

**ADDENDUM / CORRIGENDUM NO. 3**



**COCHIN PORT TRUST**

An ISO-9001:2015 & ISPS Compliant Port

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**CHIEF ENGINEER'S OFFICE,  
COCHIN – 682 009.**

No.T15/T-1938 /2021-C

Dated: .../01/2021

**TENDER FOR  
DREDGING FOR MAINTENANCE OF CHANNELS AND  
BASINS AT COCHIN PORT FOR THE YEAR 2021-22  
Tender No.T15/T-1938/2021-C**

The following additions/ modifications/ deletions are issued to the Tender Document for the subject work and these changes shall take precedence over the existing tender clauses wherever they are in variance.

- 1) The words '*twin screw with mechanical bow thrusters*' or '*bow thrusters*' wherever appeared in the bid document (sub clauses 2.6.1 at Page 114, 2.6.3 and 2.6.6 (1) at page 115 of SCC, etc.) shall be read as "***twin screw propulsion and mechanical bow thrusters***".
- 2) The 2<sup>nd</sup> sentence in the sub clause No. 8.12.1 under Technical Specification at Page 102 of the bid document is modified and replaced as "**Separate sounding charts for High frequency 210 KHz and above soundings for Navigation purpose and Low frequency 33 Khz soundings for silt and sedimentation studies shall be furnished to the Port.**"
- 3) The sub clause No. 8.12.3 under Technical Specification at Page 102 of the bid document is modified and replaced as "**After verifying the results plotted on each drawing, the Deputy. Conservator's representatives and Deputy Conservator shall put date and signature on each agreed drawing**".
- 4) Clause No. 6.5 'First Right of Refusal' under 'Instruction to Bidders' at Page No. 28 of the bid document is modified and replaced as:

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**“6.5 First Right of Refusal**

- (i) “First Right of Refusal” will be applicable only when a foreign company is the lowest bidder.
- (ii) An Indian company owning Indian flag dredgers including Dredging Corporation of India shall have the First Right of Refusal before the contract is given to any foreign company, if the bid of Indian company(ies) is within 10% of the lowest offer (i.e., L1+10%)and it/they is/are prepared to bring down its/their price to L1 in a situation where the L-1 price is from someone other than an Indian company and will undertake the work by entering into a contract with the Employer exactly similar to the contract which would have been entered into with the lowest bidder, i.e. the contract shall be on a commercial format.
- (iii) Where there are more than one Indian company owning Indian flag dredger whose bids are within 10% of the lowest offer from a foreign company, then the First Right of Refusal will be given to the lowest among such Indian company and on its failure to match the lowest bidder, the next Indian company will be given the offer and so on.
- (iv) Indian company means a company registered under the Companies Act 1956 or the Companies Act 2013 and engaged in dredging work and having dredgers under Indian flag; or vessels registered as Indian controlled tonnage ships in accordance with DGS Order No. 10 of 2014; or Indian company having either Indian flag vessel(s) or having proposed in the bid for converting foreign flag vessels to Indian flag vessel(s) before commencing the work. In case Indian company proposes to convert foreign flag vessel to Indian flag vessel before commencement of work, such offers shall be considered only against an undertaking furnished by such bidder that the dredger shall be converted to Indian flag vessel prior to the commencement of the contract and the same has to be submitted along with the bid.
- (v) An Indian company which is pre-qualified by relying on the credentials of a foreign company will not be eligible for claiming the first right of refusal.
- (vi) In case the contract is awarded to an Indian company through the process of exercising the first right of refusal as detailed under (i) above and the work is executed by such bidder by deploying foreign flag vessel, penalty shall be imposed @ Rs.1,00,000/- (Rupees one lakh only) per day per dredger for the period of deployment of foreign flag vessel for the work.
- (vii) The sub-clauses (i) to (vi) above are made as per various guidelines issued by the Ministry of Shipping (Directorate General of Shipping and also Ports Wing) regarding chartering of foreign flag vessels. Any further guidelines issued by the Ministry till the issue of LOA shall also be applicable for this contract.
- (viii) If an Indian flag vessel is not available, then “Indian controlled ships” shall be accorded higher priority in the Right of First Refusal than Non-Indian Flag Vessels.”

- 5) In Clause 2.36 ‘Settlement of Disputes & Arbitration’ under SCC at Page 126 of the bid document,
- a) The second sentence in sub Clause 2.36.3 at Page 126 is modified and replaced as “**The Chairman shall hear the Contractor and dispose off the appeal within 30 Days of receipt of the appeal**”.
  - b) Sub clause No. 2.36.4 in Page 126 is deleted.

- c) The second sentence in sub clause 2.36.5 at Page 126, is modified and replaced as “**If the dispute is not settled amicably the same shall be settled by arbitration as detailed under clause 2.36.7 and 2.36.8 below**”.
- d) Sub clause 2.36.7, (iv) **Procedure**, item (c) at Page 127, in the second line, the word ‘place’ is replaced with the word “**Claim**”.
- e) Sub clause 2.36.7, (iv) **Procedure**, item (e) at Page 127 is **deleted**.
- f) A new sub Clause No.2.36.9 as below is added;

**“2.36.9 Settlement of Disputes through Conciliation**

In the event of any dispute or differences between the Parties which could not be resolved amicably by mutual consultations / Arbitration, then the Chairman of Cochin Port Trust may refer such unresolved disputes or differences to a Conciliation Committee / Council comprising of independent subject experts, set up by the Port Trust to enable speedy disposal of pending / new cases. Recourse to such Conciliation shall be open before during or after the arbitration proceedings. The award of the Conciliation Committee / Council, if agreed by both the Parties, shall then be placed for consideration of the Board of Trustees of Cochin Port subject to the Delegation of Powers.”

- 6) A new Clause No. 14 ‘Conflict of Interest’ under Instruction to Bidders of the Bid Document is added at Page 32, as below;

**14. Conflict of Interest**

- 14.1 The Contractor shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.
- 14.2 Contractor and Affiliates not to be otherwise interested in the Project.

The Contractor agrees that, during the term of this Agreement and after its termination, the Contractor or any Associate thereof and any entity affiliated with the Contractor, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this Assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Contractor shall include a partner in the Contractor’s firm or a person who holds more than 5% (five percent) of the subscribed and paid up share capital of the Contractor, as the case may be, and any Associate thereof.

- 14.3 Prohibition of conflicting activities

Neither the Contractor nor any Associate thereof/any entity affiliated with the Contractor nor their Personnel shall engage, either directly or indirectly, in any of the following activities:

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- (i) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- (ii) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (iii) at any time, such other activities as have been specified in the Bid as Conflict of Interest.

14.4 Guidance Note on Conflict of Interest is given below.

- 1) This Note further explains and illustrates the provisions of the Bid Document, if any, and shall be read together therewith, in dealing with specific cases.
- 2) Contractors should be deemed to be in a Conflict of Interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of Contractors should avoid both actual and perceived Conflict of Interest.
- 3) Conflict of Interest may arise between the Authority and a Contractor or between Contractors and present or future Concessionaries/ Contractors. Some of the situations that would involve Conflict of Interest are identified below:
  - a) Authority and Contractors
    - i) Potential Contractor should not be privy to information from the Authority which is not available to others; or
    - ii) Potential Contractor should not have defined the Project when earlier working for the Authority; or
    - iii) Potential Contractor should not have recently worked for the Authority overseeing the Project.
  - b) Contractors and Concessionaires/Contractors:
    - i) No Contractor should have an ownership interest or a continuing business interest or an on-going relationship with a potential Concessionaire/contractor save and except relationships restricted to project-specific and short-term assignments; or
    - ii) no Contractor should be involved in owning or operating entities resulting from the Project; or
    - iii) no Contractor should Bid for works arising from the Project.

The participation of companies that may be involved as investors or consumers and officials of the Authority who have current or recent connections to the companies involved, therefore, needs to be avoided.

- 4) The normal way to identify Conflicts of Interest is through self-declaration by Contractors. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the

Authority. All conflicts must be declared as and when the Contractors become aware of them.

- 5) Another approach towards avoiding a Conflict of Interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the Contractor’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding Conflicts of Interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a Contractor coupled with provision of safeguards to the satisfaction of the Authority.
  - 6) Another way to avoid Conflicts of Interest is through the appropriate grouping of tasks. For example, conflicts may arise if Contractors drawing up the terms of reference or the proposed Documentation are also eligible for the consequent assignment or project.
  - 7) Another form of Conflict of Interest called “scope–creep” arises when Contractors advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the Contractors. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for Contractors to extend the length of their assignment.
  - 8) Every Project contains potential Conflicts of Interest. Contractors should not only avoid any Conflict of Interest, they should report any present/potential Conflict of Interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any Conflicts of Interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any Conflict of Interest arising at any stage in the process.
- 7) A new Sub Clause No. 2.8.4 under ‘Clause 2.8 Disposal of Dredged Materials’ of Special Conditions of contract at Page 116 of the Bid Document is added, as below;

**2.8.4** In addition to the above specified dumping grounds, alternate short dumping grounds indicated in the drawing attached at ‘Figure No.3 may also be provided for disposing the dredged materials, during the course of the dredging work. The Lumpsum amount quoted for the work shall be for disposing the dredged materials in the specified dumping grounds as per clause

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2.8.1. However, in case, the dredged material are to be disposed in the alternate short dumping grounds, the lumpsum amount quoted for the work shall be reduced on mutually agreed terms and conditions..

- 8) In Sub Clause 2.1.2 under ‘ Clause 2.1 Scope of Work’ of Special Conditions of Contract at Page 111 of the Bid Document, second sentence is added as below;

In addition to the above areas, dredging shall have to be carried out for maintaining the required depths at the berth basins of (i) GoI jetty, which is adjacent to sector ECB 5 and (ii) MULT jetty, which is adjacent to LNG Terminal, if it is so required by the Dy. Conservator / Engineer, but limiting the minimum monthly production as 2.00 Million cum.

- 9) Sub Clause 10.14, Currencies of Payment under General Conditions of Contract in page 70 of the Bid Document, ‘Clause 2.35 (Indian Contract Act)’ may be read as “**Clause. 2.32** (Indian Contract Act)”.

- 10) Sub Clause 16.1, Contractor’s Claims under General Conditions of Contract, at the last sentence in the last para in Page 82 of the Bid Document, ‘Clause 2.39 (Settlement of Disputes & Arbitration)” may be read as “**Clause 2.36** (Settlement of Disputes & Arbitration)”.

Sd/-  
**CHIEF ENGINEER**

