

Request for Proposal for Providing Independent Engineer's Services at Karaikal Port for Three Years

Proposals are invited by Karaikal Ports Private Limited, Karaikal ("KPPL") from the reputed experienced bidders as two bids system, meeting the following Minimum Eligibility Criteria for the work of **"Providing Independent Engineer's Services at Karaikal Port for Three Years"**.

Bidders meeting the respective minimum eligibility criteria may submit their offer in two bid system as detailed in **Terms of Reference** (ToR).

Terms of Reference

1. OBJECTIVES

The Independent Engineer shall, during the Concession Period, inspect the Project Site at regular intervals to determine the progress of Development Works and operations and maintenance of the Facility and the extent of the compliance with the Technical Requirements and the Performance Standards stipulated in the Concession Agreement (CA) and Supplementary Concession Agreement (SCA).

The Independent Engineer shall be required to:

- i. Act independently to review and monitor all proposals / port related activities associated with design, construction, operation and maintenance to ensure compliance with provisions of the CA and SCA.
- ii. Monitor, inspect, and report to GoP on various aspects of the project and carry out all such activities as are provided in the CA and SCA. Without prejudice to this, the scope of services of the Independent Engineer shall be as specified in para 2 to 3.
- iii. Determine, as per the provisions of the CA and SCA, the costs of any proposals, works and services and/or their reasonableness.
- iv. Determine as per the provisions of the Concession Agreement, the period or any extension thereof for performing any duty and obligation.

The Independent Engineer shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations other than those expressly provided in the CA and SCA without obtaining prior approval of Govt. of Puducherry.

2. ROLE AND FUNCTIONS OF THE INDEPENDENT ENGINEER

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the Project. The role and functions of the Independent Engineer shall include the following:

- i. Review of the Designs and Drawings.
- ii. Review, inspection and monitoring of Construction / Mechanization / Port related works.
- iii. Conducting Tests on completion of Construction / Mechanization / Port related works and issuing Completion / Provisional Certificate.

- iv. Determining, as required under the Agreement, the costs of any works or services and/or their reasonableness and to maintain record on cost of assets created.
- v. Determining, as required under the Agreement, the period or any extension thereof, for performing any duty and obligation.
- vi. Assisting the Parties in resolution of disputes as regards the Designs & Drawings.
- vii. Determine and recommend changes to the Project Completion Schedule, Scheduled Project Completion Date and the Concession Period in accordance with the CA and SCA.
- viii. Providing advises to the Government / Port Department on various technical issues referred by the Government / Port Department from time to time in connection with the development of the Port by Karaikal Port Private Limited (KPPL).
- ix. Review the safety measures provided by the Concessionaire.
- x. Review and approve the future expansion plans and Reports in accordance with CA and SCA.
- xi. Review and approve the Maintenance Manual prepared by the Concessionaire.
- xii. Any other task as envisaged in the Concession Agreement and/or as may be requested by GOP and/or the Concessionaire from time to time.

3. SCOPE OF SERVICES

- a) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards, cost and Safety Standards.
- b) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessions Authority, if any while furnishing the comments.
- c) The Independent Engineer shall review the monthly progress reports as regards the construction / mechanisation / port related works.
- d) The Independent Engineer shall inspect the construction / mechanisation / port related works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the

materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction / mechanisation / port related works.

- e) The Independent Engineer may inspect the construction / mechanisation / port related works more than once in a month if any lapses, defects or deficiencies require such inspections.
- f) For determining that the construction / mechanisation / port related works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- g) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- h) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the construction / mechanisation / port related works into conformity with the prescribed Standards.
- i) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the construction / mechanisation / port related works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of works and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioneing Authority and the Concessionaire forthwith.
- j) If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on construction / mechanisation / port related works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioneing Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- k) Upon remedial measures being taken by the Concessionaire for securing the safety of

suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessions Authority.

- l) If suspension of construction / mechanisation / port related works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.
- m) The Independent Engineer shall carry out, or cause to be carried out, all the Tests required and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

4. MEETING, RECORDS AND REPORTING REQUIREMENTS

- a) The Independent Engineer would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held during the period as also to participate in emergency or extra ordinary meetings of the parties held to deal with any emergency, Force Majeure even or other exigencies.
- b) The Independent Engineer shall, in ordinary course, maintain record of activities undertaken by him in discharge of his functions and responsibilities.
- c) The Independent Engineer shall prepare and submit monthly reports to the GOP three (3) copies and to the Concessionaire two (2) copies for each of the reports generated as mentioned above and also as envisaged in the Concession Agreement such as Completion reports, Inspection reports, Review reports etc.

5. PERIOD OF SERVICES

The period of services shall be 3 years from the date of appointment which can be extended further for tenure of 3 years on mutual agreement between the parties (GOP, KPPL and Independent Engineer).

6. General

I. Insurance

- a. Without limiting the contractual obligations and responsibilities under the contract, the Service Provider shall take the Employee Compensation Policy and Personal/Group Accidental Insurance and such other insurance as required as per statute for all their employee/staff deployed at KPPL port site and KPPL Corporate office at Chennai. Copy of the same shall be submitted to KPPL prior to submission of its first invoice under the contract.
- b. The Service Provider shall keep KPPL indemnified from any liabilities on account of

injury/loss/damage to its personnel/property.

- c. In the event of loss or damage for the reasons not attributable to KPPL, the Service Provider shall be solely responsible to lodge the claims and settle the same. The Service Provider shall proceed with repair or replacement of the goods without waiting for settlement of the claim. It is further clarified that no extra claim shall be admissible on account of insurance.
- d. It shall be the responsibility of the Service Provider to ensure that payments of insurance premium are made regularly and to keep the policies valid during the period of contract. However, the Service Provider will continue to be bound by the provisions of the Employee's Compensation Act and/or other statutes relating to this, as may be applicable from time to time and the above insurance shall in no manner whatsoever dilute his statutory responsibilities/obligations under the contract.

II. Minimum Qualification Criteria

The bidder shall have minimum experience of 5 (five) years in similar nature of work.

III. General Terms & Conditions

1. The bidder shall quote "**Price Schedule**" in Indian Rupees only in a separate sealed cover.
2. The Service Provider shall be paid within 30 days from the date of submission of invoice along with necessary supporting documents duly certified by KPPL's engineer in-charge.
3. TDS will be deducted at source as per statutes and the certificate for the same will be issued to the Service Provider by KPPL.
4. It is understood that the Service Provider has duly inspected the Site and its surroundings and have satisfied himself as to all technical, commercial, and general condition affecting the Site and the works including the nature of the ground and sub-soil, the extent and nature of the work, the means of communication, and in general all risks and contingencies influencing or affecting the Scope of Work. The Service Provider shall not be entitled to any adjustment of the Contract Price on grounds of misinterpretation, lack of knowledge or misunderstanding under this clause.

5. Taxes & Duties

The Service Provider shall be liable to pay all taxes, duties, levies, etc. except GST, which shall be paid extra at actuals against submission of GST based tax invoices. Statutory variation in Taxes & Duties, change in interpretation/application of any existing Taxes & Duties and/or imposition of any new tax/duty/levy in India except Income Tax after the date of the Contract shall be to the KPPL's account, provided however, such variations are in respect of direct transactions between the KPPL and the Service Provider and not in respect of any sub-contractor of the Service Provider

6. Accommodation

The Service Provider shall make its own arrangements for accommodation of its engineers /personnel deployed at site at his own cost.

7. Local Conveyance

The Service Provider shall make its own arrangements for local conveyance of its engineers/ personnel deployed at site at his own cost.

8. The bidder shall clearly mention the time required to to take over the job/to commence the work.

9. The Service Provider shall obtain the relevant permits, licenses or approval as applicable as per statute.

10. The Service Provider shall be solely responsible and liable for payment of all and any costs and liabilities associated with its employment of its employee who are deployed for rendering services, including but not limited to salary, income tax, ESI, Provident Fund (PF) contributions, insurance, workmen's compensation, traffic and other infringement (**Employee Cost**). The Service Provider shall ensure strict compliance with the requirement of Contract Labour (Regulation and Abolition) Act, will submit detail of all compliances and all forms to KPPL to enable KPPL to check such compliances as and when deemed necessary.

11. The successful bidder (Service Provider) shall not be entitled to assign the Contract or any benefit or interest therein either in part or full.

12. Safety and Security

The Service Provider shall ensure that all safety and security arrangements required during the entire contract period, which shall be entirely the responsibility of the Service Provider, including costs and expenses thereof. Any loss of life or property on account of fire, accident, negligence or breach during the execution of the Works shall be compensated and settled by the Service Provider. The Service Provider at its cost and responsibility shall ensure that all safety measures and security arrangements required during the tenure of the Contract period are strictly adhered to. Further, the Service Provider shall at its cost and responsibility, protect, safeguard and arrange for watch and ward of its equipment, stores, spares, etc. at the site/s and KPPL shall not be liable for the same. The Service Provider shall indemnify and keep indemnified KPPL from any claim, loss or damages occasioned on this account.

The Service Provider shall provide safety equipment such as hard hat, safety boots, fluorescent vest, etc. to its labourers and employees deployed at site for the works.

13. Indemnity

The successful bidder (Service Provider) shall undertake and agree to indemnify and hold KPPL and all of its employees, personnel, executives, representatives staff, men, agents and contractor

(other contactors of KPPL) indemnified and harmless from and against all actions, losses, claims, demands, damages and expenses in respect of :

- (a) Death or injury to any person or
- (b) Loss of or damage to any property
- (c) All liability for its employee cost

Which may be arises due to any act of commission or omission or negligence by the Service Provider or its men, agents etc. while executing the work during the entire contract period.

14. Suspension

During the contract period, KPPL may suspend the work in whole or in part at any time by giving notice in writing to such effect stating the nature, the date and the anticipated duration of such suspension. On receiving the notice of suspension, the Service Provider shall stop all such work which KPPL has directed to be suspended with immediate effect. The Service Provider shall continue to perform other work in terms of the Contract which KPPL has not suspended. The Service Provider shall resume the suspended work as expeditiously as possible after receipt of such withdrawal of suspension notice.

15. Force Majeure

- i. Upon award of Contract, if either party is prevented from the performance of its obligations in whole or in part for reasons of Force Majeure, viz. acts of God, acts of Government, acts of Public enemy, war, insurrection, embargo, blockade, explosion, earthquake, floods, epidemics, then provided Notice of happening of any such eventuality is given by the affected party to the other party within 7 days from the date of occurrence and cessation of Force Majeure, the period of Force Majeure shall be excluded accordingly. Provided however, such events materially and adversely affect the affected Parties performance of its obligations pursuant to the terms of the Contract. Neither of the Parties to the Contract shall claim compensation for the loss thus incurred.
- ii. If Force Majeure event continue beyond the period of 3 (three) months the parties shall hold consultation to chalk out the further course of action, either party reserving the right to terminate the Contract.
- iii. Neither Party can claim any compensation from the other Party on account of Force Majeure Event.

16. Termination

- i. KPPL reserves the right to terminate the Contract at any time by issuing 30 (thirty) days written notice to the Service Provider for any reason whatsoever. If the Service Provider fails to perform any Services or obligation in accordance with the Contract or if the Service Provider defaults in adhering to the terms hereof or if the Service Provider rescinds/abandons the Services or acts in derogation to the interests of KPPL, KPPL shall

be entitled to terminate this Contract forthwith. In such circumstances, KPPL shall have the right to complete the Services either by itself or by appointing any other surveyors and such expenses, loss, damages etc., incurred in this regard, shall be duly reimbursed by the Service Provider or shall be adjusted against payments due to the Service Provider. However, the Service Provider shall be entitled to terminate this Contract by issuing 60 (sixty) days advance written notice, for any reason, whatsoever.

- ii. Upon termination by notice, the Service Provider shall complete all its Services in a proper manner before expiry of the notice period. Further, upon termination of the Contract, the Service Provider shall handover all reports, documents, data, etc., available in its custody, to KPPL and remove all its equipment, accessories, laboratory, etc. from the Karaikal Port

17. Arbitration

- (i) During the contract period, in the event that any dispute arises between the Parties in connection with the Contract, the construction of any provision of the Contract or the rights, duties or liabilities of the Parties hereto under the Agreement, the Parties shall conduct negotiations in good faith to solve such dispute. If mutual resolution cannot be reached within sixty (60) days after the commencement of such negotiations, either of the Parties shall be free to refer such dispute to arbitration under the Arbitration and Conciliation Act, 1996 with all modifications and re-enactments thereto, as is prevalent in India. One arbitrator shall be appointed by each Party and the third presiding arbitrator shall be appointed by the arbitrators so appointed. The venue and seat of arbitration shall be Chennai. The arbitration proceedings shall be conducted in English.
- (ii) Any award made in such arbitration will be final and binding on the Parties. During pendency of any arbitration proceedings, performance of the Works and all other obligations under the Contract or any other agreement(s) issued under the Contract by the Service Provider shall continue uninterrupted.

18. Governing Law and Jurisdiction

Upon award of the Contract, the Contract shall be governed by and construed in accordance with the laws of India. Subject to clause 17 (i), any or all disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the courts of Chennai.

19. To facilitate evaluation of bids, KPPL may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

20. Acknowledgement by Bidder

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

- i. Made a complete and careful examination of the RFP;
- ii. Received all relevant information requested from KPPL to the extent possible;
- iii. accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of KPPL relating to any of the matters referred to in Clause above;
- iv. Acknowledged that it does not have a Conflict of Interest;

- v. Agreed to be bound by the undertakings provided by it under and in terms hereof.
- 20.2 KPPL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by KPPL.
21. KPPL makes no commitments, express or implied, that this process will result in a business transaction with anyone.
22. This RFP does not constitute an offer by KPPL. The bidder's participation in this process may result in selecting the bidder for execution of the contract.
23. At any time prior to the last date of submission of bids, KPPL may, for any reason, whether at its own initiative or in response to clarifications requested by any bidder, modify the tender by issuance of Addenda/Amendment. All interested Bidder shall have to check the website www.karaikalport.com.
24. The Bidder shall not submit the bid on behalf of another interested party.
25. Conditional bid will not be accepted and same will be treated as non-responsive. KPPL reserves the right to reject such bids without assigning any reason thereof and without any financial implications to KPPL.
26. KPPL reserves the right to reject any bid not submitted on time and which does not contain the information/documents as set out in Tender conditions.
27. The issue of this RFP does not imply that the KPPL is bound to select a Bidder or to appoint the Selected Bidder for the work.
28. KPPL reserves the right to accept or reject any bid, and/or to annul the tendering process and/or reject all bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for KPPL action.
29. No commitment of any kind, contractual or otherwise shall exist unless and until a formal written contract has been executed by or on behalf of KPPL. Any notification of preferred Bidder status by KPPL shall not give rise to any enforceable rights by the Bidder.
30. The Contract shall be on a principal to principal basis. The relationship between KPPL and Service Provider is that of principal and independent Service Provider. Nothing in the Contract shall be taken as constituting Service Provider an employee or agent of KPPL. The Parties undertake that none of their respective employees and staff shall be construed in any manner, either expressly or by implication, as the employees or agents of the other Party and the other Party shall not be liable in any manner whatsoever for any claims, demands and the like made by them.

31. Along with the financial bid, the bidder shall submit the following documents:

- Details of past experience of bidder for past 5 years (certificates issued by the clients)
- Organization details
- Company's Audited Financial statements for last three financial years
- Income Tax returns filed for the last 3 financial years
- Any other relevant information which bidder may like to provide
- Copy of relevant PAN, GST registration No., ESI/PF, registration, etc.
- If Registered with MSME, copy of MSME certificate.

32. This RFP supersedes and replaces any previous documentation & communications and bidders should place no reliance on such communications.

33. Bid Validity Period

The Bid shall remain valid for a period not less than 60 days from the last date of submission of tender. KPPL reserves the right to reject any Bid, which does not meet this requirement.

34. The bid shall be submitted in two part as follows on or before the due date as mentioned in the portal :

- i. The Techno-commercial bid shall be submitted in a separate sealed cover duly marked as "**Techno-Commercial Bid**".
- ii. The Price Bid shall be submitted in a separate sealed cover duly marked as "**Price Bid**".
- iii. Both the sealed covers should be packed in a sealed cover duly addressed to :

General Manager – Commercial
Karaikal Port Pvt. Ltd.
New No. 145 (Old No. 81),
Royapettah High Road, Mylapore,
Chennai – 600004, Tamilnadu.