



VIZHINJAM INTERNATIONAL SEAPORT LIMITED

**DEVELOPMENT OF INTERNATIONAL DEEPWATER MULTI-PURPOSE PORT AT
VIZHINJAM, TRIVANDRUM,
KERALA**

Request For Proposal

18 February, 2011

GOVERNMENT OF KERALA

Letter of Invitation

Date: 18 February, 2011

To,

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.....

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Sub: Request for Proposals for the Vizhinjam Port Project (the "**RFP**")

Dear Sir,

Pursuant to your application in response to our Request for Qualification dated 25 November, 2010 for the abovementioned project (the "**RFQ**"), you were short listed as a Bidder.

You are now requested to participate in the Bid Stage and submit your Technical Proposal and Financial Proposal (the "**Bid**") for the aforesaid project in accordance with this RFP.

Please note that the Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,

(Signature, name and designation of the Signatory)

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GLOSSARY

The words and expressions beginning with capital letters and defined in this RFP shall, unless the context otherwise requires, have the meaning ascribed thereto herein.

Any capitalized terms that are used in this RFP and that have not been defined herein shall have the meanings ascribed to them in the Concession Agreement.

" Addendum " or " Addenda " " Applicant "	means addendum or addenda to this RFP. means an interested party (whether a single entity or Consortium) that has made an Application in accordance with the provisions of the RFQ.
" Application "	means an application submitted by an Applicant pursuant to the RFQ, to demonstrate that it meets the Qualification Criteria to Bid for the Project.
" Application Due Date "	means the last date specified in the RFQ for submission of Applications.
" Associate "	means, in relation to a Bidder or a Member of a Consortium, a Person who Controls, is Controlled by, or is under the common Control of such Bidder or Member of a Consortium.
" Authority "	means the Department of Ports, Government of Kerala.
" Bid Due Date "	means the last date specified in Clause 1.3 for submission of Bids or such later date as may be determined under Clause 2.23.
" Bid Security "	means a bid security that must be submitted in accordance with Clause 2.26.
" Bid Stage "	means the second stage of the Bidding Process that will commence with the issuance of this RFP to Bidders and that will end on the date that the LOA is issued to the Selected Bidder.
" Bidders "	means the Applicants that are pre-qualified in accordance with the RFQ and that are issued this RFP by the Authority. The term " Bidder " shall be construed accordingly.
" Bidding Documents "	means this RFP, the RFQ, the draft Concession Agreement, any Addenda or clarifications issued to the Bidders or Applicants in accordance with this RFP or the RFQ, as relevant, and other documents provided by the Authority pursuant to this RFP or the RFQ.

"Bidding Process"	means the two-stage bidding process being followed by the Authority for the award of the Project to the Selected Bidder, the terms of which are set out in the RFQ and this RFP.
"Bid"	means the Technical Proposal and the Financial Proposal submitted by a Bidder for the award of the Project pursuant to this RFP, and "Bids" shall mean all of the Bids submitted by the Bidders.
"BOT"	means Build Operate Transfer.
"BOOT"	means Build Own Operate Transfer.
"CI EPC Contract"	means the engineering, procurement and construction contract to be awarded by the Authority or VISL, for the construction of the Civil Infrastructure required for Phase I of the Project.
"CI EPC Contractor"	means the Person awarded or to be awarded the CI EPC Contract by the Authority or VISL.
"Civil Infrastructure"	means the breakwater, the dredging and reclamation of land, the shore protection, the navigation channel and approaches to the Port, the quay walls and the dredged depths alongside the berths, as further described in the Concession Agreement.
"Clause"	means a Clause of this RFP.
"Coercive Practice"	means any action of the Bidder or its agent that impairs or harms or threatens to impair or harm, directly or indirectly, any Person or property to influence any Person's participation or action in the Bidding Process.
"Concessionaire"	means the SPV to be incorporated by the Selected Bidder that will be appointed as the Concessionaire under the Concession Agreement for the purpose of implementing the Project.
"Concession Agreement"	means the concession agreement to be entered into between the Authority and the Concessionaire for the implementation of the Project, at the final draft of which <u>the Authority</u> has been provided in the Data Room by the Authority as part of the Bidding Documents on [] April, 2011.
"Conflict of Interest"	shall have the meaning ascribed to it in Clause 2.3.1.
"Conservator"	means the conservator appointed by the Authority in respect of the Port under the Indian Ports Act.

"Consortium"	means any combination of Persons that have formed or will form a consortium or association for the purpose of submitting a Bid and for implementing the Project if such consortium or association is declared as the Selected Bidder; provided that such consortium or association submits a JBA in accordance with this RFP.
"Construction Performance Bond "	means an irrevocable and unconditional bank guarantee that must be submitted by the Concessionaire in accordance with Clause 2.26.5, to secure the performance of the Concessionaire's obligations during the Construction Period.
"Control"	with respect to any Person means the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Person or the power to direct the management and policies of such Person by operation of law, contract or otherwise. The term "Controlled" shall be construed accordingly.
"Corrupt Practice"	means: (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the Bidding Process; or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any Person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project, except as permitted at Clause 2.3.2. For the avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority or VISL who is or has been associated in any manner, directly or indirectly, with the Bidding Process or LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date that such official resigns or retires from or otherwise ceases to be in the service of the Authority or VISL, shall be deemed to constitute an influence over the actions of a Person connected with the Bidding Process.
"Data Room"	means the password-protected virtual data room that has been open to Bidders and their advisors from 26 November, 2010 and that will remain open until the Bid Due Date.
"EPC"	means engineering, procurement and construction.
"Estimated Project Cost"	means the indicative capital cost of the Project, including pre-operating expenses and contingencies, that is set out in Clause

1.1.13.

"External Infrastructure"	includes road and rail connectivity, power and , water <u>and sewage</u> connections to the boundary of the Terminal, customs facilities if any required outside the terminal area, truck terminal and <u>container</u> rail-yard to be provided by the Authority for the development, implementation and operation of all phases of the Port, as further described in the Concession Agreement.
"Financial Capacity"	means the financial capacity and strength of an Applicant determined in accordance with the RFQ.
"Financial Proposal"	means the financial proposal to be submitted by a Bidder as a part of its Bid pursuant to this RFP.
"Fraudulent Practice"	means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts by the Bidder or its agent, in order to influence the Bidding Process.
"GoI"	means the Government of India.
"GoK"	means the Government of Kerala.
"Grant"	shall have the meaning ascribed to it in Clause 1.2.7 (b).
"Handover Date"	means the date on which the Civil Infrastructure is completed and certain conditions specified in the Concession Agreement are satisfied.
"IFC"	means the International Finance Corporation.
"Indian Ports Act"	means the Indian Ports Act, 1908, as amended from time to time.
"INR" or "₹"	means Indian Rupees, the lawful currency of the Republic of India.
"JBA"	means a binding joint bidding agreement to be entered into by the Members of a Consortium that submits a Bid pursuant to this RFP, in the format set out at Appendix-III .
"Lead Member"	in the context of a Consortium, means the Member nominated by the Members of such Consortium as the lead member with the rights and obligations set out in the RFQ and this RFP.
"Lease Agreement"	means the agreement to be entered into between the Authority and the Concessionaire for the lease of the land <u>Leased Area</u> at the site of the Project <u>Site</u> (as such area will be demarcated therein), the

form of which is included as a schedule to the Concession Agreement.

"LOA" means a letter of award that will be issued by the Authority to the Selected Bidder in accordance with Clause 2.31.5.

"Marine Infrastructure" means the infrastructure required at the Port for maintaining nautical and navigational safety and for the provision of Marine Services, ~~including navigation aids, lighthouses, and vessel traffic management systems, as and when needed and~~ as further described in the Concession Agreement, but not including the Port Crafts.

"Marine Services" means the services of pilotage, towage, lighterage, anchorage, berthing and unberthing, mooring and unmooring and other similar services provided for Users' vessels to be safely brought into and moved out of the Port, as further described in the Concession Agreement.

"Member" means a member of a Consortium.

"MT" means metric tonnes.

"O&M Agreement" means the operations and maintenance agreement to be entered into, with the prior written approval of the Authority, by the SPV incorporated by the Selected Bidder with a Person having the Threshold O&M Experience, for a minimum period of 5 (five) years from the Commercial Operation Date.

"Person" means any corporation, company, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture or other legally recognized entity of whatever nature.

"Phase 1" means the first phase of development of the Port as more particularly described in the Port Concept Plan, which will include the development of:

- (a) the Civil Infrastructure meeting the specifications stated at Clause 1.1.3;
- (b) the Superstructure, such that the Terminal will have the capacity specified at Clause 1.1.10; and
- (c) the Marine Infrastructure,

as further described in the Concession Agreement.

"Port" means the green-field port to be developed at Vizhinjam in the Thiruvananthapuram District, Kerala that currently has the following notified port limits:

NORTH: A straight line running West-East through positions LAT 8⁰ 24' N and LONG 76⁰ 57.5' E to a position LAT 8⁰ 24' N and LONG 77⁰ 03' E.

SOUTH: A straight line running West-East through positions LAT 8⁰ 20' N and LONG 76⁰ 57.5' E to a position LAT 8⁰ 20' N and LONG 77⁰ 03' E.

WEST: A straight line running North-South through positions LAT 8⁰ 24' N and LONG 76⁰ 57.5' E to a position LAT 8⁰ 20' N and LONG 76⁰ 57.5' E.

EAST: A straight line running North-South through positions LAT 8⁰ 24' N and LONG 77⁰ 03' E to a position LAT 8⁰ 20' N and LONG 77⁰ 03' E.

"Port Crafts" means the port crafts such as tugs, launches and barges that are required for maintaining nautical and navigational safety within the limits of the Port, as further described in the Concession Agreement.

"Port Master Plan" shall mean the detailed master plan for the development of the Port in Phases that will be prepared by the Authority or its advisors in accordance with Concession Agreement.

"PPP" means public-private partnership.

"Preferred Bidder" means, subject to Clause 2.3.11, the Bidder: (i) whose Technical Proposal has been accepted in accordance with this RFP; and (ii) who offers the highest Premium to the Authority, and where no Bidder offers a Premium, who seeks the lowest Grant, for award of the Project.

"Premium" shall have the meaning ascribed to it in Clause 1.2.7 (a).

"Project" means the right to:

(a) ~~the design, engineering, financing, construction of~~ the design, finance, build, equip, own, operate and maintain the Superstructure required for Phase 1;

~~(b) the operations, maintenance and management of the~~

~~Terminal;~~

~~(b) (e) the procurement, installation and commissioning of design, finance, equip, operate, own and maintain~~ the Port Crafts required for the Port;

(c) operate, maintain and manage the Terminal;

(d) ~~the provision of~~provide Services to the Users of the Terminal; and

(e) ~~the provision of~~provide Marine Services to terminal operators and users of the Port (including the Users of the ~~Port~~Terminal) on behalf of the Authority,

in accordance with the terms of the Concession Agreement,
~~for the development and implementation of Phase 1 of the Port on a BOT basis.~~

"Project Development Fee" shall have the meaning ascribed to it in Clause 2.31.6.

"Prospective Bidder ~~Tenderer~~ **EPC**" shall have the meaning ascribed to it in Clause 1.1.5.

"Qualification Criteria" means the criteria set out in the RFQ₂ that an Applicant is required to satisfy to be pre-qualified as an eligible Bidder.

"Qualification Stage" means the first stage of the Bidding Process, that commenced with the issuance of the RFQ to Applicants and ended on the date that the Applicants who are pre-qualified were notified that they have been pre-qualified to be issued the RFP.

"Restrictive Practice" means any action of a Bidder or its agent that results in the formation of a cartel or any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

"RFP" means this Request for Proposal.

"RFQ" means the Request for Qualification dated 25 November, 2010 issued by the Authority inviting interested Persons to submit applications pursuant to such Request for Qualification and demonstrate that they meet the Qualification Criteria to submit a Bid for the Project, ~~as amended from time to time.~~

"Scheduled Bank" means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.

"Selected Bidder"	means the Bidder, that: (a) is declared as the Preferred Bidder; and (b) continues to be qualified in accordance with the Qualification Criteria.
"Services"	means cargo handling services and all other services, other than Marine Services, required to be provided by the Concessionaire to Users, as further described in the Concession Agreement.
"SPV"	means a special purpose vehicle to be incorporated by the Selected Bidder under the Indian Companies Act, 1956.
"Superstructure"	means all the infrastructure, assets and equipment required for the operations and maintenance of the Terminal, other than the Civil Infrastructure, the Marine Infrastructure, the External Infrastructure, the Port Crafts and includes <u>including</u> : the yard, back-up area, port buildings, storage infrastructure, cargo handling equipment, IT and communication systems, roads and railway networks, utility distribution systems, waste and sewage management facilities and fire fighting systems within the Terminal, as further described in the Concession Agreement, but excluding the Civil Infrastructure, the Marine Infrastructure, the External Infrastructure and the Port Crafts.
<u>" Term"</u>	<u>shall mean the period commencing on the Handover Date and expiring thirty (30) years thereafter, as such period may be extended in accordance with the Concession Agreement.</u>
"Terminal"	means the area adjacent to the quay wall of length 650 m, and a width of 400 m from the line of the quay wall and all of the Superstructure built or installed on or at such area, that will be situated within the Port, as further described in the Concession Agreement.
"Technical Capacity"	means the technical capacity and experience of an Applicant determined in accordance with the RFQ.
"Technical Proposal"	means the technical proposal to be submitted by a Bidder as a part of its Bid pursuant to this RFP.
"TEU"	means twenty foot equivalent unit.
"Threshold O&M Experience"	means experience in operating and maintaining port terminals for a continuous period of 3 (three) full financial years within the 5 (five) financial years preceding the Application Due Date (as such term is defined in the RFQ); provided that, the Person claiming such

operational experience meets at a minimum each of the following criteria in the latest financial year for which it is claiming experience:

- (a) the Person should have handled an aggregate annual throughput that is at least: 1.5 million TEUs; or a combination of 900,000 TEUs and 300,000 MT of multi-purpose cargo; and
- (b) the Person should have handled an annual throughput at a single terminal that is at least: 500,000 TEUs; or 300,000 TEUs and 100,000 MT of multi-purpose cargo.

"Undesirable Practice" means any action of a Bidder or its agent that results in: (a) establishing contact with any Person connected with or employed or engaged by the Authority with the objective of canvassing, or in any manner influencing or attempting to influence the Bidding Process; or (b) a Conflict of Interest.

"Users" means ~~the shipping lines, logistics providers and other users of~~any Person using the Terminal ~~or any part thereof.~~

"VISL" means Vizhinjam International Seaport Limited, a company incorporated under the Indian Companies Act, 1956 whose share capital is majority owned by the Government of Kerala and whose registered office is at 3rd Floor, Trans Towers, Vazhuthacaud, Thiruvananthapuram – 695 014, Kerala, India.

DISCLAIMER

The information contained in this RFP, the other Bidding Documents, the Data Room or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to each Bidder on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP, the other Bidding Documents and the Data Room have been or will be prepared with the assistance of the IFC as the lead transaction advisor on the Project.

This RFP is not an agreement, an offer or invitation by the Authority to the Bidders or any other Person. The purpose of this RFP, the other Bidding Documents and the Data Room is solely to provide the Bidders with information that may be useful to them in the preparation and submission of their Bids. This RFP, the other Bidding Documents and the Data Room include statements, which reflect various assumptions and assessments arrived at by the Authority, the IFC and their employees or advisors in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP, the other Bidding Documents and the Data Room may not be appropriate for all Persons, and it is not possible for the Authority, the IFC and their employees or advisors to consider the investment objectives, financial situation and particular needs of each Person who reads or uses this RFP, the other Bidding Documents or the Data Room. The assumptions, assessments, statements and information contained in this RFP, the other Bidding Documents and the Data Room may not be complete, accurate, adequate or correct. Each Bidder should therefore conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP, the other Bidding Documents and the Data Room and obtain independent advice from appropriate sources.

Information provided in this RFP, the other Bidding Documents and the Data Room to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of applicable law. The information given is not intended to be an exhaustive account of legal requirements and should not be regarded as a complete or authoritative statement of law. The Authority, the IFC and their employees and advisors accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, the IFC and their employees and advisors make no representation or warranty, express or implied, and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations, pursuant to principles of contract, tort, restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP, the other Bidding Documents or in the Data Room or for any other written or oral communication transmitted to the Bidder in the course of the Bidder's evaluation of the Project, including the accuracy, adequacy, correctness, completeness or reliability of the RFP, any of the other Bidding Documents or the information in the Data Room and any assessment, assumption, statement or information

contained therein or deemed to form part of this RFP, the other Bidding Documents or the Data Room or arising in connection with the declaration of the Selected Bidder for the award of the Project.

The Authority, the IFC and their employees and advisors also accept no liability of any nature whether resulting from negligence or otherwise, howsoever caused, arising from reliance of any Bidder upon the statements contained in this RFP, the other Bidding Documents or in the Data Room.

The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP, the other Bidding Documents or in the Data Room.

The issue of this RFP or the other Bidding Documents does not imply that the Authority is bound to appoint the Selected Bidder as the Concessionaire for the Project and the Authority reserves the right to reject all or any of the Bids.

Each Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in the preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

1. INTRODUCTION

1.1 Background to the Project

- 1.1.1 The Authority has decided to undertake the green-field development of Phase 1 of the Port as a modern, deepwater multi-purpose port at Vizhinjam in the Thiruvananthapuram district of Kerala through the PPP route on a ~~BOT~~BOOT basis. For this purpose, the Authority has constituted VISL, a government company, as the nodal agency for conducting the Bidding Process.
- 1.1.2 The Authority has appointed the IFC as the lead transaction advisor for the Project. The IFC is assisting the Authority in structuring and awarding the Project and in seeking private sector partner(s) to implement the Project in collaboration with the Authority and VISL.
- 1.1.3 The Authority has by Government Order No. 75/10/F&PD dated 18 October, 2010, decided that the Port will be developed as a "landlord" port in 3 (three) Phases. In this model, the Authority will, either itself or through VISL or any other special purpose entity, be responsible for the completion of the following Civil Infrastructure for Phase 1, subject to optimization of design:
- (a) a 3.3 km breakwater;
 - (b) dredging and reclamation of 650 m by 400 m of the terminal area at the ~~site~~Site of the Project;
 - (c) a 300 m wide access channel and a turning circle with diameter 700 m; and
 - (d) a 650 m length quay wall with quay furniture.

The Port Concept Plan and layout for the Port have been developed by the Authority and VISL and have been provided to the Bidders in the Data Room.

- 1.1.4 The Authority, VISL or any other special purpose entity established by the Authority will appoint the CI EPC Contractor to undertake the construction of the Civil Infrastructure for Phase 1 on an EPC turnkey basis through a competitive bidding process. The Authority ~~plans~~intends to use its best endeavours to start the process for selection of the CI EPC Contractor and issue the request for qualification of the tenderers for the CI EPC Contract, prior to the Bid Due Date, so that the Bidders have an opportunity to modify their Consortium if needed to incorporate a Member with adequate experience to meet the qualification criteria for the award of the CI EPC Contract. The Authority further plans that the last date for submission of pre-qualification applications for the CI EPC Contract will extend beyond the date of issuance of the LOA, so that Bidders other than the Selected Bidder that are desirous of participating in the bid process for award of the CI EPC Contract may participate.
- 1.1.5 The SPV may, ~~prior to the date for submission of bids for the CI EPC Contract~~, designate any of the following entities: itself, the Selected Bidder (if it is a single Person), a

Member of the Selected Bidder (if it is a Consortium) or an Associate of the SPV, the Selected Bidder or a Member, as the case may be, (such designated entity being the "~~Prospective EPC Bidder~~Tenderer") to separately qualify and bid for the award of the CI EPC Contract for the completion of the Civil Infrastructure ~~in accordance with~~by notifying the Authority in the 90 (ninety) day period occurring prior to the last date for submission of tenders for the CI EPC Contract. The Prospective Tenderer shall be required to comply with the qualification and bidding rules to be developed by the Authority and/or VISL or any other special purpose entity.

The Prospective ~~EPC Bidder~~Tenderer may qualify and bid for the award of the CI EPC Contract either in its individual capacity or as a member of a consortium. If the Prospective ~~EPC Bidder~~Tenderer forms a consortium, then the Prospective ~~EPC Bidder~~Tenderer will be required to be the lead member of such consortium and all members of such consortium will be required to be jointly and severally responsible for the execution and performance of the CI EPC Contract.

- 1.1.6 If the Prospective ~~EPC Bidder~~Tenderer or the consortium of which it is a part, is technically qualified for and has submitted a bid for the award of the CI EPC Contract, then the Prospective ~~EPC Bidder~~Tenderer or the consortium of which it is a part will be offered a right to match the price quoted by the ~~lowest~~best bidder for the award of the CI EPC Contract, provided that the Prospective ~~EPC Bidder's technically qualified bid for the CI EPC Contract is within 15%~~(Tenderer's original bid price is less than 115% (one hundred fifteen per cent) of the EPC turnkey price quoted by the lowest bidder.
- 1.1.7 Whether or not the Prospective ~~EPC Bidder~~Tenderer or the consortium of which it is a part is awarded the CI EPC Contract, the SPV will be required to review ~~(but not approve)~~ the design and construction of the Civil Infrastructure and provide its comments or proposals for change required to optimize the design and completion of the Civil Infrastructure in a manner that is fit for the purpose. Such review shall be in accordance with the terms of the Concession Agreement.
- 1.1.8 The ~~terminal-area~~Leased Area (the exact area of which will be as further demarcated in the Lease Agreement) will be leased by the Authority to the Concessionaire on the terms and conditions specified in the Lease Agreement. Once the Civil Infrastructure is complete, the ~~terminal-area~~Leased Area will be handed over to the Concessionaire for implementation of the Project. The lease of such area will be effective from the Handover Date. ~~For the purpose of time bound completion of work, the Concessionaire and the Authority may agree in writing to follow an alternative scheme for handover of the Civil Infrastructure.~~
- 1.1.9 In addition to completion of the Civil Infrastructure, the Authority will also be responsible for the following:
 - (a) ~~developing~~preparing a detailed master plan for the Port, including in respect of development of further phases of the Port based on the Port Concept Plan and

after consulting the Concessionaire in accordance with the terms of the Concession Agreement;

- (b) formulation of Port by-laws and appointment of a Conservator for the Port in compliance with the Indian Ports Act and the Concession Agreement;
- (c) obtaining ~~all the~~ environmental clearances and other consents required ~~for~~ developing the Port; in accordance with the Concession Agreement.;
- (d) appointing the Concessionaire to provide the Marine Services to the terminal operators and users of the Port (including the Concessionaire itself and the Users);
- (e) providing rail and road connectivity to the Port in accordance with the Concession Agreement;
- (f) design, engineering, financing, construction or installation of the Marine Infrastructure;
- (g) maintenance dredging of the access channel ~~and~~, turning circle and berth pockets in accordance with the Concession Agreement; and
- (h) maintenance of the breakwater.

The Authority may designate VISL or any other entity as its representative to assist/perform its obligations, as mentioned in this Clause 1.1.9 and the Concession Agreement.

- 1.1.10 The Concessionaire will be required to complete the Superstructure and install the Port Crafts after the ~~terminal area~~ Leased Area has been handed over to it. When the Terminal is complete, the Concessionaire should be capable of handling at a minimum a throughput of 822,000 TEUs or a combination of 450,000 TEUs of container cargo and 200,000 MT of multi-purpose cargo in accordance with the Concession Agreement.
- 1.1.11 The Concessionaire will be required to provide the Services to the Users. The Authority shall appoint the Concessionaire to provide the Marine Services to the users of the Port (including the Users) on behalf of the Authority and in accordance with the Port by-laws and the directions or instructions of the Conservator appointed by the Authority.
- 1.1.12 The Concessionaire will be entitled to set, collect and levy ~~charges~~ Tariff in relation to the Services provided by it to Users of the Terminal. The ~~Concessionaire will be required to submit a proposal for the port dues and vessel related charges to the Authority for its consideration, in accordance with the Concession Agreement.~~ Authority will be free to set and revise the Port Dues. The Authority shall notify the ~~port dues and vessel related charges~~ Port Dues and Vessel Related Charges under the Indian Ports Act, in accordance with the proposal approved by it. The ~~port dues and vessel related charges~~ Port Dues and Vessel Related Charges will be set by the Authority at levels that are comparable to

competing domestic and international competing ports. The Concessionaire will collect the ~~port dues and vessel related charges~~ [Port Dues and Vessel Related Charges](#) so notified on behalf of the Authority in special accounts in accordance with the Indian Ports Act and utilize such proceeds only for the objects authorized by section 36 of the Indian Ports Act.

- 1.1.13 The Estimated Project Cost to be borne by the Concessionaire (based on 2010 rates) for the Project is INR 970,00,00,000 (INR nine hundred and seventy crores). This cost does not include the cost to be borne by the Authority in completing the Civil Infrastructure (including the cost of providing existing and reclaimed land at the Project site for exclusive use of the Concessionaire during the Term), the Marine Infrastructure and the External Infrastructure. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.14 The Authority is now seeking to appoint the Selected Bidder for the Project.
- 1.1.15 The Authority has set up the Data Room where information relating to the Project has been made available for examination and review by the Bidders. The Data Room will be open to the Bidders until the Bid Due Date. Included in the Data Room is a draft of the Concession Agreement that will be required to be executed by the Authority and the Concessionaire. The Concession Agreement sets out the detailed terms and conditions for implementation of the Project, including the scope of the Services and obligations in relation to the Project. The Authority reserves the right to amend the Concession Agreement before the Bid Due Date in accordance with the provisions of this RFP.
- 1.1.16 The Selected Bidder will be required to incorporate an SPV ² to execute the Concession Agreement [within 90 \(ninety\) days of the issuance of the LOA](#) and to perform all the obligations of the Concessionaire under the Concession Agreement.
- 1.1.17 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth herein, as these may be modified, altered, amended and clarified from time to time by the Authority. All Bids shall be prepared and submitted in accordance with such terms on or before the Bid Due Date.
- 1.1.18 The statements and explanations contained in this RFP and the Data Room are intended to provide an understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire that are set out in the Concession Agreement or the Authority's right to amend, alter, change, supplement or clarify the scope of work, the concession to be awarded or the terms hereof or contained in the Concession Agreement prior to execution of the Concession Agreement. Consequently, any omissions, conflicts or contradictions in the Bidding Documents (including this RFP) are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

1.2 Brief Description of Bidding Process

- 1.2.1 The Authority has adopted the Bidding Process for declaration of the Selected Bidder for award of the Project.
- 1.2.2 The Qualification Stage involved the pre-qualification of Applicants by the Authority in accordance with the provisions of the RFQ. At the end of the Qualification Stage, the Authority announced the list of pre-qualified Applicants that are eligible for participation in the Bid Stage of the Bidding Process.
- 1.2.3 In the Bid Stage, the Bidders are being called upon to submit their Bids in accordance with this RFP and the other Bidding Documents. The Bidding Documents for the Project will be provided to every Bidder free of cost. Each Bid shall be valid for a period of not less than 180 (one hundred eighty) days from the Bid Due Date.
- 1.2.4 Bidders are invited to familiarise themselves with all such information made available in the Data Room and to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids.
- 1.2.5 A Bidder will be required to deposit along with its Bid, the Bid Security in accordance with Clause 2.26. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.6 Bidders are required to submit a single Bid which will consist of 2 (two) parts: (i) the Technical Proposal; and (ii) the Financial Proposal. The evaluation of the Bids will be carried out in two sub-stages:
 - (a) in the first sub-stage, the Technical Proposals of Bidders will be evaluated. Only those Bidders whose Technical Proposals are found to satisfy the requirements set out at Clause 3.1 will be entitled to have their Financial Proposals evaluated in the second sub-stage; and
 - (b) in the second and final sub-stage, the Financial Proposals of those Bidders whose Technical Proposals meet the requirements set out at Clause 3.1 will be evaluated and compared for identifying the Selected Bidder for the Project as per details set out at Clause 3.2.
- 1.2.7 The Financial Proposals will be invited for the Project on the basis of:
 - (a) the highest premium (the "**Premium**") that the Bidder is willing to pay to the Authority for implementing the Project. The Premium may be offered in the form of an upfront INR amount payable on or before the Handover Date and/or INR amounts payable at the commencement of each year during the Term; or
 - (b) the lowest financial grant (the "**Grant**") required by a Bidder for implementing the Project. The Grant may be sought as INR amounts either during the

Construction Period or the ~~Operations~~Services Period ~~of the Project~~ or for both the Construction Period and ~~Operations~~Services Period ~~of the Project~~.

- 1.2.8 The Grant or Premium will constitute the sole criterion for evaluation of Financial Proposals. The Project will be awarded to the Bidder: (i) whose Technical Proposal meets the requirements set out in Clause 3.1 and the Concession Agreement; and (ii) who offers the highest Premium, and in the event that no Bidder offers a Premium, the Bidder who seeks the lowest Grant.

For the purposes of comparison of Financial Proposals, the Authority will compare the net present value of the total Grant or total Premium quoted by a Bidder in the manner set out at Clause 3.2.

- 1.2.9 Any queries or requests for additional information concerning this RFP must be submitted in writing or by fax and e-mail to the persons mentioned in Clause 2.21.4 below. The envelopes/communications shall clearly bear the following identification/title: "**Queries/Request for Additional Information: RFP for Vizhinjam Port Project**".

1.3 Schedule of Bidding Process

The intended schedule for the Bidding Process is as follows:

S.no.	Event Description	Date
1.	Distribution of this RFP	18 February, 2011
2.	Last date for receiving queries prior to pre-bid meeting	4 March, 2011
3.	Authority response to queries latest by	10 March, 2011
4.	Pre-bid meeting	14 <u>16</u> March, 2011 and 15 <u>17</u> March, 2011
5.	Authority response to queries raised at pre-bid meeting latest by	22 March, 2011
6.	Bid Due Date	19 April <u>17 May</u> , 2011
7.	Issuance of LOA to Selected Bidder, subject to grant of security clearance by GoI	29 April <u>15 June</u> , 2011
8.	Validity of Bids	180 days from Bid Due Date
9.	Submission of Construction Performance Bond	Within 90 days of

S.no.	Event Description	Date
		issuance of LOA
10.	Signing of the O&M Agreement, if required	Within 90 days of issuance of LOA
11.	Payment of the first instalment of the Project Development Fee in accordance with Clause 2.31.6(c)(i)	Within 90 days of issuance of LOA
<u>12.</u>	<u>Incorporation of the SPV by the Selected Bidder</u>	<u>Within 90 days of issuance of the LOA</u>
12.1 <u>3.</u>	Signing of Concession Agreement, <u>subject to the occurrence of the events listed in paragraphs 9 to 12 above.</u>	Within 90 days of issuance of LOA

2. INSTRUCTIONS TO BIDDERS

PART A: GENERAL

2.1 General Terms of Bidding

- 2.1.1 The Bidder may be a single Person acting in its individual capacity or a Consortium. The term Bidder used herein shall apply to both a single Person and a Consortium.
- 2.1.2 The Selected Bidder shall incorporate an SPV and shall cause such SPV to execute the Concession Agreement and the O&M Agreement, if applicable, within the period specified in Clause 1.3.
- 2.1.3 If the Bidder is a single Person, then the Bidder shall subscribe for and hold at least 51% (fifty one per cent) of the Equity of the SPV and shall Control the SPV from the date of signing of the Concession Agreement and until the second anniversary of the Commercial Operation Date, as further described in the Concession Agreement.
- 2.1.4 If the Bidder is a Consortium, then the Bidder and its Members shall, in addition to complying with the conditions specified in the RFQ, comply with the following conditions:
- (a) the Consortium shall submit a binding and enforceable JBA to the Authority with its Bid, substantially in the form set out at **Appendix-III**.

Except as specifically permitted in accordance with the Bidding Documents, the Members of the Consortium shall not amend, vary or terminate the JBA at any time during the validity period of the Bid as specified in Clause 2.19.1 and thereafter, subject to Clause 2.1.4(b)(iii) above, until the second anniversary of the Commercial Operation Date, without the prior written consent of the Authority.

- (b) the Members of the Consortium shall undertake to subscribe for and hold the issued and paid-up Equity of the SPV in the manner set out below, if the Consortium is declared as the Selected Bidder:
- (i) the Lead Member shall hold ~~not less than~~ at least 26% (twenty six per cent) of the Equity and voting rights of the SPV from the date of signing of the Concession Agreement and until the second anniversary of the Commercial Operation Date;
- (ii) any Member of the Consortium, other than the Lead Member, whose Technical Capacity is taken into consideration, shall hold ~~not less than~~ at least 26% (twenty six per cent) of the Equity and voting rights of the

SPV from the date of signing of the Concession Agreement and until the second anniversary of the Commercial Operation Date;

- (iii) any Member of the Consortium, who has the Threshold O&M Experience and whose operational experience is assessed by the Authority to its satisfaction, shall hold at least: (x) 26% (twenty six per cent) of the Equity and voting rights of the SPV from the date of signing of the Concession Agreement and until the second anniversary of the Commercial Operation Date; and (y) 10% (ten per cent) of the Equity and voting rights of the SPV from the second anniversary of the Commercial Operation Date until the fifth anniversary of the Commercial Operation Date;
- (iv) each Member of the Consortium to whom paragraphs (i), (ii) and (iii) above do not apply, shall hold at least 5% (five per cent) of the Equity and voting rights of the SPV from the date of signing of the Concession Agreement and until the second anniversary of the Commercial Operation Date; and
- (v) without prejudice to paragraphs (i) to (iv) above, the Members of the Consortium shall collectively subscribe for and hold at least 51% (fifty one per cent) of the Equity of the SPV and shall Control the SPV from the date of signing of the Concession Agreement and until the second anniversary of the Commercial Operation Date.

Subject to Clause 2.1.4(b)(iii), the Members of the Consortium will be entitled to dilute their equity shareholding in the SPV below the levels stated above, after the second anniversary of the Commercial Operation Date ~~of the Project~~.

2.1.5 The Technical Proposal and the Financial Proposal shall be furnished in the formats set out at **Appendix-IA** and **Appendix-IB** respectively and shall be accompanied by a covering letter in the format set out at **Appendix-I**.

2.1.6 Any conditions, qualification, deviation or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid. The Authority will not entertain any deviations from the Bidding Documents at the time of submission of the Bid or thereafter. The Bidders will be deemed to have accepted the terms and conditions of the Bidding Documents.

2.2 Change in Consortium

2.2.1 Where the Bidder is: (i) a single Person, the Bidder may form a Consortium; and (ii) a Consortium, the Bidder may change the composition of the Consortium; in either case, only with the prior permission of the Authority ~~as provided in~~ accordance with this Clause 2.2.1. Such Consortium formation or change in the Consortium will be permitted at any time from the date of issuance of this RFP until the Bid Due Date. Such

Consortium formation or change in the Consortium may be effected either by adding new Member(s) or by substituting existing Member(s) with new Member(s), as relevant. Consortium formation or a change in the composition of a Consortium may be permitted by the Authority, subject to compliance with the following conditions:

- (a) an application to the Authority requesting consent to such formation or change is made at least 15 (fifteen) days prior to the Bid Due Date;
- (b) the single entity is the Lead Member, in the case of a Consortium formation and the Lead Member continues to be the Lead Member of the Consortium, in the case of a change in Consortium;
- (c) if such formation or change will result in the addition of a new Member, such addition shall not result in the total number of Members exceeding 6 (six);
- (d) if such change will result in the substitution of an existing Member whose Technical Capacity and/or Financial Capacity has been assessed as part of the Qualification Stage, then the substitute shall be at least equal, in terms of Technical Capacity and/or Financial Capacity, to the Member who is sought to be substituted, and this is proved to the satisfaction of the Authority;
- (e) such new or substituting Member is not liable for disqualification in terms of Clauses 2.3 or 2.4 and such new or substituting Member undertakes to comply with Clause 2.1.4(b) and the requirements of the RFQ, and this is proved to the satisfaction of the Authority;
- (f) the modified Consortium shall continue to meet the Qualification Criteria for Applicants and this is proved to the satisfaction of the Authority;
- (g) such change shall be subject to grant of security clearance by the GoI for the new or substituting Member;
- (h) the new or substituting Member expressly adopts the Application already made on behalf of the Consortium as if it were a party to it originally; and
- (i) the new or substituting Member does not constitute another Bidder, Member or Associate of any other Bidder or Member of any other Consortium bidding for the Project.

2.2.2 Approval for formation of a Consortium or change in the composition of a Consortium shall be at the sole discretion of the Authority and must be in writing.

2.2.3 The new Consortium or the modified/reconstituted Consortium shall submit a JBA substantially in form set out at **Appendix-III** and Powers of Attorney in the ~~forms set out in the RFQ~~ formats prescribed at **Appendix-VII** and **Appendix-VIII**.

2.3 Eligibility of Bids

2.3.1 A Bidder shall not have a conflict of interest that affects the Bidding Process ("**Conflict of Interest**"). Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (a) such Bidder or an Associate of such Bidder:
 - (i) Controls, is Controlled by or is under common Control with any other Bidder or any Associate thereof; or
 - (ii) has any direct or indirect ownership interest in any other Bidder or Associate thereof,

provided that this disqualification shall not apply if:

- (i) the direct or indirect ownership interest in such other Bidder or Associate thereof is less than 25% (twenty five per cent) of all ownership interests in such other Bidder or Associate; or
 - (ii) the Control or ownership interest is exercised or held by a bank, insurance company, pension fund or a public financial institution referred to in Section 4A of the Companies Act, 1956; or
- (b) such Bidder is also a constituent of another Bidder; or
 - (c) such Bidder or its Associate receives or provides any direct or indirect subsidy, grant, concessional loan or subordinated debt from or to any other Bidder or such other Bidder's Associate; or
 - (d) such Bidder has the same legal representative for purposes of this Bidding Process as any other Bidder; or
 - (e) such Bidder, or its Associate has a relationship with another Bidder, or such other Bidder's Associate, directly or through common third party/parties, that puts either or both of them in a position to have access to the ~~others~~other's information about, or to influence the Bid, of the other; or
 - (f) such Bidder, or its Associate has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

If a Bidder is a Consortium, then the term "**Bidder**" as used in this Clause 2.3.1 shall include each Member of such Consortium; and the term "**Associate**" as used in this Clause 2.3.1 shall include Associates of each Member of the Consortium.

2.3.2 A Bidder shall be liable for disqualification if any legal, financial or technical advisor of the Authority in relation to the Project is engaged by the Bidder, any Member of the Consortium or any of its Associates, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such advisor: (i) was engaged by the Bidder, Member of the Consortium or any of its Associates in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of the RFQ; or (ii) is engaged after a period of 2 (two) years from the ~~effective date of the Concession Agreement~~Effective Date. It is hereby clarified that the advisors of the Authority in relation to the Project are:

(a) Lead Advisor: International Finance Corporation;

(b) Legal Advisor: Allen & Overy and Trilegal;

(c) Technical Advisor: Royal Haskoning & Drewry Shipping Consultants; and

(d) Communications: Perfect Relations Limited.

2.3.3 No Bidder shall submit more than one Bid, either individually or as a Member of a Consortium. This will result in the disqualification of all such Bids. However, this does not limit the participation of a Bidder as a subcontractor of another Bidder.

2.3.4 If:

- (a) a Bidder is likely to breach or breaches its undertakings under Clause 2.1.3 or a Member of a Consortium is likely to breach or breaches any of its undertakings under Clause 2.1.4 or the JBA; or
- (b) there occurs a change in Control of a Bidder or a Member of a Consortium or any of their Associates whose Technical Capacity is taken into consideration at the Qualification Stage; or
- (c) if any Associate, whose credentials have been relied on by the Bidder or a Member of the Consortium to demonstrate Technical Capacity at the Qualification Stage, ceases or will cease to be an Associate of the Bidder or such Member,

then the Bidder shall give the Authority notice of such occurrence forthwith along with all relevant particulars of such occurrence and shall seek the approval of the Authority for such occurrence. If the Authority is of the view that such occurrence is likely to affect the Technical Capacity or Financial Capacity of the Bidder or the Consortium adversely, then the Authority may disqualify the Bidder from participation in the Bidding Process; or, if

the Bidder has been declared as the Selected Bidder, withdraw the LOA or terminate the Concession Agreement, without the Authority incurring any liability towards the Concessionaire for such withdrawal or termination. While the Authority will not unreasonably withhold or delay such approval, the decision of the Authority will be final in this regard.

- 2.3.5 If any Person or any of its Associates has been barred by any central, state or local government or government instrumentality in India or in any other jurisdiction to which such Person or its Associate belongs or in which such Person or its Associate conducts its business, from participating in any project on a private participation basis (whether on a BOOT/BOT basis or otherwise), and the bar subsists as on the Bid Due Date, then such Person shall not be eligible to submit a Bid, either individually or as a Member of a Consortium. If the Authority finds that the Bidder or a Member of a Consortium is so barred, then the Authority may disqualify the Bidder from participation in the Bidding Process.
- 2.3.6 From the perspective of maintaining national defence and security, the GoI requires security clearance for bidders for participation in port projects. ~~The~~ The Bidders will be required to submit, in a format specified by the Authority, all the relevant information required by the GoI for this purpose. The Authority will then forward these applications for security clearance to the Ministry of Shipping for the award of security clearance. The decision of the GoI to grant security clearance will be intimated to the Bidders by the Authority. This process of security clearance will be run concurrently with the Bid Stage. If any Bidder or any of its Members is not granted security clearance by the GoI, such Bidder shall be deemed not to be eligible (despite any prior pre-qualification during the Qualification Stage) and its Bid shall be disqualified. If permissible under Applicable Law and these guidelines, the Authority may decide to issue the LOA to the Selected Bidder subject to security clearance by GoI. In that case, if subsequently the Selected Bidder or any of its Members is not granted security clearance the LOA shall be deemed to be void. The Authority reserves the right to invite the next best Bidder as the Preferred Bidder and declare him as the Selected Bidder. The decision of the GoI and/or the Authority in this regard is final and binding. The Authority shall not entertain any correspondence and/or representation whatsoever from an ineligible Bidder.
- 2.3.7 While persons from any country are entitled to bid for the Project, if during the Bid Stage, there is an acquisition of not less than 15% (fifteen per cent) of the aggregate issued, subscribed and paid up equity share capital or of Control, by persons resident outside India, in or of the Bidder or its Member, then the continued qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this regard shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding or acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents

and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.3.8 (a) The Bidders and their respective officers, employees, agents and advisors shall observe the highest standards of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may 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 in the Bidding Process.

(b) Without prejudice to the rights of the Authority under Clause 2.3.8(a) above, if a Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority for a period of 2 (two) years from the date such Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, as the case may be.

2.3.9 The GoI has issued guidelines for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. A copy of the GoI's guidelines has been provided in the Data Room. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority will be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process.

2.3.10 The Authority reserves the right to seek information and evidence from Bidders regarding their continued eligibility at any time during the Bidding Process and each Bidder shall undertake to provide all of the information and evidence requested by the Authority.

2.3.11 Without limiting Clause 2.9, the Authority reserves the right to reject any Bid if:

(a) at any time, a material misrepresentation is made by the relevant Bidder or any of its Members; or

(b) the relevant Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

If the Bidder is a Consortium, then the entire Consortium may be disqualified/rejected. If such disqualification/rejection occurs after the Bids have been opened and the Preferred Bidder gets disqualified/rejected, then the Authority may exercise any of its rights under Clause 2.31.4.

- 2.3.12 If it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, that one or more of the Qualification Criteria have not been met by the Bidder, or the Bidder or any of its Members has made a material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith, if not yet appointed as the Concessionaire by issuance of the LOA. If the Bidder, has already been issued the LOA or its SPV has entered into the Concession 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 Bidder, without the Authority being liable in any manner whatsoever to the Bidder or the SPV.
- 2.3.13 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities or affect any of the rights of the Authority.

2.4 Number of Bids

No Bidder shall submit more than 1 (one) Bid for the Project. A Bidder applying individually or as a Member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any other Consortium, as the case may be. A Bidder who submits or participates in more than one Bid shall cause all Bids with the Bidder's participation to be disqualified.

2.5 Site visit and Verification of Information

- 2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, hydrological data, applicable laws and regulations, and any other matter considered relevant by them. The cost of visiting the Project site and verifying other information shall be borne solely by the Bidder.
- 2.5.2 The Bidder and any of its personnel or agents are granted permission by the Authority to enter upon the premises and land at the Project site, but only upon the express condition that the Bidder, its personnel, and agents will: (a) release and indemnify the Authority and its personnel, agents and advisors from and against all liability in respect thereof; and (b) be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs and expenses incurred as a result of such inspection.

2.6 Acknowledgement by the Bidder

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

- (a) made a complete and careful examination of the RFP, the other Bidding Documents and the information made available in the Data Room;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP, the other Bidding Documents and the information made available in the Data Room or otherwise furnished by or on behalf of the Authority;
- (d) satisfied itself about all things, matters and information, including matters referred to in Clause 2.5 above, necessary and required for submitting an informed Bid, execution of the Project in accordance with the Concession Agreement and performance of the Concessionaire's obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in this RFP, the other Bidding Documents or in the Data Room or ignorance of any matter referred to in Clause 2.5 above shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations or loss of profits or revenue from the Authority or a ground for termination of the Concession Agreement; and
- (f) agreed to be bound by the undertakings provided by it under and in accordance with the terms of this RFP.

2.6.2 The Authority and/or VISL 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, the Data Room or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.6.3 Unless otherwise specified in this RFP, in the event of any conflict between the provisions of the Concession Agreement, the RFP and the RFQ, the following shall be the order of priority:

- (a) firstly the Concession Agreement;
- (b) secondly the RFP; and
- (b) lastly the RFQ.

2.7 Clarification of RFP and Pre-Bid Meeting

- 2.7.1 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 2.21.4 or raise their queries during the pre-bid meeting referred to in this Clause 2.7. All queries should be sent to the Authority before the last date for receiving queries prior to the pre-bid meeting, as specified in the schedule of Bidding Process in Clause 1.3 or raised during the pre-bid meeting.
- 2.7.2 The Authority shall endeavour to respond to any request for clarifications and questions raised no later than the dates specified in Clause 1.3. The responses will be sent by fax and/or e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of clarifications or queries. 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 2.7.2 shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.7.3 The Bidders' designated representatives are invited to attend the pre-bid meeting, to be convened on the date specified in Clause 1.3 in Thiruvananthapuram. The purpose of the pre-bid meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. During the pre-bid meeting, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.
- 2.7.4 Minutes of the pre-bid meeting, including the text of the questions raised (without identifying the source) and the responses given, will be transmitted promptly to all Bidders.
- 2.7.5 Should the Authority deem it necessary to amend the RFP or the other Bidding Documents, it will do so following the procedure under Clause 2.8.
- 2.7.6 The Authority may also of its own volition, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFP and to the extent applicable, the other Bidding Documents. Verbal clarifications and information given by the Authority or its employees, representatives or advisors shall not in any way or manner be binding on the Authority.

2.8 Amendment of the Bidding Documents

- 2.8.1 At any time prior to the deadline for submission of the Bid, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP and the other Bidding Documents by the issuance of Addenda.
- 2.8.2 Any Addendum thus issued will be sent in writing to all Bidders. Each Bidder must properly acknowledge in writing the receipt of each Addendum issued to it by the Authority.
- 2.8.3 In order to afford the Bidders reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

2.9 Right to accept or reject any or all Bids

Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid, to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment. If the Authority rejects the Bids or annuls the Bidding Process, it may, in its discretion, invite all eligible Bidders to submit fresh bids.

2.10 Correspondence with Bidders

Save as provided in this RFP, the Authority will not entertain any correspondence with the Bidders for acceptance or rejection of any Bid.

2.11 Confidentiality

2.11.1 Information relating to examination, clarification, evaluation and selection of the Selected Bidder will not be disclosed to any Person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Authority on or matters arising out of or concerning the Bidding Process.

2.11.2 The Authority will treat all information, submitted as part of a Bid, in confidence and will require all those who have access to such material to treat it in confidence. The Authority may not divulge any such information unless as contemplated under Clause 2.11.1 or it is directed to do so by any statutory authority that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory authority and/or the Authority or as may be required by law or in connection with any legal process.

2.11.2 Each Bidder must treat all information provided by the Authority in the RFP, the other Bidding Documents and in the Data Room as strictly confidential and shall not use it for any purpose other than for preparation and submission of its Bid.

2.12 Proprietary Data

The Bidding Documents and all other documents and information provided by the Authority or submitted by a Bidder to the Authority will remain or become the property of the Authority, as the case may be.

2.13 Governing Law and Jurisdiction

The Bidding Documents will be governed by and construed in accordance with the laws of India and the courts at Thiruvananthapuram shall have the exclusive jurisdiction to adjudicate any dispute arising out of the Bidding Documents or relating to the Bidding Process.

2.14 Rights of the Authority

The Authority and/or VISL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Documents or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Bidder in order to receive clarification or further information;
- (c) retain any information and/or evidence submitted to the Authority by, or on behalf of, the Bidders; and/or
- (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.

2.15 Waiver and Release by Bidders

It will be deemed that by submitting a Bid, the relevant Bidder agrees and releases the Authority and/or VISL, the IFC and their employees, agents and advisors, 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 RFP or the other Bidding Documents and/or in connection with the Bidding Process, to the fullest extent permitted by applicable law and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in future.

PART B: PREPARATION AND SUBMISSION OF BIDS

2.16 Contents of the RFP

This RFP comprises the disclaimer set forth above, the contents listed below, and will additionally include any Addenda issued in accordance with Clause 2.8.

Request for Proposal

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Criteria for Evaluation

Appendices

- I. Letter comprising the Bid
- IA. Format of the Technical Proposal
- IB. Format of the Financial Proposal
- II. Format of the Bid Security

III.	Format of the JBA for Consortium
IV.	Format of the Project Development Fee Undertaking
<u>V.</u>	<u>Format of Undertaking regarding Representations by the Bidder</u>
<u>VI.</u>	<u>Format of the Undertaking regarding Execution of O&M Agreement</u>
<u>VII.</u>	<u>Format of the Power of Attorney for signing of Bid</u>
<u>VIII.</u>	<u>Format of the Power of Attorney for Lead Member of Consortium</u>

2.17 Cost of Bids

Each Bidder will bear all costs associated with the preparation and submission of its Bid and neither the Authority nor VISL will be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding Process.

2.18 Language of Bids

The Bid and all correspondence and documents relating to the Bid exchanged by the Bidder and the Authority and/or VISL shall be written in English. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate and self-certified translation of the relevant passages in English. Supporting materials, which are not translated into English, may not be considered. For purposes of interpretation and evaluation of a Bid, the English translation of relevant documents will prevail.

2.19 Period of Validity of Bids

- 2.19.1 The Bids shall remain valid for a period of 180 (one hundred and eighty) days from the Bid Due Date. A Bid valid for a shorter period shall be rejected by the Authority as being non-responsive.
- 2.19.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Authority may request Bidders to extend the Bid validity period. The request and the responses shall be made in writing.

2.20 Format and signing of Bid

- 2.20.1 Each Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Each form must be completed in accordance with the instructions set out therein. Incomplete and/or conditional Bids shall be liable to rejection.
- 2.20.2 Each Bidder shall prepare 1 (one) original set of the Bid covering letter and each of the Technical Proposal and the Financial Proposal, together with their respective enclosures and clearly marked "**ORIGINAL**". In addition, each Bidder shall submit 1 (one) copy of of the Bid covering letter and 1 (one) copy each of the Technical Proposal and the Financial Proposal, together with their respective enclosures and clearly marked "**COPY**". Each Bidder shall also provide 2 (two) soft copies of each of the Technical

Proposal and the Financial Proposal on 2 (two) separate compact disc (CD). Therefore, the Bidder is required to submit 4 (four) CDs, with 2 (two) CDs each containing the Technical and Financial Proposal. In the event of any discrepancy between the original and the copy, the original shall prevail.

2.20.3 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page in blue ink. If any printed and published documents are being submitted, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall be serially paginated and shall be bound together in hard cover.

2.20.4 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets if the space provided in the prescribed forms in the Appendices is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information.
- (b) Information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder or Member named in the Bid and not, unless specifically permitted, to their Associates.
- (c) A Bid submitted by a Consortium must be signed by a Person nominated by the Lead Member and shall be legally binding on all Members.
- (d) Any interlineations, erasures, or overwriting will be valid only if they are signed or initialed by the Person signing the Bid.

2.21 Sealing, Marking and Submission of Bids

2.21.1 The Bidder shall submit 1 (one) Bid consisting of 2 (two) parts (i.e. the Technical Proposal and the Financial Proposal), in 2 (two) separate envelopes or packages. The 2 (two) separate envelopes shall be inserted in 1 (one) outer envelope or package which shall then be sealed.

The outer envelope shall clearly bear the following identification: "**BID: VIZHINJAM PORT PROJECT**"

2.21.2 The first envelope shall contain the original, the copy and 2 (two) soft copies of:

- (a) Letter comprising the Bid in the prescribed format (**Appendix-I**);
- (b) the Technical Proposal in the prescribed format (**Appendix-IA**) and alternate proposals (if any), along with supporting documents;

- (c) Bid Security in the prescribed format (**Appendix-II**);
- (d) if applicable, copy of the JBA, substantially in the prescribed format (**Appendix-III**);
- (e) an undertaking by the Bidder that it will pay the IFC the Project Development Fee if it is chosen as the Selected Bidder, in the prescribed format (**Appendix-IV**);
- (f) a power of attorney from the Bidder or the Lead Member authorizing an employee of the Bidder or Lead Member to sign the Application, in the prescribed format (**Appendix-VII**); and
- (g) a power of attorney from the Members of the Consortium authorizing the Lead Member to represent all the Members of the Consortium during the Bidding Process, in the prescribed format (**Appendix-VIII**);
- (h) copy of the ~~draft~~ Concession Agreement, with each page initialed by the Person signing the Bid;
- (g) copies of the Addenda issued by the Authority in accordance with Clause 2.8 with each page initialed by the Person signing the Bid; and
- (h) any other documents required by the RFP.

The first envelope shall clearly bear the following identification: "**TECHNICAL PROPOSAL: VIZHINJAM PORT PROJECT**".

2.21.3 The second envelope shall contain the original, the copy and 2 (two) soft copies of:

- (a) the Financial Proposal in the prescribed format (**Appendix-IB**);
- (b) an undertaking by the Bidder (and in case of a Consortium, the Lead Member for itself and on behalf of the other Members of the Consortium), that all the undertakings and representations made by the Bidder as part of its Application during the Qualification Stage and as part of the Technical Proposal are and will be true, correct and accurate on the Bid Due Date and on the date of execution of the Concession Agreement (if the Bidder is the Selected Bidder); and
- (c) an undertaking by the Bidder (if the Bidder or its Member has not demonstrated the Threshold O&M Experience) that, if declared the Selected Bidder, the SPV formed by it shall enter into the O&M Agreement within the period specified at Clause 1.3; ~~and(d) — the undertaking regarding the payment of the Project Development Fee in the format prescribed at format (**Appendix-IV VI**).~~

The second envelope shall clearly bear the following identification: "**FINANCIAL PROPOSAL: VIZHINJAM PORT PROJECT**".

2.21.4 Each of the envelopes (including the outer envelope) shall be addressed to:

Managing Director & CEO,
Vizhinjam Seaport International Limited
3rd Floor, Trans Towers, Vazhuthacaud
Thiruvananthapuram, Kerala – 695 014, India.
e-mail: ceo@vizhinjamport.in

In addition, each of the sealed envelopes (including the outer envelope) shall clearly indicate the name and address of the Bidder, the Bid Due Date and the date and time of submission of the Bid on the right hand corner of the envelope.

~~2.21.4~~2.21.5 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

~~2.21.5~~2.21.6 Hand delivery, courier and delivery with receipt acknowledged are accepted modes of submission of the Bids. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.22 Currency of Evaluation

The Bidders may only submit their Technical Proposals and Financial Proposals in Indian Rupees. If any other currency is used for submitting Technical or Financial Proposals, such Technical or Financial Proposals shall be liable to disqualification.

2.23 Bid Due Date

2.23.1 Bids should be submitted before 1700 hours IST on the Bid Due Date, at the address provided in Clause 2.21.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified in Clause 2.21.4.

2.23.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.8 uniformly to all Bidders. In such a case, all rights and obligations of the Authority and Bidders previously subject to the deadline shall thereafter be subject to the Bid Due Date, as extended.

2.23.3 The Authority will not be responsible for any delay, loss or non-receipt of Bids sent by post/courier.

2.24 Late Bids

Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.25 Modifications/substitution/withdrawal of Bids

- 2.25.1 The Bidder may modify, substitute or withdraw its Bid after submission and prior to the Bid Due Date, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid Due Date. Notwithstanding the above, no Bid shall be modified, substituted or withdrawn by the Bidder on or after 1700 hours IST on the Bid Due Date.
- 2.25.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.21, with the envelopes being additionally marked "**MODIFICATION**", "**SUBSTITUTION**" or "**WITHDRAWAL**", as appropriate.
- 2.25.3 Any alteration/modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

PART C: BID SECURITY

2.26 Bid Security

2.26.1 Each Bidder shall furnish along with its Bid, the Bid Security for INR 150,000,000 (INR fifteen crores) in the form of ~~a demand draft or~~ a bank guarantee issued by a Scheduled Bank in India, in favour of the Authority. The validity period of the ~~demand draft or~~ bank guarantee, ~~as the case may be,~~ shall not be less than 240 (two hundred and forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time.

~~If a Bidder submits a bank guarantee as the Bid security, then such~~Such bank guarantee shall be in the form set out at **Appendix-II**. If the bank guarantee is issued by a foreign bank outside India, such bank guarantee must be confirmed by a Scheduled Bank in India for payment in Thiruvananthapuram.

2.26.2 If a Bidder does not have the Threshold O&M Experience, then such Bidder will be required to submit a Bid Security for twice the sum specified in Clause 2.26.1 above.

2.26.3 Any Bid not accompanied by the Bid Security or accompanied with the Bid Security that is not in the prescribed format or for the correct amount, shall be rejected by the Authority as non-responsive.

2.26.4 The Bid Security of unsuccessful Bidders will be returned by the Authority no later than 240 (two hundred and forty) days from the Bid Due Date except in the case of the Selected Bidder, whose Bid Security shall be retained until it has provided a Construction Performance Bond in accordance with this RFP and the Concession Agreement.

2.26.5 Subject to Clause 2.26.6, the Selected Bidder's Bid Security will be returned, without any interest, upon the Bidder furnishing the Construction Performance Bond and signing the Concession Agreement. The Concessionaire shall furnish the Construction Performance Bond by way of an irrevocable bank guarantee for an amount equivalent to INR 100,00,00,000 (Rupees hundred crores) in favour of the Authority within the period specified in Clause 1.3 and prior to execution of the Concession Agreement for the Project. Such Construction Performance Bond shall secure the due and faithful performance of the Concessionaire's obligations during the Construction Period under the Concession Agreement.

2.26.6 If the Selected Bidder does not have the Threshold O&M Experience, then half of the amount of the Bid Security furnished by the Selected Bidder pursuant to Clause 2.26.2 above will be released upon the SPV constituted by the Selected Bidder entering into the O&M Agreement in accordance with Clause 2.31.7. If, however, the requirements of this Clause 2.26.6 are not complied with, then the entire amount of the Bid Security will be liable to be forfeited.

2.26.7 The Bid Security shall be forfeited and appropriated by the Authority as the mutually agreed genuine pre-estimated compensation and damages payable to the Authority for the time, cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, upon the occurrence of any of the following events:

- (a) if a Bidder submits a non-responsive Bid;
- (b) if a Bidder engages in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice as specified in Clause 2.3.8;
- (c) if a Bidder is disqualified for any of the reasons set out at Clauses 1.2.5, 2.1.6, 2.3.2, 2.3.3, 2.3.4, 2.3.5, ~~2.3.6~~, 2.3.7, 2.3.8, 2.3.9, 2.3.11, 2.4, ~~2.14~~, 2.19.1, 2.20.1, 2.21.5, 2.26, 2.26.3, 2.28.1, 2.28.3, 2.28.4, 2.29.2, 2.31.5 and 2.31.6;
- (d) if a Bidder withdraws its Bid after the Bid Due Date and during the Bid validity period as specified in this RFP and as extended by mutual consent of the Bidder and the Authority;
- (e) if a Bidder is ~~selected~~chosen as the Selected Bidder for the Project and it fails within the specified time limit to:
 - (i) incorporate the SPV and cause the SPV to sign the Concession Agreement;
 - ~~(ii) — obtain undertakings from the Members of the Consortium (if required by the Concession Agreement) in relation to their Equity holding and the voting rights of the Concessionaire that will be valid for the period set out at Clause 2.1.4(b) and the RFQ;~~
 - (ii) ~~(iii)~~ pay the first installment of the Project Development Fee in accordance with Clause 2.31.6(c)(i);
 - (iii) ~~(iv)~~ furnish the Construction Performance Bond within the period prescribed at Clause 2.26.5 above; or
 - (iv) ~~(v)~~ execute the O&M Agreement or obtain the Authority's approval for its proposed O&M contractor pursuant to Clause 2.31.7; and
- (f) if the Selected Bidder, has signed or caused the SPV to sign the Concession Agreement for the Project, and the Bidder or the Concessionaire commits any breach thereof before furnishing the Construction Performance Bond.

PART D: EVALUATION PROCESS

2.27 Opening of Bids

- 2.27.1 The Authority shall open the Bids at 1800 hours IST on the Bid Due Date, at the place specified in Clause 2.21.4 and in the presence of the Bidders who choose to attend. The names of all Bidders who have submitted Bids will be read out, and such other details as the Authority, at its discretion, may consider appropriate, will be announced at the opening.
- 2.27.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.25 shall not be opened.
- 2.27.3 The Authority will prepare a record of the opening of the Bids that will include, as a minimum, the names of the Bidders whose Bids are being opened. The Bidder's representatives who are present will be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record will be distributed to all Bidders who have submitted Bids.
- 2.27.4 Bidders are advised that evaluation of Bids and declaration of the Selected Bidder will be entirely at the discretion of the Authority, acting reasonably. Bidders 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 to Bidders.
- 2.27.5 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 2.27.6 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 Bid(s).

2.28 Determination of Responsiveness of Bids

- 2.28.1 The Authority will examine the Bids to determine whether they are complete, whether the documents have been properly signed, and whether the Bids are generally in order. If any Bidder is found to be disqualified in accordance with the terms of the RFP or if any Bid is found to be non-responsive, such Bid shall, subject to Clause 2.28.3, be rejected by the Authority. No request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.
- 2.28.2 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
- (a) it is received as per the formats [prescribed](#) at **Appendix-I**;

- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause ~~1.3~~2.23.2;
 - (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clause 2.21;
 - (d) it contains all the information and documents (complete in all respects) as requested in this RFP;
 - (e) it contains information in the formats ~~same as those specified~~prescribed in this RFP;
 - (f) it does not contain any condition, qualification or deviation; and
 - (g) it is not otherwise non-responsive in terms of the RFP.
- 2.28.3 If any information furnished by the Bidder is found to be incomplete or contained in formats other than those ~~specified~~prescribed herein, the Authority may, in its sole discretion, exclude the relevant information for the purposes of evaluation of the Bid. Alternatively, the Authority may request the Bidder to submit necessary information or documentation, within a reasonable period of time, to rectify non-material omissions in the Bid related to documentation requirements. If a Bidder does not provide clarifications sought under this Clause 2.28.3 within a reasonable period of time, its Bid shall be liable to be rejected. If the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring the clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.
- 2.28.4 Where any information provided by a Bidder is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid.

2.29 Clarifications

- 2.29.1 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. 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.
- 2.29.2 If a Bidder does not provide clarification(s) sought under Clause 2.29.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

2.30 Evaluation of Bids

The Bids will be evaluated by the Authority in 2 (two) sub-stages:

(a) Sub-stage I (Technical Proposal)

In the first sub-stage, Technical Proposals of the Bidders will be evaluated on the basis of the technical parameters set out at Clause 3.1. Only those Bidders whose Technical Proposals are responsive to these requirements, will be technically qualified for evaluation of Financial Proposals during Sub-Stage II.

After the evaluation of all the Technical Proposals, the Authority shall notify in writing by e-mail or by fax those Bidders whose Technical Proposals are qualified in accordance with Clause 3.1; and return the un-opened Financial Proposals of those Bidders whose Technical Proposals are not so qualified.

(b) Sub-stage II (Financial Proposal)

In the second sub-stage, Financial Proposals of Bidders who have passed sub-Stage I will be evaluated for award of the Project.

2.31 Selection of Selected Bidder

2.31.1 The Bidder whose Bid is adjudged as responsive in terms of Clause 2.28.2 and which offers the highest Premium to the Authority, or in the event that no Bidder offers a Premium, then the Bidder seeking the lowest Grant from the Authority, will be declared the Preferred Bidder.

2.31.2 If two or more Bidders quote the same Premium or Grant, as the case may be, the Authority may choose any one of the following options for choosing the Preferred Bidder:

- (a) invite fresh Financial Proposals only from the Bidders quoting the same Premium or Grant. However, the fresh Financial Proposal submitted by the Bidders should not quote a lower Premium or a higher Grant, as the case may be; or
- (b) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.31.3 The Bidder that is adjudged as the Preferred Bidder and continues to be qualified in accordance with the Qualification Criteria will be declared as the Selected Bidder.

2.31.4 If for any reasons contained in the Bidding Documents, the Preferred Bidder is disqualified, then the Authority may:

- (a) invite the remaining Bidders to match the Preferred Bidder; or

- (b) declare the second preferred Bidder as the Selected Bidder; or
- (c) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.31.5 After selection, a LOA shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. If the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to an extension of time for submission thereof, exercise any of the options available to it under Clause 2.31.4 and enforce the Bid Security.

2.31.6

- (a) The Selected Bidder ~~shall or~~ shall cause the SPV incorporated by it to pay the IFC a fee (the "**Project Development Fee**") that is the higher of:
 - (i) 1% (one percent) of the lower of: (1) the estimated capital cost of the Project stated in the Technical Proposal submitted by the Selected Bidder; and (2) the Estimated Project Cost; and
 - (ii) US\$ 1,500,000 (US Dollars one million and five hundred thousand).
- (b) The payment of the Project Development Fee to IFC shall be made in US Dollars, in immediately available funds, without any deductions whatsoever for taxes, duties, charges or other withholdings (all of which shall be borne by the Selected Bidder or the SPV), into the bank account having the following details:

Wells Fargo Bank, N.A.
 375, Park Avenue: New York, NY 10152
 United States of America

Account Number: 2000192003476
 For Credit: IBRD – International Bank for Reconstruction and Development
 Swift ID: PNBPUS3NNYC
 ABA: 026005092

or at such other bank in such place as the IFC may designate.

- (c) The Selected Bidder shall or shall cause the SPV to pay the Project Development Fee in accordance with the following schedule:

- (i) US\$ 1,000,000 (US Dollars one million) within 90 days of the issuance of the LOA and on or before the date of signing of the Concession Agreement; and
- (ii) the balance of the aggregate amount of the Project Development Fee, which shall not be less than US\$ 500,000 (US Dollars five hundred thousand), within 30 (thirty) days of the date on which Financial Close is achieved by the ~~SPV~~Concessionaire.

2.31.7 If the Selected Bidder does not have the Threshold O&M Experience, it shall cause the SPV incorporated by it to execute the O&M Agreement within 90 (ninety) days of the receipt of the LOA with a Person having the Threshold O&M Experience and approved by the Authority and furnish a copy of the executed O&M Agreement to the Authority. If the Selected Bidder fails to cause the execution of the O&M Agreement within such 90 (ninety) days period, then the Authority may, unless it consents to an extension of time for submission thereof, exercise any of the options available to it under Clause 2.31.4.

2.31.8 After acknowledgement of the LOA, the Selected Bidder shall incorporate the SPV in accordance with Clause 1.1.16 and cause such SPV to:

- (a) pay the first instalment of the Project Development Fee in accordance with Clause 2.31.6(c)(i);
- (b) execute the O&M Agreement in accordance with Clause 2.31.7;
- (c) submit the Construction Performance Bond in accordance with Clauses 1.3. and 2.26.5; and

~~(c)~~ on or after compliance with paragraphs (a) ~~and~~, (b) and (c) above, execute the Concession Agreement with the Authority. ~~— The Selected Bidder and/or the Concessionaire shall submit the Construction Performance Bond within the period prescribed in Clauses 1.3 and 2.26.5.~~ The Selected Bidder and/or the Concessionaire shall not be entitled to seek any deviations from the Concession Agreement.

3. CRITERIA FOR EVALUATION

3.1 Evaluation of Technical Proposals

Only those Bidders that have submitted Technical Proposals meeting the pass criteria specified in the table below shall be technically qualified for evaluation of their Financial Proposals under Clause 3.2:

S. No.	Item	Pass Criteria
1.	Strategic Vision	<ul style="list-style-type: none"> • The Strategic Vision covers each of the elements listed at paragraph 1 of Appendix-IA.
2.	Implementation Plan	<ul style="list-style-type: none"> • Implementation Plan incorporates each of the elements listed at paragraph 2 of Appendix-IA • Implementation Plan achieves the time lines stated in the Concession Agreement.
3.	Preliminary Design and Operational plan	<ul style="list-style-type: none"> • Includes detailed calculations, drawings and submissions as required by paragraph 3 of Appendix-IA. • Elements of the master plan, Layout and Operation Plan reasonably demonstrate achievement of minimum capacity and performance criteria in accordance with Good Industry Practice, Laws, Consents and the Performance Standards.
4.	Investment Plan	<ul style="list-style-type: none"> • Duly incorporates all capital expenditure items as necessary to meet the details specified by the Bidder in the Preliminary Design and Operational Plan. • Includes investments required for equipment replacement.
5.	Business Plan	<ul style="list-style-type: none"> • Includes detailed analysis of reasonableness of traffic projections • Includes detailed analysis of competitiveness of tariffs • The proposed capacity is able to cater to projected traffic at the Performance Standards specified in the Concession

		Agreement.
6.	Outline Environmental and Sustainability Plan	<ul style="list-style-type: none"> Identifies most critical issues and proposes specific mitigation measures.

3.2 Evaluation of Financial Proposals

The Financial Proposals will be invited for the Project on the basis of:

- (a) the highest ~~premium (the "Premium")~~ that the Bidder is willing to pay to the Authority for implementing the Project. The Premium may be offered in the form of an upfront INR amount payable on or before the Handover Date and/or INR amounts payable at the commencement of each year during the Term; or
- (b) the lowest financial ~~grant (the "Grant")~~ required by a Bidder for implementing the Project. The Grant may be sought as INR amounts either during the Construction Period or the ~~Operations~~Services ~~Period-of the Project~~ or for both the Construction Period and ~~Operations~~Services ~~Period-of the Project~~.

For the purposes of comparison of Financial Proposals, the Authority will compare the present value of the total Grant or total Premium quoted by a Bidder in the manner set out at **Appendix-IB**.

If two or more Bidders quote the same Premium or Grant, as the case may be, then the Authority may exercise either of the options available to it under Clause 2.31.2.

APPENDIX-I

LETTER COMPRISING THE BID

Dated:

To,

Managing Director & CEO,
Vizhinjam Seaport International Limited
3rd Floor, Trans Towers, Vazhuthacaud
Thiruvananthapuram, Kerala – 695 014, India.
e-mail: secyports.ker@nic.in

Sub: Bid for Vizhinjam Port Project

Dear Sir,

With reference to your RFP—~~document~~ dated 18 February, 2011, [*insert name of Bidder/Consortium*], having examined the RFP—~~document~~ and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

1. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for the Project, and we certify that all information provided in the Bid is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
2. This statement is made for the express purpose of [my/our](#) selection as the Selected Bidder for the Project.
3. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
4. I/We undertake that this Bid will be valid for a period of 180 (one hundred and eighty) days from [*insert the Bid Due Date*].
5. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP—~~document~~, including any Addendum issued by the Authority; and
 - (b) I/We do not have any Conflict of Interest in accordance with Clause 2.3.1 and I/we am/are not otherwise ineligible to submit this Bid in accordance with Clause 2.3 [and 2.4](#) of the RFP—~~document~~.

6. [I/We hereby certify that I/we have not engaged any legal, financial or technical advisor of the Authority in relation to the Project] **OR** [I/We hereby certify that our engagement of the Authority's legal, financial or technical advisors in relation to the Project has ceased 6 (six) months prior to the date of the RFQ].

I/we hereby further undertake that, if I/we are declared as the Selected Bidder, I/we will not engage such advisors of the Authority until the expiration of 2 (two) years from the date of effectiveness of the Concession Agreement.

7. I/We acknowledge and agree that if:
- (a) a change in Control of the Bidder or an Associate whose Technical Capacity was taken into consideration at the Qualification Stage; or
 - (b) an Associate whose Technical Capacity was taken into consideration at the Qualification Stage ceases or is likely to cease being an Associate of the Bidder,

we shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be, if the Authority is of the view that such event is likely to affect the Technical Capacity or Financial Capacity of the Bidder or Consortium. We further acknowledge and agree that if such event occurs after signing of the Concession Agreement, it would, be deemed a breach of the Concession Agreement, and the Concession Agreement shall be liable to be determined without the Authority being liable to us in any manner.

8. I/We certify that neither I/we nor my/our Associates has been barred by any central, state or local government or government instrumentality in India or in any other jurisdiction in which I/we or my/our Associates belongs or in which I/we or my/our Associates conduct our business, from participating in any project on a private participation basis (whether on a BOOT/BOT basis or otherwise), and no such bar subsists on the Bid Due Date.

9. I/We certify that in the last 3 (three) years preceding the Application Due Date, I/we have not and my/our Associates have not:

- (a) failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award; or
- (b) been expelled from any project or contract by any public authority; or
- (c) have had any contract terminated by any government or government instrumentality for breach.

10. I/we acknowledge that while evaluating our Bid, due regard would be paid to national defence and security considerations. Accordingly, the Authority has sought security clearance from the GoI in our favour. This process will be carried out concurrently with

the evaluation of the Bids. I/we acknowledge that the decision of the Government of India/the Authority in this regard is final and binding and that no correspondence and/or representation whatsoever towards the above shall be entertained.

11. [I/We declare that as on the Bid Due Date, no person resident outside India holds 15% (fifteen percent) or more of my/our aggregate issued, subscribed and paid up equity share capital or the aggregate issued, subscribed and paid up equity share capital of our Members.] **OR** [I/We declare that as on the Bid Due Date, a person(s) resident outside India holds 15% (fifteen percent) or more of my/our aggregate issued, subscribed and paid up equity share capital or the aggregate issued, subscribed and paid up equity share capital of our Members. I/we further acknowledge that as a result of such shareholding, my/our qualification is subject to approval from the Authority from a national security and public interest perspective and that such decision of the Authority shall be final, conclusive and binding.]

I/We undertake that if at any subsequent stage after the date of this Bid, there is an acquisition of not less than 15% (fifteen) or more of my/our aggregate issued, subscribed and paid up equity share capital or the aggregate issued, subscribed and paid up equity share capital of our Members, then I/we shall inform the Authority forthwith along with all relevant particulars. I/we further acknowledge that as a result of such shareholding, my/our continued qualification is subject to approval from the Authority from a national security and public interest perspective and that such decision of the Authority shall be final, conclusive and binding.

12. I/We hereby certify that:
- (a) I/We have not directly or indirectly or through an agent engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 2.3.8 of the RFP-~~document~~, no person acting for us or on our behalf has engaged or will engage in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice.
13. I/We certify that in regard to matters other than security and integrity of the country, we/any Member of the Consortium or any of our/their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
14. I/We further certify that in regard to matters relating to security and integrity of the country, we/any Member of the Consortium or any of our/their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

15. I/We declare that we/any Member of the Consortium, or our/ its Associates are not a Member of a/any other Consortium bidding for the Project.
16. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.9 of the RFP ~~document~~.
17. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
- [18. We acknowledge and undertake that:
- (a) the Lead Member will subscribe for and will hold ~~a minimum of~~ at least 26% (twenty six per cent) of the Equity and voting rights of the Concessionaire from the date of signing of the Concession Agreement until the second anniversary of the Commercial Operation Date;
 - (b) any Member other than the Lead Member, whose Technical Capacity was taken into consideration at the Qualification Stage will subscribe for and hold ~~a minimum of~~ at least 26% (twenty six per cent) of the Equity and voting rights of the Concessionaire from the date of signing of the Concession Agreement until the second anniversary of the Commercial Operation Date;
 - [(c) each other Member that is not the Lead Member or a Member whose Technical Capacity was taken into consideration at the Qualification Stage, will subscribe for and will hold ~~a minimum of~~ at least 5% (five per cent) of the Equity and voting rights of the Concessionaire from the date of signing of the Concession Agreement until the second anniversary of the Commercial Operation Date;] and
 - (d) notwithstanding anything to the contrary in (a) or (b) above, any Member whose operational experience was taken into consideration at the Qualification Stage will subscribe for and will hold ~~a minimum of~~ at least 26% (twenty six per cent) of the Equity and voting rights of the Concessionaire from the date of signing of the Concession Agreement until the second anniversary of the Commercial Operation Date and hold ~~a minimum of~~ at least 10% (ten per cent) of the Equity and voting rights of the SPV shall from the second anniversary of the Commercial Operation Date until the fifth anniversary of the Commercial Operation Date.]
- [19. We acknowledge and undertake that all the Members of our Consortium shall, in aggregate hold ~~a minimum of~~ at least 51% (fifty one per cent) of the Equity of and shall exercise Control over the Concessionaire from the date of signing of the Concession Agreement until the second anniversary of the Commercial Operation Date.]

- [20. We agree and undertake to:
- (a) be jointly and severally liable and responsible for all the obligations of the Concessionaire under the Concession Agreement until occurrence of Financial Close in accordance with the Concession Agreement; and
 - (b) comply with the terms of the JBA submitted by us along with this Bid.]
- [21. We acknowledge and undertake that upon any potential breach of the undertakings in paragraphs ~~19~~18 to ~~21~~20 of this Bid, we shall give the authority notice of such occurrence along with all relevant particulars and seek approval of the Authority for such occurrence. We further acknowledge that the Authority shall be entitled to disqualify us from participation in the Bidding Process, or if we have been declared as the Selected Bidder, withdraw the LOA or terminate the Concession Agreement, without the Authority incurring any liability towards us or to the Concessionaire in accordance with Clause 2.3.4 of the RFP.]
22. [I/We certify that, I/we have the Threshold O&M Experience.]

OR

[I/We certify that, I/we do not have the Threshold O&M Experience. I/we represent, warrant and undertake that if I/we are declared as the Selected Bidder for the Project, then I/we will cause the Concessionaire to enter into the O&M Agreement within 90 days of issuance of the LOA, with the prior written approval of the Authority. If I/we fail to cause the Concessionaire do so within 90 (ninety) days of the issuance of the LOA, the Authority shall have a right to withdraw the LOA without the Authority incurring any liability towards the Concessionaire.]

23. I/We understand that if I/we are chosen as the Selected Bidder I/we shall incorporate an SPV under the Indian Companies Act, 1956, prior to execution of the Concession Agreement. I/we undertake that if declared as the Selected Bidder, I/we shall subscribe for and hold at least 51% (fifty one per cent) of the Equity of and shall exercise Control over such SPV from the date of signing of the Concession Agreement and until the expiration of 2 (two) years from the Commercial Operation Date.
24. I/We certify that we are not disqualified in terms of the additional criteria specified in the disinvestment guidelines issued by the Government of India a copy of which have been provided in the Data Room.
25. I/We are submitting a Bid Security of [INR 150,000,000 (INR fifteen crores)] **OR** [INR 300,000,000 (INR thirty crores)] in the form of a ~~{demand-draft/bank guarantee}~~ [from {a Scheduled Bank}/[confirmed by a Scheduled Bank] with our Bid in accordance with the RFP. [*strike out whichever is not applicable*]

26. The [Premium] and/or [Grant] [*strike out whichever is not applicable*] has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, the ~~draft~~ Concession Agreement, other Bidding Documents, our own estimates of costs and traffic and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.

27. I/We agree and undertake to abide by all the terms and conditions of the RFP ~~document~~.

In witness thereof, I/We submit this ~~bid~~Bid under and in accordance with the terms of the RFP ~~document~~.

Yours faithfully,

Name and seal of the Bidder/Lead Member

(Signature, name and designation of the Authorised Signatory)

Date:

Place:

Instructions:

- (1) *All blank spaces shall be suitably filled by the Bidder to reflect particulars relating to such Bidder.*
- (2) *Omit paragraphs 19 to 22, if the Bidder is not a Consortium.*

APPENDIX IA

ELEMENTS OF THE TECHNICAL PROPOSAL

(Refer to Clauses 2.1.5, 2.21.2 and 3.1)

The Technical Proposal for the Concession shall contain each of the elements listed below. The Technical Proposal will be considered only on the basis of information supplied in accordance with this check-list.

1. Strategic Vision

1.1 Bidder's vision for the Project demonstrating the following key aspects:

- Development as a highly efficient and competitive port
- Linkages with Kerala economy
- Development of clean and green port

1.2 Cargo categories proposed to be developed by the Bidder, in the following order of priority:

- Phase 1
- Phase 2 expansion (if the Bidder is given an opportunity to develop Phase 2)

1.3 Specific action points/strategies proposed by the Bidder to achieve the objectives listed at paragraphs 1.1 and 1.2, including without limitation:

- Performance Standards proposed to be achieved by the Bidder; and
- Innovative technologies and operational processes proposed to be used.

2. Implementation Plan

The Bidder shall provide the implementation plan including the following:

2.1 Detailed timeline to meet the scheduled timelines as per the Concession Agreement, setting out a clear distinction and description of the activities in separate construction phases including:

- Inputs in evolving a detailed ~~master plan~~ [Port Master Plan](#), adapting from the Port Concept Plan
- Inputs in the design parameters of the Civil Infrastructure
- Participation in the monitoring of CI EPC Contract
- Preparatory activities for Superstructure and Port Crafts, including separate planning and design, contract preparation, finalization and order of equipment
- Contractor selection
- Execution of the works for Superstructure and Port Crafts, including paving of the Terminal, provision of Utilities, etc.

- Program for the acquisition, installation, commissioning and testing of Moveable Assets required for the Terminal;
 - Proposed staffing
- 2.2 Mitigation measures proposed to be adopted by the Bidder to address risks and delays in construction of the Civil Infrastructure, the Superstructure, the Port Crafts and the Marine Infrastructure.

3. Preliminary Design and Operation Plan

The Bidder must submit **detailed write ups** and **concept drawings** (Scale 1: 1000) of the preliminary design and operational plan of the Terminal, clearly showing detailed assumptions and calculations demonstrating the achievement of key technical requirements such as minimum (or proposed) capacity and performance criteria. In particular, apart from meeting the Performance Standards mentioned in the draft Concession Agreement, the Bidders will demonstrate that the following criteria are met:

- Minimum quay capacity: 1,265 TEU/m/a
- Minimum yard capacity : 31,000 TEU/ha/a
- Terminal Capacity [822,000 TEUs of container cargo or a mix of 450,000 TEUs of container cargo and 200,00 MT of multi-purpose cargo](#)

3.1 Terminal concept plan and layout of the Superstructure, including the following:

- Terminal area & circulation area
- Truck lay byes for effective circulation
- Waste collection and disposal system
- Superstructure (gates, fences, offices and buildings)
- Moveable Assets for handling proposed cargo mix, duly indicating the number, capacity and specification of proposed Moveable Assets to be used
- Terminal data and communication system
- Safety and security system
- Utilities plan

3.2 Operation plan, duly including the following:

- Staffing plan and organogram separately showing Concessionaire's management structure and staff positions and staff positions proposed to be filled by the O&M contractor
- Proposed qualifications and experience of key management and staff positions
- Plan for development of operational procedures including references to standards where applicable
- Productivity levels proposed to be achieved for key operational staff
- Proposed operations schedules
- Proposed plan for establishing feeder services

- Proposed plan for compliance with the Performance Standards specified in the Concession Agreement

4. Investment Plan

- 4.1 Yearly schedule of investments planned over the Term, at 2010 prices, including investments related to equipment replacement.
- 4.2 Detailed breakup of capital expenditure under separate cost heads duly indicating all elements of costs.

5. Business Plan

- 5.1 Detailed cargo traffic forecast for each year of the Term (i.e., assuming that it is a period of 30 (thirty) years from the Handover Date), giving detailed split across types of cargo: container transshipment; container gateway; different categories of multipurpose cargo.
- 5.2 Detailed forecast for each year of the Term of vessel calls and sizes per week and assumptions of parcel size.
- 5.3 Detailed analysis of reasonableness of traffic projections.
- 5.4 Detailed projections for cargo and vessel related tariffs across each category of cargo and vessels.
- 5.5 Analysis on competitiveness of tariffs.
- 5.6 Forecast of revenues for each year of the Term (30 years), giving detailed split across cargo and vessels categories.
- 5.7 Projections of operational and maintenance expenditure split across categories such as ~~Equipment~~[equipment](#) routine and periodic maintenance, manpower; Utilities etc.

6. Environmental and Sustainability Management Plan

- 6.1 Environmental and sustainability plan for construction.
- 6.2 Environmental and sustainability plan for operations.

APPENDIX IB
FORMAT OF FINANCIAL PROPOSAL
(Refer to Clauses 2.1.5, 2.21.2 and 3.2)

[I/We hereby offer a Premium to the Authority as follows:

Sl. No.	Year	Amount in figures ¹ (INR, Million)	Amount in words (INR, Million)	Discounting Factor @ 16 15%	PV = A multiplied by F
		A		F	P
1.	0			1	
2.	1			0.870	
3.	2			0.756	
4.	3			0.658	
5.	4.			0.572	
6.	5			0.497	
7.	6			0.432	
8.	7			0.376	
9.	8			0.327	
10.	9			0.284	
11.	10			0.247	
12.	11			0.215	
13.	12			0.187	
14.	13			0.163	
15.	14			0.141	
16.	15			0.123	
17.	16			0.107	
18.	17			0.093	
19.	18			0.081	
20.	19			0.070	
21.	20			0.061	
22.	21			0.053	
23.	22			0.046	
24.	23			0.040	
25.	24			0.035	
26.	25			0.030	
27.	26			0.026	
28.	27			0.023	
29.	28			0.020	
30.	29			0.017	
31.	30			0.015	
		PREMIUM = SUM OF COLUMN "P"			

¹ All figures to be quoted in three decimal points and all calculations will be rounded to three decimal points.

Payment Schedule

1. For the purpose of this Schedule, the term **Year** refers to each 12 (twelve) month period that commences on the Handover Date or an anniversary of the Handover Date.
2. Year 0 refers to the year in which the Handover Date occurs, Year 1 refers to the Year following Year 0 and so on.
3. In relation to each Year, the Premium amount quoted for that Year, the Premium amount quoted for that Year (i.e. the amount stated in column A) shall be payable on the first day of that Year.

OR

[I/We hereby seek a Grant from the Authority as follows:

Sl. No.	Year	Amount in figures ² (INR, Million)	Amount in words (INR, Million)	Discounting Factor @ 16 15%	PV = A multiplied by F
		A		F	P
1.	0			1	
2.	1			0.870	
3.	2			0.756	
4.	3			0.658	
5.	4.			0.572	
6.	5			0.497	
7.	6			0.432	
8.	7			0.376	
9.	8			0.327	
10.	9			0.284	
11.	10			0.247	
12.	11			0.215	
13.	12			0.187	
14.	13			0.163	
15.	14			0.141	
16.	15			0.123	
17.	16			0.107	
18.	17			0.093	
19.	18			0.081	
20.	19			0.070	
21.	20			0.061	
22.	21			0.053	
23.	22			0.046	
24.	23			0.040	
25.	24			0.035	
26.	25			0.030	
27.	26			0.026	
28.	27			0.023	
29.	28			0.020	
30.	29			0.017	
31.	30			0.015	
GRANT = SUM OF COLUMN "P"					

² All figures to be quoted in three decimal points and all calculations will be rounded to three decimal points.

Disbursement Schedule

1. For the purpose of this Schedule, **Year** refers to each 12 month period that commences on the Handover Date or an anniversary of the Handover Date.
2. Year 0 refers to the year in which the Handover Date occurs, Year 1 refers to following year and so on.
3. In relation to each Year, the Grant amount quoted for that Year, (i.e. the amount stated in column A), shall be payable on the first day of that Year. Provided however that, the first disbursement of a Grant amount shall only be made to the Concessionaire after the Concessionaire fulfils the following conditions:
 - (i) the Concessionaire has expended the Equity as indicated in the Financial Model, duly certified by the Lenders; and
 - (ii) Financial Close of the Project has occurred.

All subsequent instalments of the Grant shall only be disbursed after the prior year's Grant has become due and disbursed by the Authority.

Instruction to Bidders:

1. *The Financial Proposal should be signed by the authorised signatory of the Bidder. The name and contact details of the authorized signatory of the Bidder should be provided. The signature and such details should match the signature and details of the authorized signatory that are set out in the Power of Attorney that was submitted by the Bidder at the Qualification Stage.*
2. *Bidders should specify the amount of the Premium/Grant in both figures and words, in Indian Rupees. In the event of any difference between figures and words, the amount indicated in words shall prevail.*
3. *If the Bidder is not offering a Premium or seeking a Grant in respect of any particular period, the Bidder shall state "Nil" in the corresponding row of the tabular format provided.*
4. ~~*The Financial Proposal must be accompanied by undertakings by the Bidder (in case of a Consortium, the Lead Member for itself and other Members of the Consortium), that:*~~
 - ~~*(i) all undertakings and representations made by the Bidder as a part of its Application during the Qualification Stage and as part of the Technical Proposal are and will be true, correct and accurate on the Bid Due Date and on the date of execution of the Concession Agreement, if the Bidder emerges as the Selected Bidder; and*~~
 - ~~*(ii) if declared the Selected Bidder, the SPV formed by it shall enter into the O&M Agreement within the period specified at Clause 1.3 (this undertaking will be required only if the Bidder has not demonstrated the Threshold O&M experience).*~~

APPENDIX II

FORMAT OF BID SECURITY

(Refer to Clauses 2.26 and 2.21.2)

[To be executed on stamp paper of appropriate value]

B.G. No.

Dated:

(Where applicable, the capitalised words and expressions used in this Bid Security shall have the meaning assigned to them in the Request for Proposal dated 18 February, 2011 (RFP) issued in respect of the Project.)

1. In consideration of the Governor of the State of Kerala, represented by the Secretary of the Department of Ports, Government of Kerala (hereinafter referred to as the "**Authority**", which expression shall unless it is repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956) [*If a Consortium, mention the name of the Lead Member*] and having its registered office at [and acting on behalf of its Consortium)] (hereinafter referred to as the "**Bidder**" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Project pursuant to the RFP, the ~~draft~~ Concession Agreement and other Bidding Documents, we [*Name of the Scheduled Bank*] having our registered office at and one of its branches at (hereinafter referred to as the "**Bank**"), at the request of the Bidder, do hereby in terms of Clause 1.2.5 read with Clause 2.26 of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP) by the Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of [INR 150,000,000]/[INR 300,000,000] [*strike out as applicable, depending on whether the Bidder has demonstrated the Threshold O&M Experience*] (hereinafter referred to as the "**Guarantee**") as our primary obligation if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of due and faithful compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents, including but not limited to the following events:

- (a) if a Bidder submits a non-responsive Bid;
- (b) if a Bidder engages in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice as specified in the RFP;
- (c) if a Bidder is disqualified for any of the reasons set out in ~~the RFP~~[Clauses 1.2.5, 2.1.6, 2.3.2, 2.3.3, 2.3.4, 2.3.5, 2.3.7, 2.3.8, 2.3.9, 2.3.11, 2.4, 2.19.1, 2.20.1, 2.21.5, 2.26, 2.26.3, 2.28.1, 2.28.3, 2.28.4, 2.29.2, 2.31.5 and 2.31.6;](#)
- (d) if a Bidder withdraws its Bid after the Bid Due Date and during the Bid validity period as specified in this RFP and as extended by mutual consent of the Bidder and the Authority;
- (e) if a Bidder is ~~selected~~[chosen](#) as the Selected Bidder for the Project and it fails within the specified time limit to:
 - (i) incorporate the SPV and cause the SPV to sign the Concession Agreement;
 - ~~(ii) — obtain undertakings from the Members of the Consortium (if required by the Concession Agreement) in relation to their shareholding in the Equity and voting rights of the Concessionaire that will be valid for the period set out in the Bidding Documents;~~
 - [\(ii\)](#) ~~(iii)~~ pay the first installment of the Project Development Fee in accordance with Clause 2.31.6(c)(i) of the RFP;
 - [\(iii\)](#) ~~(iv)~~ furnish the Construction Performance Bond within the period prescribed in the RFP; or
 - [\(iv\)](#) ~~(v)~~ execute the O&M Agreement or obtain the Authority's approval for its proposed O&M contractor pursuant to the RFP;

or
- (f) if the Selected Bidder, has signed or caused the SPV to sign the Concession Agreement for the Project, and the Bidder or the Concessionaire commits any breach thereof before furnishing the Construction Performance Bond.

Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding [INR 150,000,000 (INR fifteen crores)] **OR** [INR 300,000,000 (INR thirty crores)]. *[strike out as applicable, depending on whether the Bidder has demonstrated the Threshold O&M Experience]*

4. This Guarantee shall be irrevocable and remain in full force for a period of 240 (two hundred and forty) days from ~~the Bid Due Date~~[\[17 May,2011\]](#) inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, those events listed at Clause 3 above. The decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor.
8. The obligations of the Bank under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Bidding Documents or the Bid submitted by the Bidder.
9. The obligations of the Bank under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Bank from or prejudice or diminish its liability under this Guarantee, including (whether or not known to it, or the Authority):
 - (a) any time or waiver granted to, or composition with, the Bidder or any other person;
 - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions or change in the Bidder or Members of the Consortium, as the case may be;
 - (c) any variation of the Bidding Documents, so that references to the Bidding Documents in this Guarantee shall include each such variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of the Bidder or the Authority under the Bidding Documents or any unenforceability, illegality or invalidity of the obligations of the Bank under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or guarantee or security, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and

primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity; and

- (e) the partial or entire release of any surety or other party primarily or secondarily liable or responsible for the performance, payment or observance of any of the obligations of the Bidder under the Bidding Documents; or by any extension, waiver, or amendment whatsoever which may release a guarantor or surety (other than performance of any of the obligations of the Bidder under the Bidding Documents).
- 10. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
- 11. We undertake to make the payment on receipt of your notice of claim on us addressed to [*name of Bank along with branch address*] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
- 12. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
- 13. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
- 14. The Bank represents and warrants that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by.....Bank

By the hand of Mr./Ms. its and authorized official.

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX III
FORMAT OF JOINT BIDDING AGREEMENT

(Refer Clauses 2.1.4 and 2.21.2)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of, 20.....

AMONGST

1. {....., a [company] incorporated under the laws of} and having its registered office at (hereinafter referred to as the "**First Party**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {....., a [company] incorporated under the laws of} and having its registered office at (hereinafter referred to as the "**Second Party**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

[3. {....., a [company] incorporated under the laws of} and having its registered office at (hereinafter referred to as the "**Third Party**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {....., a [company] incorporated under the laws of} and having its registered office at (hereinafter referred to as the "**Fourth Party**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

5. {....., a [company] incorporated under the laws of} and having its registered office at (hereinafter referred to as the "**Fifth Party**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

6. {....., a [company] incorporated under the laws of} and having its registered office at (hereinafter referred to as the "**Sixth Party**" which

expression shall, unless repugnant to the context include its successors and permitted assigns)]³

The above mentioned parties of the FIRST, SECOND, [THIRD, FOURTH, FIFTH and SIXTH] PART are collectively referred to as the "**Members**" and each is individually referred to as a "**Member**".

WHEREAS

- (A) The Government of Kerala, represented by [insert] with its principal offices at [insert] (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 bids (the "**Bids**") by its Request for Proposal dated 18 February, 2011 (the "**RFP**") for selection of bidders for development and implementation of the Project (as defined in the RFP) through public private partnership.
- (B) The Members are interested in jointly bidding for the Project as members of a consortium under the name "..... Consortium" and in accordance with the terms and conditions of the RFP and other Bidding Documents in respect of the Project.
- (C) It is a necessary condition under the RFP that the Members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

IT IS 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. Consortium

- 2.1 The Members do hereby irrevocably constitute a consortium by the name of "..... Consortium" (the "**Consortium**"), for the purpose 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 Consortium and not individually and/or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

³ The number of Members of a Consortium cannot exceed 6.

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, ~~it~~the Consortium shall incorporate a special purpose vehicle (the "SPV") under the Indian Companies Act, 1956 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) The First Party shall be the Lead Member of the Consortium and shall have the Power of Attorney from all the Members, in the format set out in the ~~RFP~~RFP, for conducting all business for and on behalf of the Consortium during the Bidding Process and until the date on which the Financial Close is achieved in accordance with the terms of the Concession Agreement;
- (b) The Second Party shall be the [●] Member of the Consortium;
- (c) The Third Party shall be the [●] Member of the Consortium.
- (d) The Fourth Party shall be the [●] Member of the Consortium.
- (e) The Fifth Party shall be the [●] Member of the Consortium.
- (f) The Sixth Party shall be the [●] Member of the Consortium.]

[A brief provision shall be included in each of the paragraphs (b) to (f), stating the role and responsibilities of each Member of the Consortium.]

5. Joint and Several Liability

The Members do undertake to be jointly and severally responsible and liable for all the obligations and liabilities of the Concessionaire relating to the Project in accordance with the terms of the RFP and the Concession Agreement, until such time that the Financial Close has been achieved for the Project.

6. Participation in the Equity and Voting Rights of the SPV

- 6.1 Without prejudice to the undertakings at Clauses 6.2 to 6.7 below, the Members agree that the proportion of their participation in the Equity and voting rights of the SPV shall be as follows on the date of execution of the Concession Agreement and until the date of effectiveness of the Concession Agreement:

First Party:	%
Second Party:	%
Third Party:	%

Fourth Party: %
Fifth Party: %
Sixth Party: %

6.2 The First Party undertakes that it shall hold ~~a minimum of~~at least 26% (twenty six per cent) of the Equity and voting rights of the SPV, from the date of signing of the Concession Agreement and at all times until the second anniversary of the Commercial Operation Date.

[6.3 The *[insert]* Party undertakes that it shall hold ~~a minimum of~~at least 26% (twenty six per cent) of the Equity and voting rights of the SPV, from the date of signing of the Concession Agreement and at all times until the second anniversary of the Commercial Operation Date.] *[This Clause 6.3 will apply to a Member other than the Lead Member, whose Technical Capacity has been demonstrated and considered by the Authority.]*

[6.4 The *[insert]* Party undertakes that it shall hold ~~a minimum of~~at least:

- (i) 26% (twenty six per cent) of the Equity and voting rights of the SPV, from the date of signing of the Concession Agreement and at all times until the second anniversary of the Commercial Operation Date; and
- (ii) 10% (ten per cent) of the Equity and voting rights of the SPV at all times from the second anniversary of the Commercial Operation Date until the fifth anniversary of the Commercial Operation Date.]

[This Clause 6.4 will apply to a Member whose Threshold O&M Experience has been demonstrated and considered by the Authority.]

6.5 Each Member, other than the Members referred to at [Clauses 6.2, 6.3 and 6.4], undertakes that it shall hold ~~a minimum of~~at least 5% (five per cent) of the Equity and voting rights of the SPV, from the date of signing of the Concession Agreement and at all times until the second anniversary of the Commercial Operation Date.

6.6 The Members jointly and severally undertake that the Members shall collectively hold at least 51% (fifty one per cent) of the Equity of and exercise Control over the SPV, from the date of signing of the Concession Agreement and at all times until the second anniversary of the Commercial Operation Date.

6.7 The Members jointly and severally undertake that they shall comply with all the change in ownership restrictions set out in the Concession Agreement and the other Bidding Documents.

7. Representation of the Members

Each Member represents and warrants that as of the date of this Agreement and on each day during the term of this Joint Bidding Agreement:

- (a) Such Member 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 Member 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 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;
 - (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, judgement, 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 Member, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Member'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 Member in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be fully effective from the date hereof and shall continue in full force and effect until:

- (a) the date on which the Bid Security is returned to the Consortium by the Authority, if the Project is not awarded to the Consortium; or
- (b) the date of expiration of 2 (two) years from the Commercial Operation Date, if the Project is awarded to the Consortium.

Notwithstanding anything to the contrary in the foregoing paragraph, the obligations set out at Clauses 5 and 6.4 shall survive the expiration or termination of this Agreement.

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, varied or terminated by the Members without the prior written consent of the Authority.

This Joint Bidding Agreement is entered into on this day of, 2011 by each of the Members as a Deed in favour of the Governor of Kerala, represented by the Secretary of the Department of Ports, Government of Kerala, Government Secretariat, Thiruvananthapuram - 695 001, Kerala, India (the "**Authority**") and the Authority shall be entitled to rely on and enforce the terms of this Joint Bidding Agreement against any or all of the Members.

SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER by:
Signature
Name:
Designation:
Address:

SIGNED, SEALED AND DELIVERED

For and on behalf of
SECOND PARTY:
Signature:
Name:
Designation:
Address:

SIGNED, SEALED AND DELIVERED

[For and on behalf of

THIRD PARTY:

Signature:

Name:

Designation:

Address:

[SIGNED, SEALED AND DELIVERED

For and on behalf of

FOURTH PARTY:

Signature:

Name:

Designation:

Address:]

[SIGNED, SEALED AND DELIVERED

For and on behalf of

FIFTH PARTY:

Signature:

Name:

Designation:

Address:]

[SIGNED, SEALED AND DELIVERED

For and on behalf of

SIXTH PARTY:

Signature:

Name:

Designation:

Address:]

Notes:

- *The mode of the execution of the Joint Bidding Agreement 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.*
- *The Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution/power of attorney in favour of each person*

executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

- *For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy or apostilled and notarized in the jurisdiction where the Power of Attorney has been executed.*

APPENDIX IV
FORMAT OF PROJECT DEVELOPMENT FEE UNDERTAKING
(Refer Clauses 2.21.2(e) and 2.31.6)

Dated:

To,

International Finance Corporation
50-M, Shanti Path
Gate No. 3, Niti Marg
Chanakyapuri
New Delhi 110 021

Sub: Undertaking to Pay the Project Development Fee

Dear Sir,

I/We on behalf of the Members of our Consortium undertake that if I/we are/am chosen as the Selected Bidder for the Vizhinjam Port Project, I/we will pay or cause the SPV to pay to the International Finance Corporation a fee (the "**Project Development Fee**") that is the higher of:

- (a) 1% (one percent) of the lower of: (1) the estimated capital cost of the Project stated in the Technical Proposal submitted by the Selected Bidder; and (2) the Estimated Project Cost; and
- (b) US\$ 1,500,000 (US Dollars one million and five hundred thousand).

I/We shall pay or cause the SPV to pay the Project Development Fee to the International Finance Corporation in US Dollars, in immediately available funds, without any deductions whatsoever for taxes, duties, charges or other withholdings (all of which shall be borne by the Selected Bidder or the SPV), into the bank account having the following details:

Wells Fargo Bank, N.A.
375, Park Avenue: New York, NY 10152
United States of America

Account Number: 2000192003476
For Credit: IBRD – International Bank for Reconstruction and Development
Swift ID: PNBPUS3NNYC
ABA: 026005092

or at such other bank in such place as the IFC may designate.

The Project Development Fee shall be payable by me/us or the SPV as follows:

- (i) US\$ 1,000,000 (US Dollars one million) within 90 days of the issuance of the LOA and on or before the date of signing of the Concession Agreement; and
- (ii) the balance of the aggregate amount of the Project Development Fee, which shall not be less than US\$ 500,000 (US Dollars five hundred thousand), within 30 (thirty) days of the date on which Financial Close is achieved by the SPV.

Yours faithfully,

Name and seal of the Bidder/Lead Member

(Signature, name and designation of the Authorised Signatory)

Date:

Place:

APPENDIX V
FORMAT OF UNDERTAKING REGARDING REPRESENTATIONS BY THE BIDDER
(Refer Clauses 2.21.3(b))

Dated:

To: Managing Director & CEO,
 Vizhinjam Seaport International Limited
 3rd Floor, Trans Towers, Vazhuthacaud
 Thiruvananthapuram, Kerala – 695 014, India.
 e-mail: ceo@vizhinjamport.in

Sub: Undertaking by the Bidder as per Clause 2.21.3(b) of the RFP

Dear Sir,

I/we undertake that all undertakings and representations made by the me/us as a part of my/our **Application during the Qualification Stage and as part of the Technical Proposal are and will be true, correct and accurate on the Bid Due Date and on the date of execution of the Concession Agreement.**

I/we shall be (jointly and severally, if applicable) liable to the Authority for the performance of the obligations mentioned in this Undertaking.

My/our address, fax and telephone number for the purpose of receiving communications under are as follows:

Attention: []
Address: []
Fax: []

(Any terms defined in the Request for Proposal or the Concession Agreement shall have the same meaning in this Undertaking.)

Yours faithfully,

Name and seal of the Bidder/Lead Member

(Signature, name and designation of the Authorised Signatory)

Date:

Place:

APPENDIX VI
FORMAT OF UNDERTAKING REGARDING EXECUTION OF O&M AGREEMENT
(Refer Clauses 2.21.3(c))

Dated:

To: _____ Managing Director & CEO,
_____ Vizhinjam Seaport International Limited
_____ 3rd Floor, Trans Towers, Vazhuthacaud
_____ Thiruvananthapuram, Kerala – 695 014, India.
_____ e-mail: ceo@vizhinjampport.in

Sub: Undertaking by the Bidder as per Clause 2.21.3(c)

Dear Sir,

Any terms defined in the Request for Proposal or the Concession Agreement shall have the same meaning in this Undertaking.

I/we undertake, as I/[insert name of Consortium Member] have/~~has not demonstrated the~~ ~~Threshold O&M Experience~~ (as defined in the RFP), and that I/we shall ensure that, if declared to be ~~the Selected Bidder, the SPV formed by me/us~~ shall enter into an O&M Agreement within the time period specified at Clause 1.3 of the RFP and in accordance with Clause 2.31.7 of the RFP.

I/we shall be (jointly and severally, if applicable) liable to the Authority for the performance of the obligations the mentioned in this Undertaking.

My/our address, fax and telephone number for the purpose of receiving communications under are as follows:

Attention: _____ []
Address: _____ []
Fax: _____ []

(Any terms defined in the Request for Proposal or the Concession Agreement shall have the same meaning in this Undertaking.)

Yours faithfully,

Name and seal of the Bidder/Lead Member

(Signature, name and designation of the Authorised Signatory)

Date:

Place:

APPENDIX VII

FORMAT OF POWER OF ATTORNEY FOR SIGNING OF BID

(Refer to Clause 2.21.2(f))

Know all men by these presents, We (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") 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 Bid for the **Vizhinjam Port Project** that is being developed by the Government of Kerala (the "Authority"). The Attorney is expressly authorised to sign and submit the Bid and other documents, participate in the pre-bid meetings and provide information/responses to the Authority, and generally deal with the Authority in all matters in connection with our Bid for the said Project. The Attorney shall have no authority to act on our behalf, except in relation to matters specifically stated herein.

AND we 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.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For
.....
(Signature, name, designation and address)

Witnesses:
1.
2. _____

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Instructions:

- (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 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.
- (3) 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.

APPENDIX VIII

FORMAT OF POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM

(Refer 2.21.1(g))

Whereas the Government of Kerala ("the Authority") has invited applications from interested parties for the Vizhinjam Port Project (the "Project").

Whereas, and (collectively the "Consortium") being Members of the Consortium are interested in submitting an application for pre-qualification for the Project and if declared as pre-qualified, to Bid for the Project in accordance with the terms and conditions of the Request for Qualification document ("RFQ"), Request for Proposal ("RFP") and the other Bidding Documents, and

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at M/s. having our registered office at M/s. having 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 Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium 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 Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its Bid and generally represent the Consortium in all its dealings with the Authority, and/or any other Government Agency or any person, in all matters in connection with our Bid for the Project including delegating its power to sign and execute the Bidding documents to its authorised officer. The Attorney shall have no authority to act on our behalf, except in relation to matters specifically stated herein.

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/Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
- 2.

.....
(Executants)

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

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Instructions:

- (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) 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.
- (3) 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.

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