

## **CORRIGENDUM No. 1 TO THE TENDER.**

Further to the discussions held at the NTCPWC, VI Floor Academic Complex, IIT-Madras on 23.01.2020, the following Amendment No. 1 is issued to the Tender Document for the above work.

Clause No	Original Text (Lines 4 & 5)	Amended Text (replaces Lines 4 & 5)
2.6 Performance Bank Guaranty-under Commercial Terms and Conditions of SECTION-II	Only after submission of Performance security, Work Order/ Purchase Order will be issued.	The Performance Security shall be submitted within two weeks of issue of the Work order. In case of delay in submission of the Performance Security, the Work order is liable to be cancelled and the EMD amount forfeited.

The following additional sub-clauses are introduced under **2.14- Special Conditions forming part of SECTION II -Commercial Terms and Conditions** of the Tender document.

### **2.14.2 JOINT VENTURE**

The Bids submitted by a Joint Venture (JV) shall comply with the following requirements:

- a) There shall be a Joint Venture Agreement between the constituent firms specific for the contract package for which the bids are submitted. The JV Agreement shall include among other things, the Joint Venture's objectives, the proposed management structures, the proposed distribution of responsibilities both financial as well as technical for execution of the work, the contribution of each partner to joint venture operation, the commitment of partners to the joint and several liability for due performance, recourse/ sanctions within the joint venture in the event of default or withdrawal of any partner and arrangements for
- b) providing the required indemnities.
- c) The most experienced partner will be the Lead Partner and nominated as the partner-in-charge; and his nomination shall be evidenced by submitting power of attorney signed by the legally authorised signatories of all the partners.
- d) The most experience partner (Lead Partner) of the joint venture will provide suitable experienced personnel for at least 3 (three) positions at site for the purpose of general planning, site management and operations, during the whole period of contract execution and a statement to this effect should be included in the Joint Venture Agreement.
- e) The bid, and in the case of the successful bidder, the Form of Agreement, shall be signed and / or executed in such a manner as may be required for making it legally binding on all partners (including operative parts of the ensuing Contract in respect of
- f) Agreement of Arbitration, etc.).
- g) The partner-in-charge shall be authorised to incur liabilities and to receive instructions for and on behalf of the partners of the Joint and entire execution of the Contract including payment shall be carried out exclusively through the partner-in-charge. A Statement to this effect should be included in the Joint Venture Agreement.
- h) All partners of the Joint Venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a Statement to this effect should be included in the Joint Venture Agreement.

- i) Bid Security as required can be furnished by any partner but it shall be in the name of Joint venture.
- j) Performance Guarantee, as required, will be furnished by all partner(s) , out of their accounts, in proportion of their participation in joint venture.
- k) Joint Venture Agreement shall contain a clause to the effect that there shall be a separate JV Bank Account (distinct from the Bank Account of the individual partners) to which the individual partners shall contribute their share capital and/or working capital.
- l) Joint Venture Agreement shall also contain a clause to the effect that the financial obligation of the JV shall be discharged through the said JV Bank Account only and also all payment received by JV from the Employer shall be through that account only.
- m) In the event of default by most experienced partner (Lead Partner), it shall be construed as default of the contractor; and Employer will take action under default clause.
- n) In the event of any partner leaving the JV, it shall be intimated to the Employer within 30 days by other partner(s). Failure to do so shall be construed as default of the contractor and the Employer may take action under default clause.
- o) In case Joint Venture Agreement is not acceptable to The Employer, the Joint Venture will modify the Agreement so as to be acceptable to the Employer.
- p) The bid submitted shall also include all information as required under the provisions of JV clause and furnished separately for each partner.

### **2.14.3 JOINT VENTURE / ASSOCIATE & SUBSIDIARY COMPANY**

#### **2.14.3.1 Associate & Subsidiary company**

Relevant experience and credentials of parent company is allowed for qualification of the tender participation by a associate/subsidiary company.

Note: For purposes of this Bid, Associate/ Subsidiary means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the “Subsidiary”/ “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law. However, all the financial documents should reflect the financial situation of the Bidder and not sister or parent companies.

#### **2.14.3.2 Joint Venture**

Companies / Contractors may jointly participate in Bid process subject to fulfilling the conditions as stipulated below. The Bidder’s specific attention is required to the following conditions for fulfilling the obligation of Joint Venture during Bidding and operation of contract. The Bidder shall submit the JV agreement duly fulfilling the conditions stipulated hereunder.

If a contractor is a joint venture, consortium or other unincorporated group limited to three (including the lead partner) then such joint venture, consortium or other unincorporated group shall be treated as a separate entity distinct from its constituents and competent to enter into contract in its own name and its constituents shall be jointly and severally liable to the Employer for the performance of the Contract and shall comply with the following requirements:

- a) There shall be a Joint Venture Agreement between the constituent firms specific for the contract packages. The JV Agreement shall include among other things, the joint venture’s objectives, the proposed management structure, the proposed distribution of responsibilities both financial as well as technical for execution of the work, the contribution of each partner to the joint venture operation, the commitment of the partners to joint and several liability for due performance, recourse/sanctions within the Joint

Venture in the event of default or withdrawal of any partner and arrangements for providing the required indemnities.

- b) The most experienced partner will be the Lead Partner and nominated as the partner-in-charge; and this authorization shall be evidenced by submitting a power of attorney signed by the legally authorized signatories of all the partners. The most experienced partner (lead partner) will be the one defined as such in the communication approving the prequalification.
- c) The most experienced partner (Lead Partner) of the joint venture will provide suitable experienced personnel for at least 3(three) positions at site for the purpose of general planning, site management and plant operations, during the whole period of contract execution and a statement to this effect should be included in the Joint Venture Agreement.
- d) The Form of Agreement shall be signed and/or executed in such a manner as may be required for making it legally binding on all partners (including operative parts of the ensuing Contract in respect of Arbitration Agreement etc.)
- e) The partner-in-charge shall be authorized to incur liabilities and to receive instructions for and on behalf of all partners of the Joint Venture and the entire execution of the contract including payment shall be carried out exclusively through the partner-in-charge. A statement to this effect should be included in the Joint Venture agreement.
- f) All partners of the Joint Venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a statement to this effect shall be included in the Joint Venture Agreement.
- g) Performance Security, as required, will be furnished by all partners(s), out of their accounts, in proportion to their participation in joint venture.
- h) Joint Venture Agreement shall contain a clause to the effect that there shall be separate JV Bank Account (distinct from the Bank Accounts of the individual partners) to which the individual partner shall contribute their share capital and/or working capital.
- i) Joint Venture Agreement shall also contain a clause to the effect that the financial obligations of the Joint Venture shall be discharged through the said JB Bank Account only and also all the payments received by the Joint Venture from the Employer shall be through that account alone.
- j) In the event of default by the most experienced partner (Lead Partner), it shall be construed as default of the Contractor; and Employer will take action under default clause.
- k) In the event of any other partner leaving the joint venture, it shall be intimated to the Employer within 30 days by the other partner(s). Failure to do so shall be construed as default of the contractor and the Employer may take action under default clause.
- l) In case the Joint Venture Agreement is not acceptable to the Employer, the joint venture will modify the agreement so as to be acceptable to the Employer.
- m) The contractor shall not alter its composition or legal status without the prior written permission of the Employer. Failure to do so shall be construed as default of the contractor and the Employer may take action under default clause.

**The following two new Annexures are introduced:**

- (i) Annexure 3 – Joint Venture Partner Information Form (Enclosed)
- (ii) Annexure 4 – Pro forma of Joint Venture Agreement (Enclosed)

**JOINT VENTURE PARTNER INFORMATION FORM**

(The Tenderer shall fill this form in accordance with the instructions indicated below)

(To be executed on bidder's letter head)

**TENDER FOR “Geo technical investigation in the alignment of outer channel at V.O. Chidambaranar Port Trust at Tuticorin”**

Ref: Tender No. OED/2019/20/NTCPWC/KMUR

Date of tender submission:

1. Tenderer legal name:
2. JV's Party legal name:
3. JV's legal Lead Partner:  
(Specify name and address)
4. JV's Party
  - Year of registration
  - Country of registration
  - Legal address in the country of registration
5. JV's Party authorized representative information
  - Name
  - Address
  - Telephone/Fax numbers
  - Email address
6. Attach copies of the following original documents
  - Articles of Incorporation or Registration of firm named in sl.no.2 above, in accordance with tender documents
  - In case of Govt. owned entity from India, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with tender documents
  - PAN number
  - Sales Tax/VAT registration number

- Service tax registration number
- Any other documents required for statutory compliance

Duly authorized to sign this authorization on behalf of (\_\_\_\_\_Name of Tenderer)

Dated \_\_\_\_\_

**Annexure 4**

**PRO-FORMA FOR JOINT VENTURE AGREEMENT (TO BE TYPED ON RS. ONE HUNDRED NON-JUDICIAL STAMP PAPER)**

SR.no.\_\_\_\_\_dated

1). The Joint Venture agreement made and entered into at \_\_\_\_\_ on (\_\_\_\_dated) by and between.

FIRM A & Address

FIRM B & Address

Signature of FIRM A

Signature of FIRM B

## 2) Definition:

In this deed the following words and expression shall have the meaning set out below.

The “Employer” shall mean NTCPWC- IIT Madras, Chennai-36.

“The works” shall mean Geotechnical investigations in the alignment of outer channel at V.O. Chidambaranar Port Trust, Tuticorin which is more particularly described in the post qualification bid document issued thereof by the employer.

“The Tender” shall means the Tender to be submitted by Joint Venture to the Employer for the work/works.

The contract shall mean the contract entered/to be entered into between the Joint Venture and the employer for the works.

## 3) Joint Venture (J.V)

The parties hereto declare that they have agreed to form a joint venture for the purpose of submitting the bid documents and if successful for the execution of the work as an integrated Joint Venture. The parties are not under this agreement entering into any permanent partnership of Joint Venture to tender (or) undertake any contract other than the subject work. Nothing herein contained shall be considered to constitute the parties of partners to constitute either party the agent of the other.

## 4) WITNESS:

Whereas NTCPWC, IIT MADRAS, Chennai-36, herein after referred to as NTCPWC Employer has invited tenders from intending bidders and has permitted a group of firms (not exceeding three) forming a Joint Venture to eligible to be a bidder, And where as M/S \_\_\_\_\_ party of the first part and

M/S. \_\_\_\_\_ party of the second part (if applicable) are desirous to enter into a Joint Venture in the nature of partnership engaged in the joint undertaking for the specific purpose of execution of the work of Geotechnical investigations in the alignment of outer channel at V.O. Chidambaranar Port Trust at TUTICORIN and whereas parties of the first and second part (if applicable) reached understanding to submit bid documents and to execute the contract if awarded.

This Agreement witness as follows,

- a) The parties don't enter into an agreement of any permanent partnership of joint venture to tender or undertake any contract other than the specified above;
- b) That the operation of this Joint Venture firm concerns and is confined to the work of Geotechnical investigations in the alignment of outer channel at V.O. Chidambaranar Port Trust, Tuticorin
- c) The name of the Joint Venture firm for convenience and continuity shall be Firm A – Firm B (JV)
- d) The Address of joint Venture for communication shall be as under.

- e) The Joint Venture shall jointly submit Bid Documents Bid on the above name according to all terms and conditions stated in the relevant instructions contained in the bid documents.
- f) This joint venture shall regulate the relations between the parties thereto and shall include without being limited to them the following conditions.
  - i. Firm A shall be the lead company in charge of the joint venture for all intents and purpose.
  - ii. In case they said work is awarded to the Joint Venture, the partners of the Joint Venture will nominate a person with duly notarized power of Attorney on stamp paper, who will represent the Joint Venture with the authority to incur liabilities, receive instructions and payments, sign and execute the contract for an on behalf of the Joint Venture.
  - iii. All the (Not exceeding three) parties agree to make financial participation and to place at disposal of Joint Venture the benefits of its individual experience, technical knowledge, skill and shall in all respect bear its share as regards planning and execution of the work and responsibilities including the provision of information, advice and other assistance required in the Joint Venture and participation shall be in proportion of,
    - i. Firm A % (Name of Firm A)
    - ii. Firm B % (Name of Firm B)
  - iv. All rights, interests, liabilities, obligations work experience and risks (and all net profits or net losses) arising out of the contract shall be borne by the parties in proportion to their shares. Each of the parties shall furnish its proportionate share in any bonds, guarantees, sureties required for the works as well as its proportionate share in connection with the works. The share and participation of the two/three partners in working capital and other financial requirements shall be in ratio as mentioned above.

#### 5. Internal responsibilities and Abilities:

- a) The division of individual scope of work may be worked out mutually by the parties but the party shall be jointly and severally liable to the employer for the whole work.
- b) The parties specifically undertake to carry out their separate works in full compliance with the contract with the employer. Each party shall be responsible jointly and severally for consequences if any arising out of defective or delayed execution of works which falls within the individual party's area of responsibility and/or it has been caused due to acts and/or omission of the concerned party.
- c) The parties jointly and severally agree to replace modify or repair any defect in their respective portions of works in accordance with the terms and conditions of the contract with the employer.
- d) The parties jointly and severally indemnify and hold harmless to each other against any claim made by the employer or any other third party for injury, damage, loss or expenses is attributed to the breach/ non-performance of his responsibilities by the indemnifying party in accordance with the agreements and/or contract with the employer.
- e) None of parties have joined in any other Joint Venture for the said works.



6. Responsibilities and liabilities of Joint Venture towards the employer:

- a) Parties hereto shall be jointly and severally liable and responsible to the acts, deeds and things done or omitted to be done in respect of the execution of the contract and for any financial liability arising there from.
- b) Parties hereto shall be jointly and severally responsible to the Employer for the execution of the works in accordance with the contract conditions;
- c) Parties hereto shall be jointly and severally indemnifying to the Employer against any claim made against the employer or any other third party for any injury, damage or loss which may be attributed to the breach of the obligations under the contract pursuant to the contract.

7. Site Management:

- a) The execution of the work on the site will be managed by a Project manager appointed by the Joint Venture and who will report to the Firm A- Firm B (Joint Venture) the project manager shall be authorized to represent the Joint Venture on site in respect of matters arising under the contract.
- b) The Firm A – Firm B (Joint Venture) shall be jointly and severally liable to the employer for the execution of the contract commitment in respect of the works in accordance with the contract conditions.

8. Termination of the Agreement:

This agreement shall be terminated in the following circumstances.

- a) The employer awards the contract for the work to the other Tenderer.
- b) The employer cancels the work to award the contractor.
- c) On completion of the defect liability period as stipulated in the contract agreement of the works and all the liabilities thereof are liquidated.

9. No partner has right to assign any benefits, obligation of liability under the agreement to any third party without prior written consent of the other partner as well as NTCPWC, IITM.

10. Financial matter:

- a) Bank Account in the name of the Joint Venture will be opened with any scheduled or nationalized Bank to be operated by an individual signatory as decided mutually by the joint Venture partners.
- b) All the partners shall be responsible to maintain or cause to maintain proper Books of Account in respect of the business of the Joint Venture firm as per the Indian Regulation Act and shall be closed at the end of the every financial year ending 31st March, Upon closure of the books of accounts balance sheet and profit, and loss account as to the state of affairs of the firm as at the end of the financial year and as to the profit and loss made or incurred by the firm for the year ended on that date, respectively shall be prepared and the same shall be subject to audit by a Chartered Accountant.

- c) None of the party shall be entitled to make any borrowing on behalf of the Joint Venture without express prior written consent of the other party.
- d) Bank guarantee for the application /execution of the work shall be provided jointly from a bank acceptable to the employer.

#### 11. Negotiation:

Any negotiation of agreement between the parties hereto and the employer subsequent to the submission of the tender and prior to award, shall take place only with consent of each of the parties who shall be represented at the such negotiation one or more representative(s) duly empowered to make such negotiation or agreement.

#### 12. Legal jurisdiction:

All questions relating to validity interpretation of this agreement shall be governed by the law of India and shall be subject to jurisdiction of light court at Chennai.

#### 13. Settlement of disputes:

Any dispute in interpretation of any condition mentioned herein shall be referred to an arbitrator/tribunal by mutual consent of the partners and such proceedings shall be governed by the Arbitration and Conciliation Act, 1996 as amended from time to time. The award of arbitrator shall be final and binding on the party hereto. Neither the obligation of each party here to the performance of contract nor the execution of work shall stop during the course of arbitration proceeding or as a result thereof.

#### 14. Insurance

- a) The Joint Venture through the parties individually shall take such insurance in connection with the work in accordance with the tender condition as acceptable to the employer.
- b) The cost of the insurance premium paid by the Joint Venture shall be borne and paid by the parties in proportion to the respective shares of work. Other insurance taken individually by the parties shall be fully borne by the respective parties.

15. No change shall be made in this agreement without prior written consent of the employer and tither party. However, if the employer directs the parties to make changes in the agreement so as to fulfil tender conditions the parties discuss with employer and mutually agreed such changes requited to be made in the agreement.

#### 16. Default and withdrawals from the Joint Venture

In case that either party fails to observe the provision stipulated in this agreement withdrawal from the Joint Venture, Loss and/or expenses incurred by other party due to

such default and/or withdrawals shall be fully compensated by the party who has defaulted.

17. All matter relating to or arising due to this agreement shall be treated as confidential and shall not be disclosed to any other party.

In witness whereof the parties have caused their duly authorized representatives to sign below,

Signed for and on behalf of Firm A

M/S.

Witness:

1. \_\_\_\_\_

2. \_\_\_\_\_

Signed for and on behalf of Firm B

M/S.