.1 General

3.1.1 Standard of performance: The contractor shall perform the services and carry out their obligation hereunder with all due diligence, efficiency and economy in accordance with generally accepted professional standards and practices and shall observe sound management practices and employ appropriate technology and safe effective methods.

The contractor shall always act, in respect of any matter relating to this contract or to the assignment as faithful adviser to the “Authority” and shall at all times support and safeguard the interest of “Authority” while dealing with Third Parties.

3.2 Conflict of Interests: The contractor shall hold the “Authority” interests paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments or their own corporate interests. The contractor shall not engage and shall cause their personnel as well as their sub-contractors and their personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this contract. If during the period of this contract, a conflict of interest arises for any reason, the contractor shall promptly disclose the same to the Owner and seek its instructions.

3.3 Confidentiality: Except with the prior written consent of the “Authority” the contractor and its personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the services, nor shall the contractor and its personnel make public the recommendations formulated in the course of, or as a result of the services.

3.4 Insurance to be taken out by the contractor: The contractor shall take out and maintain adequate insurance at its own cost against various risks including risk of life in respect of its personnel deployed for the assignment and shall provide evidence to the “Authority” showing that such insurance has been taken out and maintained and that all the due premiums thereof have been paid.

3.5 Reporting requirements: The contractor shall submit to the “Authority” progress report of its activity as on 1st week of every month starting from the commencement of the assignment duly indicating the (i) Activities carried out during the report period (ii) A brief of the progress/stage achieved with reference to the ToR (iii) Places visited and officials contacted and (iii) problems, if any affecting the progress including non functioning of any/all equipments. All reports shall be delivered in soft copy also in addition to the hard copies.

3.6 The contractor has to operate the terminal operations and its related functions according to the respective laws, rules and regulations, notifications from the related ministries and organizations of GOM.

4. Obligations, Responsibility & Inputs by Authority:

- a) IWAI shall assist to the Bidder to get all necessary permissions/clearances for the respective project. However, it shall be on the part of Bidder to get all these permissions. Bidder has to pay all the necessary fees for permissions/clearances/ collection of data etc. for completion of the project.
- c) IWAI shall provide only the available details / the Bidder shall manage balance data. IWAI will introduce/ authorize the Bidder, if required, to collect data/ information within the quoted price from Statutory / Non- Statutory Bodies. Non- availability of the required inputs from IWAI, which is not essential for IWAI to be furnished, shall not be an excuse for improper preparation of study report /delay in preparation.

5. Security Deposit/Performance Bank Guarantee

5.1 The successful bidder has to submit a bank guarantee as a performance guarantee in the format provided in this RFP document in favor of the MEA. The bank guarantee will be of an amount equal to 10% of the contract value and will be irrevocable guarantee from nationalised bank in India with validity of 180 days beyond the contract period. This Security deposit/performance bank guarantee shall be submitted within 28 days after the issuance of LOA.

5.2 The performance guarantee shall remain with “Authority” till the completion of the contract or the payment of the final bill payable in accordance with agreement conditions whichever is later, provided “Authority” is satisfied that there is no demand outstanding against the contractor.

5.3 On submission of PBG, the EMD will be returned to the Successful bidder within 30 days by the “Authority”.

5.4 If the contractor neglects to observe or fails to perform any of his/her obligations under the contract, including any damage to the assets under their custody, it shall be lawful for the “Authority” to forfeit either in whole or in part, the PBG furnished by the contractor. In case Contractor is due to the “Authority” some cost and expenses that the “Authority” may have incurred and other money including all losses and damages which the “Authority” is entitled to recover from the Contractor, such amount has to be paid by Contractor to “Authority” and receipt obtained. However, if the contractor duly performs and completes the contract in all respects and presents

in absolute “NO DEMAND CERTIFICATE” in the prescribed form, the Owner shall return the PBG to the contractor.

- 5.5 All compensation or other sums of money payable by the Contractor to “Authority”, under the terms of the contract or any other contract or on any other account whatsoever, will be paid by the Contractor within 14 days of receipt of notice of demand from the “Authority”. Also, in the event of the contractor’s security deposit being reduced by reasons of such deductions or sale, as aforesaid the contractor shall, within 14 days of receipt of notice of demand from the Contractor, who will make good the deficit in his/her security deposit.

6.0 Payment Terms

- 6.1 (a) No advance payment shall be made.
(b) Payment terms shall be as mentioned in clause 8 of ToR of this tender document.

6.2 Mode of Payment:

The complete invoices in all respects, duly certified by PDC/Authority’s representative, is to be raised monthly by the Contractor and submitted to ‘The Chief Engineer (Tech), Inland Waterways Authority of India, A-13, Sector-1, Gautam Budh Nagar, Noida, Uttar Pradesh- 201301, who shall process the same after due verification and forward it to MEA. The payment shall be paid at the earliest through RTGS/NEFT by MEA, in favor of contractor.

7. Arbitration

In the event of any dispute or difference covering, relating to or arising out of this agreement, the parties shall do their utmost to settle it in fair and amicable manner in a spirit of mutual cooperation and any dispute or difference not settled within thirty days, shall be referred to the sole arbitration of a person so nominated by the authority, such arbitrator shall have the right to extend the period of arbitration proceedings with the consent of the parties. The venue of the arbitration shall be Delhi. In view of the arbitration proceedings, the work under the agreement should not be suspended. The arbitration shall be conducted in accordance with the provisions of the Arbitration Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment (as amended in 2015) thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause. As the place of work is outside India, International arbitration procedure will be followed.

8. **Defect liability period**

The contractor shall keep “Authority” indemnified against all claims arising out of this contract. If the claim amount against any default exceeds cumulatively beyond the amount of PBG, the excess amount of claim is liable to be withheld from any due payment to the contractor on any account whatsoever. The contractor is liable to settle the claims as early as possible but not later than defect liability period. If the contractor fails to settle the claim of any ambiguity, the authority will settle the claim of claimants and recover the amount from the contractor to close the defect liability period and contract. Defect Liability period shall be 6 months beyond the contract period.

9. **Laws Governing the Contract**

- i. The laws of India shall govern this contract.
- ii. Irrespective of the place of works, the place of performance or place of the payment under the contract, the contract shall be deemed to have been made at the place from which the letter of acceptance has been issued.
- iii. Courts in Delhi shall alone have jurisdiction to decide any dispute arising out of or in respect of contract, but not settled through the dispute resolution provision in the contract.

10. **Miscellaneous Provisions**

- i. The contractor notifies the “Authority” of any material change in their status, in particular, where such change would impact or performance of obligations under this contract.
- ii. The contractor shall be liable to and responsible for all obligations towards the “Authority” for performance of the assignment.
- iii. The contractor shall at all times indemnify and keep indemnified the “Authority” against any claims in respect of any damages or compensation payable in consequences of any accident or injury sustained or suffered by its (the Contractor’s) employees or agents or by any other third party resulting from or by any action, omission or operation conducted by or on behalf of the contractor.
- iv. The contractor shall at all times indemnify and keep indemnified the “Authority” against and all claims by employees, workman, contractor, sub-contractors, suppliers, agent (s), engaged or otherwise working for the

contractor, in respect of wages, salaries, remuneration, compensation or the like.

- vi. All claims regarding indemnity shall survive the termination or expiry of the contract.
- vii. It is acknowledged and agreed by the parties that there is no representation of any type, implied or otherwise, of any absorption, regularization, continued engagement or concession or preference for employment of persons engaged by the contractor for any engagement, service or employment in any capacity in any office or establishment of the Government of India or “Authority”.

SECTION-VIII: ANNEXES

ANNEX - I: Bank guarantee form for performance security

To

The Secretary to the Government of India
Ministry of External Affairs, Govt. of India
New Delhi

In consideration of the (Hereinafter called “**Owner**”) having to enter into an Agreement with M/s (hereinafter called the “**Contractor**”) as a follow up to the Letter of Acceptance no.....dated..... issued by the Authority for **Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project** and in accordance with the provisions of the Contract Agreement (the “Contract Agreement”) to be entered into between the Contractor and the Authority in the form provided by the Authority.

On production of Performance security in the form of Bank Guarantee for Rs (Rupees.....only), at the request of **Contractor**, We, (**Bank**) do hereby undertake to pay to the Employer an amount not exceeding Rs..... (Rupees-----only) against any default or failure on the part of Contractor to perform the contract in accordance with terms & conditions or any breach of the said Agreement.

1. We, (**Bank**) do hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on a demand from the Employer stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Employer by reason of breach of the said **Contract** or any of the terms or conditions contained in the said time frame or by reason of the **Contractor’s** failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive, final and binding on the bank and bank shall not be entitled to question or go into the validity or reasonableness of the demand made by the Authority, as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs..... (Rupees.....only).
2. We, (**Bank**) undertake to pay the Employer any money so demanded notwithstanding any dispute or disputes raised by the **Contractor** in any suit or proceeding pending before any court or Tribunal relating thereto, liability under this present being absolute and unequivocal. The payment so made by us under this guarantee shall be valid discharge of our liability for payment hereunder and the **Contractor** shall have no claim against us for making such payment.

3. We, **(Bank)** further agree that the guarantee herein contained shall remain in full force and effect till completion project work to the complete satisfaction of the Employer in terms of conditions of contract and Letter of Acceptance and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Agreement have been fulfilled and its claim satisfied or till the scheduled date of completion of Works as per the Agreement. We (Bank) shall consider that the terms and conditions of the said Agreement have been fully and properly carried out by the said **Contractor** and accordingly discharge this Guarantee after defects liability period of six months from the date of completion of the said contract unless a demand or claim under this Guarantee is served by the Employer in writing on the bank but before the expiry of the said period in which case it shall be enforceable against the bank notwithstanding the fact that the same is enforced after the expiry of the said period or after the extended period as the case may be.
4. We **(Bank)** further agree with the Employer that the Employer shall have fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time or performance by the said **Contractor** from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said **Contractor** and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said **Contractor** or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said **Contractor** or by any such matter or thing whatsoever which under the law relating to sureties would, but for the provision, have effect of so relieving us.
5. It shall not be necessary for the Employer to proceed against the **Contractor** before proceeding against the Bank and the guarantee herein contained shall be enforceable against the bank notwithstanding any security which the Employer may have obtained or obtain from the **Contractor** at the time when proceedings are taken against the bank hereunder be outstanding or unrealized.
6. Notwithstanding anything contained herein above our liability under the guarantee is restricted to Rs..... (Rupees..... only) and shall remain in force until or otherwise until the extended date by the Employer. Unless a claim or suit under this guarantee is filled with us on or before or the extended date
ALL THE RIGHTS UNDER THE GUARANTEE SHALL BE FORFEITED and the bank shall be relieved and discharged from all liabilities therein.
7. This Guarantee will not be discharged due to the change in the constitution of the Bank or the **Contractor**.
8. We, **(Bank)** lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Owner in writing.

Dated the of 2016

for

(Indicate the name of bank)



Signature.....
Name of the Officer
(In Block Capitals)
Designation
Code No.
Name of the bank and Branch. (SEAL)

Note: This Performa suitably amended and approved by the Authority shall be used for furnishing Bank Guarantee.

(This draft Contract Agreement Form will be revised suitably before concluding the Agreement)

ANNEX -II: CONTRACT AGREEMENT FORM

For providing services of **Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project**

This Agreement made the _____ day of _____ 2017 between The President of India acting through the Ministry of External Affairs, New Delhi 110 001 (hereinafter called “the Owner” which expression shall unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the one part _____ and _____ of _____ (hereinafter called “the Contractor” which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the other part

Whereas

- (A) The Owner is desirous of getting **“Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project** through a Contractor m/s who will be executing the work.
- (B) The Owner acting through the Ministry of External Affairs appointed the Inland Waterways Authority of India as Project Development Consultant (PDC) and the PDC had invited Proposal (RFP) for selecting a Contractor for Management, Operation & Maintenance of Port & IWT Terminal at Sittwe & IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project in Myanmar.
- (C) The Contractor having fulfilled the technical and financial criteria prescribed for Qualification was shortlisted for participation in the bid process
- (D) The PDC on behalf of the Owner invited bids from eligible and experienced Contractors and Contractor has fulfilled the technical and financial criteria spelt out in the bid document and after evaluation of the bids the Owner has accepted the Tender submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein and accordingly issued a Letter of Acceptance (LOA) dated requiring the selected bidder to inter alia:
- (a) Provide to the Owner an irrevocable and unconditional performance guarantee from a schedule or nationalised Bank in India for a sum equivalent to Rs.....

(Rs.....) in the form set forth in Section VIII of the bid document within 30 days of the date of issue of LOA;

(b) Deliver to the Owner a legal opinion from the legal counsel of the selected bidder with respect to the authority of the selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 21 days of the date of issue of LOA;

(c) Execute this Agreement within 30 (Thirty) days of the date of issue of LOA.

(D) {The selected Contractor has since promoted and incorporated the Contractor as a limited liability company under the Companies Act 1956/2013 and has requested the Owner to accept the Contractor as the entity which shall undertake and perform the obligations and exercise the rights of the selected Contractor under the LOA,} including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.}

(E) {By its letter dated, the Contractor has also joined in the said request of the selected Contractor to the Employer to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Contractor including the obligation to enter into this Agreement pursuant to the LOA. It has further represented to the effect that the selected Contractor has promoted it for the purposes hereof.}

(F) {The Owner has agreed to the said request of the selected Contractor and has accordingly agreed to enter into this Agreement with the Contractor for execution of the Project, subject to and on the terms and conditions set forth hereinafter.}

(G) AND Whereas the Contractor has fulfilled the requirements specified in Recital (A) to (E) above;

Now this Agreement the witness as follows:

In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contractor hereinafter referred to.

The following documents shall be deemed to be read and construed as part of this Agreement,

- (a) The Letter of Acceptance;
- (b) Correspondences exchanged between Contractor and Authority/authority's representative from opening of bids till issue of Letter of Acceptance
- (c) The said RFP
- (d) The Conditions of Contract with its schedules
- (e) The Technical Specifications;
- (f) The Bill of Quantities.

(g) Pre-bid Minutes

The Contractor hereby covenants with the Employer to execute and complete the Works and remedy all defects therein in conformity in all respects with the provisions of the Contract for the consideration of the payments to be made by the Owner to the Contractor as hereinafter mentioned.

The Owner hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS WHEREOF the Parties executed these presents on the day and the year first above written

Signed and delivered

for and on behalf of

OWNER

Date -----

Place -----

Signed and delivered

for and on behalf of

CONTRACTOR

Date -----

Place -----

(COMMON SEAL)

In presence of two Witness

1. -----

2. -----

(COMMON SEAL)

1. -----

2. -----

ANNEX -III: DETAILS OF BANK ACCOUNT

FOR RELEASE OF PAYMENT THROUGH
ELECTRONIC FUND TRANSFER SYSTEM
(TO BE FURMSHED BY THE BIDDER ON ITS LETTER HEAD)

NAME OF THE PROJECT: _____

We _____ (Name of the Bidder) hereby request you to give our payments by crediting our bank account directly by E-payment mode as per account details given below. We hereby undertake to intimate IWAI in case of any change in particulars given below and will not hold IWAI responsible for any delay I default due to any technical reasons beyond IWAI's control: -

Bank Account Number :
RTGS/NEFT/IFSC CODE :
NAME OF THE BANK :
ADDRESS OF THE BRANCH OF THE BANK
ACCOUNT TYPE
(SAVING/CURRENT/OTHERS) :
A BLANK CHEQUE (CANCELLED) IS ENCLOSED HEREWITH.

Contractor hereby declares that the particulars given above are correct and complete. If the transaction is delayed or credit is not affected at all for reasons of incomplete or in correct information, I/We would not hold OWNER/PDC responsible.

Signature of Authorized Signatory
Name & Designation

Date:

Place:

ANNEX -IV: BANK CERTIFICATION

It is certified that above mentioned beneficiary holds a Bank Account No.with our branch and the bank particulars mentioned above are correct.

Authorized Signatory

Date:

Authorization No.

Name: _____

Official Seal/Stamp



ANNEX –V: TENDER ACCEPTANCE LETTER

(To be given on Company Letter Head)

To,
The Chief Engineer (Tech)
Inland Waterways Authority of India
A-13, Sector-1, Gautam Budh Nagar, Noida,
Uttar Pradesh -201301.

Date:

Sub: Acceptance of Terms & Conditions of RFP (Tender).

Tender Reference No.....

Name of Tender/Work: - **Management, Operation & Maintenance” of Port & IWT Terminal at Sittwe and IWT Terminal at Paletwa under Kaladan Multi-Modal Transit Transport Project**

Dear Sir,

1. I/We have downloaded /obtained the Tender document(s) for the above-mentioned ‘Tender/Work’ from the website(s) namely: www.iwai.nic.in OR <https://eprocure.gov.in> In/eprocure/app as per your advertisement, given in the above-mentioned website(s).
2. I / We hereby certify that I / we have read the entire Terms and Conditions of the Tender documents from Page No. _____ to _____ (including all documents like annexure(s), schedule(s), etc.), which form part of the contract agreement and I / we shall abide hereby by the terms/conditions/clauses contained therein.
3. The minutes of the pre-bid meeting (if any) and/or corrigendum(s)(if any) issued from time to time by your department/ organization for this work too have also been taken into consideration, while submitting this acceptance letter.
4. I/We hereby unconditionally accept the Tender conditions of above mentioned Tender document(s) /minutes of the Pre-bid Meeting (if any)/corrigendum (s) (if any in its totality /entirety).
5. In case any provisions of this Tender are found violated, then your department/organization shall without prejudice to any other right or remedy be at liberty to reject this Tender/Bid including the forfeiture of the full said earnest money deposit absolutely.

Yours Faithfully

(Signature of the Bidder / Lead member of
JV, with Official Seal)



ANNEX-VI: WARRANTY FORM

M/s (Hereinafter referred to as the Tenderer) having carefully studied all the tender documents pertaining to the Contract for “.....” and the local conditions having undertaken to execute the said works.

DO HEREBY WARRANT THAT: -

1. The Tenderer is familiar with all the requirements of the Contract.
2. The Tenderer has investigated the work site & also visited IWAI office and satisfied himself regarding the nature of work, and local conditions that may affect the work or its performance.
3. The Tenderer shall mobilize the necessary equipment, qualified & experienced manpower as per tender conditions.
4. The Tenderer undertakes that the work may be performed and completed as required in the Contract.
5. The Tenderer accepts all risks directly or indirectly connected with the performance of the Contract.
6. The Tenderer has/had/have no collusion with other Tenderer, with any of the men of the Engineer-in-Charge or with any other person in Authority to execute the said works according to the terms and conditions of the said Contract.
7. The Tenderer has not been influenced by any statement of promise of the Authority but only the Contract Documents.
8. The Tenderer is financially solvent.
9. The Tenderer is experienced and competent to perform the Contract to the satisfaction of the Authority.
10. The Tenderer is familiar with all General and Special Laws, Acts, Ordinances, Rules and Regulations of the local Govt. and/or any other statutory authorities in Myanmar, Municipalities, District, State and Central Govt., that may affect the work, its performance or personnel employed therein.
11. I/We hereby give undertaking that the information, certificates and documents furnished by me/us with my/our offer and subsequently regarding works mentioned are true, correct, valid and complete to the best of my/us knowledge and nothing has been concealed/distorted any material as mentioned above I/We am/are agreeable for termination of Contract between me/us and “Authority” regarding works mentioned in the tender without any notice, reason or compensation and non-issue of tender documents in future.

Yours Faithfully

(Signature of the Bidder / Lead member of
JV, with Official Seal)

ANNEX –VII: TENDER (RFP) SUBMISSION LETTER

Date:

To
The Chief Engineer (Tech)
Inland Waterways Authority of India
A-13, Sector 1
NOIDA 201 301
U P, India

I/We have read and examined the following documents relating to-----
-----as specified, of Inland Waterways Authority of
India, Noida (IWAI):

- i) Tender notice
- ii) Instructions to the Tenderer
- iii) Instruction to Bidder (ITB)
- iv) General Conditions of Contract
- v) Special Terms and Conditions of Contract
- vi) Warranty Form
- vii) Terms of Reference
- viii) Tender Submission Letter
- ix) Agreement Form
- x) Performance Bank Guarantee Form

1. I/We hereby tender for the execution of the works referred to in the aforesaid document upon the terms and conditions contained or referred to therein and in accordance in all respects, with the specifications, designs, and other terms and conditions of the contract and within the period of completion as stipulated in the tender document.
2. I/We agree to keep the tender open for acceptance for 180 days counted from the last date specified for the submission thereof and not to make any modifications in its terms and conditions, which are not acceptable to “Authority”. We also agree that any terms or condition in the tender at variance with the above stipulation will render the tender liable to rejection summarily.
3. Rs..... (Rupeesonly) is attached herewith as Earnest Money.
4. If, after the tender is accepted, we fail to execute the contract deed within days of the receipt of the order to do so, we agree that “Authority” shall without prejudice to any terms and conditions of the tender, forfeit the earnest money (EMD) absolutely.

5. Bid shall remain valid for 180 days from the date of bid closing prescribed by the Authority as per the Clause given in "Instruction to the Bidder (ITB).
6. I/We undertake to commence the work within (...) days of issue of letter of commencement after signing of Agreement by the "Authority" and continue to work from the date on which "Authority" issues written order to abide by and fulfil all the terms and conditions and provisions of the aforesaid documents or in default thereof to forfeit the security at the hands of "Authority" the liquidated damages in terms of the contract.
7. Until a formal contract is prepared and executed this bid, together with your written acceptance thereof in your notification of award shall constitute a part of the contract between us.
8. I/We understand that you are not bound to accept the lowest priced or any bid that you may receive.

Signature_____

In the capacity of

 —

—
 Duly authorized to sign the
 Tender on behalf of (in block
 Capitals)._____

Witness_____

Date_____

Address_____

Postal address_____

Telephone No._____

Telegraphic address_____

E-mail_____



To be signed by the bidder and competent signatory authorized to sign the contract on behalf of MEA.

ANNEX – VIII - INTEGRITY AGREEMENT

This Integrity Agreement is made at on thisday of..... 2019

BETWEEN

Ministry of External Affairs, Government of India represented through.....(Authorized representative who is authorized to sign to contract), Jawaharlal Nehru Bhawan, Ministry of External Affairs (MEA), 23-D Janpath, New Delhi, India.

AND

.....
(Name and Address of the Contractor/JV

Through..... (Hereinafter referred to as the
(Details of duly authorized signatory)

“Bidder/Contractor” and which expression shall unless repugnant to the meaning or context hereof include its successors and permitted assigns)

Preamble

WHEREAS the “Authority” has floated the Tender (Tender No.....) (hereinafter referred to as “RFP/Tender/Bid”) and intends to award, under laid down organizational procedure, contract for “.....” hereinafter referred to as the “Contract”.

AND WHEREAS the “Authority” values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relation with its Bidder(s) and Contractor(s).

AND WHEREAS to meet the purpose aforesaid both the parties have agreed to enter into this Integrity Agreement (hereinafter referred to as “Integrity Pact” or “Pact”), the terms and conditions of which shall also be read as integral part and parcel of the Tender/Bid documents and Contract between the parties.

NOW, THEREFORE, in consideration of mutual covenants contained in this Pact, the parties hereby agree as follows and this Pact witnesses as under:

Article 1: Commitment of the “Authority”



- 1) The “Authority” commits itself to take all measures necessary to prevent corruption and to observe the following principles:
 - (a) No employee of the “Authority”, personally or through any of his/her family members, will in connection with the Tender, or the execution of the Contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - (b) The “Authority” will, during the Tender process, treat all Bidder(s) with equity and reason. The “Authority” will, in particular, before and during the Tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the Tender process or the Contract execution.
 - (c) The “Authority” shall endeavor to exclude from the Tender process any person, whose conduct in the past has been of biased nature.
- 2) If the “Authority” obtains information on the conduct of any of its employees which is a criminal offence under the Indian Penal code (IPC)/Prevention of Corruption Act, 1988 (PC Act) or is in violation of the principles herein mentioned or if there be a substantive suspicion in this regard, the “Authority” will inform the Chief Vigilance Officer and in addition can also initiate disciplinary actions as per its internal laid down policies and procedures.

Article 2: Commitment of the Bidder(s)/Contractor(s)

- 1 It is required that each Bidder/Contractor (including their respective officers, employees and agents) adhere to the highest ethical standards, and report to the IWAI all suspected acts of fraud or corruption or Coercion or Collusion of which it has knowledge or becomes aware, during the tendering process and throughout the negotiation or award of a contract.
- 2 The Bidder(s)/Contractor(s) 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 Contract execution:
 - a) The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Authority’s employees involved in the tender process or execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the Tender process or during the execution of the contract.

- b) The Bidder(s)/Contractor(s) will not enter with other Bidder(s) 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 cartelize in the bidding process.
- c) The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act. Further the Bidder(s)/Contractor(s) will not use improperly, (for the purpose of competition or personal gain), or pass on to others, any information or documents provided by the “Authority” as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- d) The Bidder(s)/Contractor(s) of foreign origin shall disclose the names and addresses of agents/representatives in India, if any. Similarly Bidder(s)/Contractor(s) of Indian Nationality shall disclose names and addresses of foreign agents/representatives, if any. Either the Indian agent on behalf of the foreign principal or the foreign principal directly could bid in a tender but not both. Further, in cases where an agent participate in a tender on behalf of one manufacturer, he shall not be allowed to quote on behalf of another manufacturer along with the first manufacturer in a subsequent/parallel tender for the same item.
- e) The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the Contract.
- f) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- g) The Bidder(s)/Contractor(s) will not, directly or through any other person or firm indulge in fraudulent practice means a willful misrepresentation or omission of facts or submission of fake/forged documents in order to induce public official to act in reliance thereof, with the purpose of obtaining unjust advantage by or causing damage to justified interest of others and/or to influence the procurement process to the detriment of the Government interests.
- h) The Bidder(s)/Contractor(s) will not, directly or through any other person or firm use Coercive Practices (means the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force directly or indirectly, where potential or actual injury may befall upon a person, his/ her reputation or property to influence their participation in the tendering process).

Article 3: Consequences of Breach

Without prejudice to any rights that may be available to the “Authority” under law or the

Contract or its established policies and laid down procedures, the “Authority” shall have

the following rights in case of breach of this Integrity Pact by the Bidder(s)/Contractor(s)

and the bidder/contractor accepts and undertakes to respect and uphold the Authority’s absolute right:

- 1 If the Bidder(s)/Contractor(s), either before award or during execution of Contract has committed a transgression through a violation of Article 2 above or in any other form, such as to put his reliability or credibility in question, the “Authority” after giving 14 days’ notice to the contractor shall have powers to disqualify the Bidder(s)/Contractor(s) from the tender process or terminate/determine the Contract, if already executed or exclude the Bidder/Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of transgression and determined by the “Authority”. Such exclusion may be forever or for a limited period as decided by the “Authority”.
- 2 Forfeiture of EMD/Performance Guarantee/Security Deposit: If the “Authority” has disqualified the Bidder(s) from the tender process prior to the award of the contract or terminated/determined the contract or has accrued the right to terminate/determine the contract according to Article 3(1), the “Authority” apart from exercising any legal rights that may have accrued to the “Authority”, may in its considered opinion forfeit the entire amount of Earnest Money Deposit, Performance Guarantee and Security Deposit of the Bidder/Contractor.
- 3 Criminal Liability: If the “Authority” obtains knowledge of conduct of a bidder or Contractor, or of an employee or a representative or an associate of a bidder or Contractor which constitutes corruption within the meaning of IPC Act, or if the “Authority” has substantive suspicion in this regard, the “Authority” will inform the same to law enforcing agencies for further investigation.

Article 4: Previous Transgression

- 1 The Bidder declares that no previous transgressions occurred in the last 5 years with any other Company in any country confirming to the anticorruption approach or with Central Government or State Government or any other

Central/State Public Sector Enterprises in India that could justify his exclusion from the Tender process.

- 2 If the Bidder makes incorrect statement on this subject, he/she can be disqualified from the Tender process or the “Authority” can take action for banning of business dealings/ holiday listing of the Bidder/Contractor as deemed fit.
- 3 If the Bidder/Contractor can prove that he has resorted / recouped the damage caused by him/her and has installed a suitable corruption prevention system, the “Authority” may, at its own discretion, revoke the exclusion prematurely.

Article 5: Equal Treatment of all Bidders/Contractors/Subcontractors

- 1 The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact. The Bidder/Contractor shall be responsible for any violation(s) of the principles laid down in this agreement/Pact by any of its Subcontractors/ sub-vendors.
- 2 The “Authority” will enter into Pacts on identical terms as this one with all Bidders and Contractors.
- 3 The “Authority” will disqualify Bidders, who do not submit, the duly signed Pact between the “Authority” and the bidder, along with the Tender or violate its provisions at any stage of the Tender process, from the Tender process.

Article 6: Duration of the Pact

This Pact begins when both the parties have legally signed it. It expires for the Contractor/Vendor 12 months after the completion of work under the contract or till the Continuation of defect liability period, whichever is more and for all other bidders, till the Contract has been awarded.

If any claim is made/lodged during the time, the same shall be binding and continue to be valid despite the lapse of these Pacts as specified above, unless it is discharged/determined by the Competent Authority in MEA.

Article 7: Other Provisions

- (a) This Pact is subject to Indian Law, place of performance and jurisdiction is the Headquarters of the Division of the “Authority”, who has floated the Tender.
- (b) Changes and supplements need to be made in writing. Side agreements have not been made.

- (c) If the Contractor is a partnership, this Pact must be signed by all the partners or by one or more partner holding power of attorney signed by all partners. In case of a Company, a representative duly authorized by board resolution must sign the Pact.
- (d) Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intensions.
- (e) It is agreed term and condition that any dispute or difference arising between the parties with regard to the terms of this Integrity Agreement / Pact, any action taken by the Owner/Principal in accordance with this Integrity Agreement/ Pact or interpretation thereof shall not be subject to arbitration.

Article 8: LEGAL AND PRIOR RIGHTS

All rights and remedies of the parties hereto shall be in addition to all the other legal rights and remedies belonging to such parties under the Contract and/or law and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid. For the sake of brevity, both the Parties agree that this Integrity Pact will have precedence over the Tender/Contact documents with regard any of the provisions covered under this Integrity Pact.

IN WITNESS WHEREOF the parties have signed and executed this Integrity Pact at the place and date first above mentioned in the presence of following witnesses:

.....
 (For and on behalf of "Authority")

 (For and on behalf of Bidder/Contractor)
 WITNESSES:

- 1.....
 (Signature, name and address)
- 2.
 (Signature, name and address)

Place:
 Date:



ANNEX-IX: BANK GUARANTEE FORM FOR EMD

To

The Secretary to the Government of India,
Ministry of External Affairs, Govt. of India
New Delhi

WHEREAS _____ (Name of Tenderer) (hereinafter called the Tenderers) wishes to submit his tender for work of _____ in the state/s of _____ herein called “the Tender”

KNOW ALL PEOPLE by these present that we _____ (Name of Bank) of _____ (Name of country) having our registered office at (_____) (hereinafter called the “Bank”) are bound unto the Ministry of External Affairs (hereinafter called “the employer”) in the sum of the Rs. _____ (Rupees _____) *for which payment can truly be made to the said employer. The Bank bind themselves, their successors and assigns by these presents with the common seal of the Bank this day _____ of 2019 and undertake to pay the amount of _____ Rs. _____ to the employer upon receipt of this written demand without the employer having to substantiate his demand.

The conditions of this obligation are:

If the tenderer withdraws his tender during the period of Tender validity specified in the Form of Tender.

Or

If the Tenderer having been notified of the acceptance of his Tender by the Employer during the period of tender validity fails or refuses to execute the Agreement Form in accordance with the instructions to bidders or fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders or any fraud/misrepresentation is noted with reference to the bid submitted.

We undertake to pay employer up to the above amount upon receipt of his written demand, without the employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to his owing to the occurrence of any one of the above conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to six months or more beyond the last date of receipt of bids or as it may be extended by the Employer, at any time prior to the closing date for submission of the Tender. Any demand in respect of this guarantee should reach the Bank not later than the above date of expiry of this guarantee.



SIGNATURE OF AUTHORISED REPRESENTATIVE OF THE BANK

NAME AND DESIGNATION

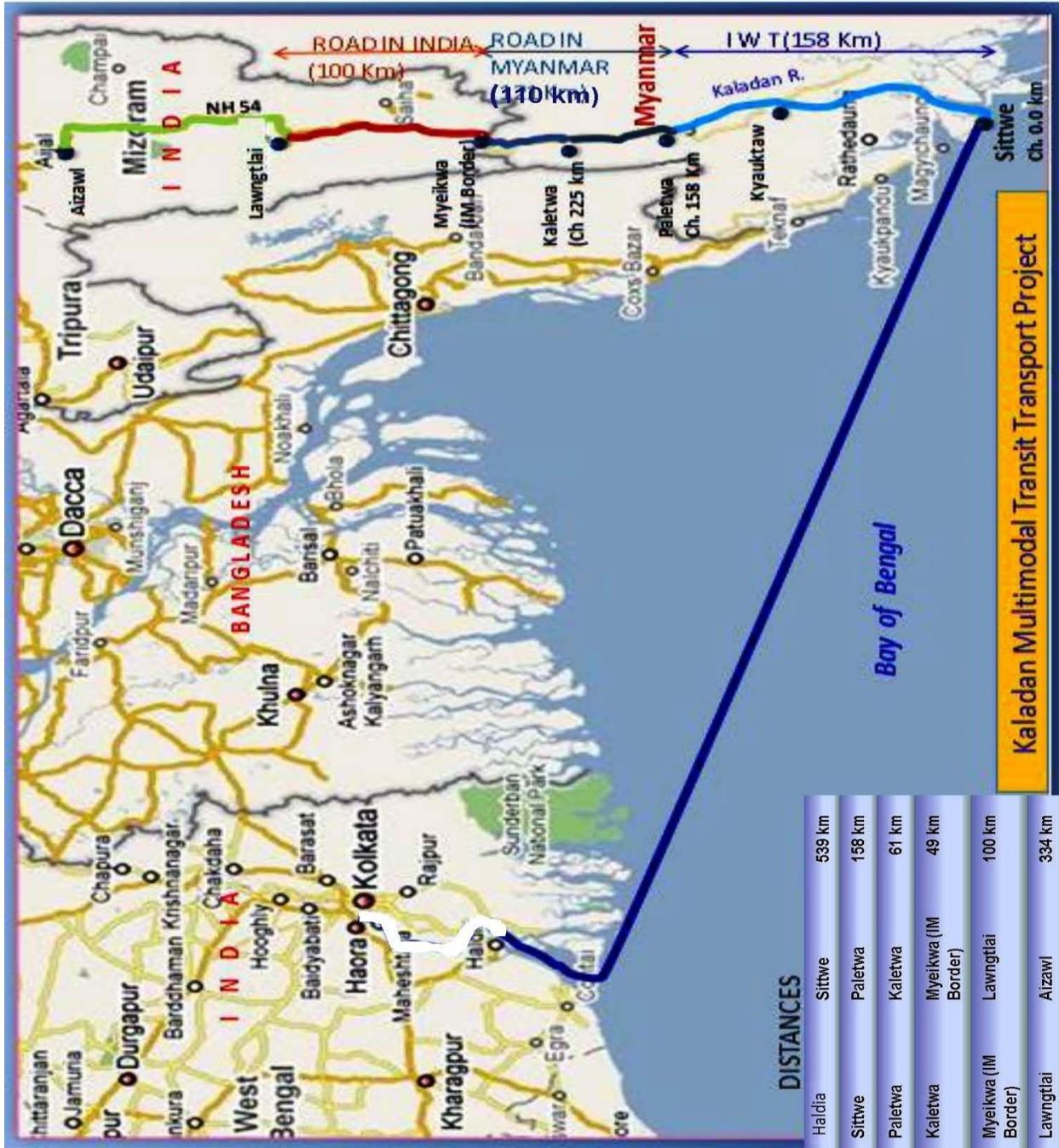
SEAL OF THE BANK

SIGNATURE OF THE WITNESS

NAME OF THE WITNESS

ADDRESS OF THE WITNESS

MAP OF KALADAN PROJECT



INDEX MAP OF KALADAN PROJECT

