

**ADDENDUM**

**Tender for Engagement of Consultant for Preparation of Detail Project Report (DPR) for Construction of IWT Terminal at Sahibganj in Jharkhand (India) on River Ganga (National Waterway-1)**

In continuation to NIT issued on 05.01.2015 for aforesaid tender, the Pre-bid meeting was held on 15.01.2015 between the interested bidders and TEC Members. The following addendum is made considering the queries/request of participants for Joint Venture participation and may be referred as part of aforesaid tender.

2. Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:

- (i) The bid shall include all the information listed in Sub-Clause 5.1 & 5.2 above.
- (ii) The bid security and the bid shall be signed so as to be legally binding on all partners.
- (iii) A Joint Venture Agreement entered into by all partners shall be submitted with the bid. One of the partners shall be nominated as being lead partner. This authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners. The lead partner has to be an Indian Company.
- (iv) The Lead Partner shall be authorized (this authorization shall be evidenced by submitting a power of attorney, duly notarized, signed by the legally authorized signatories of all the partners and a copy of the said authorization shall be furnished in this Bid) to incur liabilities and receive instructions and furnish clarifications and participate in negotiations for and on behalf of any and all partners of the joint venture during the Bid process till finalization of bid in favour of any bidder or till a final decision is taken on the bids.
- (v) There shall be a Joint Venture Agreement 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. For the purpose of this clause, the most experienced lead partner will be the one defined. A copy of the Joint Venture agreement in accordance with requirements mentioned in submitted along with the bid. The proposal should contain the information required for each member of the Consortium;
- (vi) An undertaking signed by all partners stating that JV will, if selected for award of project, incorporate itself as a company under the companies Act 1956 prior to execution of Contract Agreement, is to be enclosed with the bid. The contract agreement shall be signed with the company so incorporated.

- (vii) By submitting the Bid, the Bidder shall be deemed to have acknowledged that it was short-listed on the basis of Technical Capacity and Financial Capacity of Joint Venture Members who will own at least 26% each of the equity of the Company to be incorporated in case the JV is selected for award of work. The Bidder further acknowledges and undertakes that each of such Joint Venture Members shall hold at least 26% of the equity of the Contractor until the completion of the Project is achieved under and in accordance with the provisions of the Contract. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Contract, and a breach thereof shall, notwithstanding anything to the contrary contained in the Contract, be deemed to be a breach of the Contract and dealt with as such there under and;
- (viii) By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Joint Venture Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under the Bid process, the Bidder shall inform the Director(P&C) forthwith along with all relevant particulars about the same and the Director(P&C) may, in his sole discretion, disqualify the Bidder or withdraw the Letter of Acceptance from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Agreement, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach thereof, and the Agreement shall be liable to be terminated at the sole discretion of the Employer without the Employer being liable in any manner whatsoever to the Contractor. In such an event, notwithstanding anything to the contrary contained in the Agreement, the Director (P&C) or Employer shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Employer for, inter alia, time, cost and effort of the Employer, without prejudice to any other right or remedy that may be available hereunder or otherwise.
- (ix) The bid, and in the case of the successful bidder, the Form of Agreement, etc., 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 Agreement of Arbitration, etc.). On award of work, the Form of Agreement and Contract Documents shall be signed by all partners of the Joint Venture to conclude Contract Agreement.

- (x) 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 relevant statement to this effect shall be included in the authorization mentioned under sub clause (iv) above as well as in the Form of Bid and the Form of Agreement (in case of a successful bidder).
- (xi) 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 partner-in-charge, or in the case of the partner-in-charge being the defaulter, by the partner nominated as partner-in-charge of the remaining Joint Venture. 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.

### **3. Change in composition of the J.V:**

- (a) Change in composition of the J.V may be permitted by the Director (P&C) during the bid stage, only where:
  - (i) The Lead Member continues to be the Lead Member of the J.V.
  - (ii) The substitute is at least equal, in terms of Technical Capacity and Financial Capacity, to the J.V Member who is sought to be submitted and the modified J.V shall continue to meet the pre-qualification and short-listing criteria for Applicants; and
  - (iii) The new Member(s) expressly adopt(s) the Application already made on behalf of the J.V as if it were a party to it originally, and is not an applicant/Member of any other J.V bidding for this Project.
- (b) Approval for change in the composition of a J.V shall be at the sole discretion of the Director (P&C) and must be approved by him in writing.
- (c) The modified/reconstituted J.V shall be required to submit a revised Jt. Bidding Agreement at least five working days before the Financial Bid opening Due Date.