

e-TENDER NO.DC/O(17)/2017/7

E-TENDER FOR HIRE OF ONE NUMBER (TRACTOR/REVERSE TRACTOR OF CYCLOIDAL OR STEERABLE RUDDER PROPULSION SYSTEM INCLUSIVE OF AZIMUTH STERN DRIVE) HARBOUR TUG OF BOLLARD PULL 50 TON OR MORE AT 100% MCR FOR 07 YEARS TO MORMUGAO PORT TRUST CLARIFICATIONS TO QUERIES RAISED BY PROSPECTIVE BIDDERS DURING PREBID MEETING HELD ON 08.08.2017 AT 1100HRS IN DY CONSERVATOR, CONFERENCE ROOM, MORMUGAO PORT TRUST, HEADLAND SADA GOA

17. APPLICATION OF LAW AND ARBITRATION

17.1. SETTLEMENT OF DISPUTES

(i) If any dispute of difference of any settlement of kind whatsoever shall arise between the Deputy Conservator and the Contractor in connection with or arising out of the contract or the carrying out of the works (whether during the progress of the works, after the termination, abandonment of or breach of the contract) it shall in the first place be referred to be settled by the Deputy Conservator who within a period of 60 days after being requested by the contractor shall give written notice of his decision to the contractor, if the Deputy Conservator shall fail to give notice of his decision as aforesaid within a period of 60 days after being requested by the contractor as aforesaid or if the contractor be dissatisfied with any such decision then any such case, the contractor shall, within a further period of 30 days from the expiry of the first 60 days from the date of receipt of Deputy Conservator's decision, write to the Chairman putting forth his views why he is not in agreement with the decision given by the Deputy Conservator.

(ii) If the contractor, after receiving notice of the decision of the Deputy Conservator does not refer the dispute to the Chairman seeking his decision, within a period of 30 days of the Deputy Conservator's decision then the Deputy Conservator's decision will be final and binding upon the contractor, and no further claim will exist thereto.

(iii) The Chairman shall, within a period of 60 days from the receipt of the request from the contractor, give written notice of his final decision in the matter under dispute to the contractor. If the Chairman fails to give written notice of his final decision within a period of 60 days after being requested by the contractor as aforesaid or if the contractor be dissatisfied with any such final decision given, then the contractor may within a period of 30 days after the expiry of the period of 60 days from the date of his application to the Chairman or within a period of 30 days after receiving notice of such final decision, as the case may be, require that the matter or matters in dispute be referred to arbitration as herein after provided. If the Chairman has given the written notice of his final decision to the contractor, and no claim to the arbitration has been communicated to the Chairman by the contractor, within a period of 30 days from the receipt of Chairman's decision the said decision shall remain final and binding upon the contractor. If the Chairman fails to give written notice of his final decision to the contractor within a period of 60 days and no claim to the arbitration has been communicated to the Chairman or the Deputy Conservator by the contractor within a period of 30 days thereafter, then the decision given by the Deputy Conservator shall remain final and binding upon the contractor as hereinafter provided such decision in respect of every matter as referred shall be final and binding upon the contractor

until the completion of the work and shall forthwith be given, effect to by the contractor who shall proceed with the works with all the diligence whether he requires arbitration as hereinafter provided or not.

(iv) All disputes or differences in respect of which the decision (if any) of the Deputy Conservator or the Chairman has not become final and binding as aforesaid shall be referred to the sole arbitration of Engineer serving or retired of Central Government agencies, including Defence Service and or a member of Indian Council of Arbitrators, to be appointed by Chairman pursuant to and so as with regard to the mode and consequence of the reference and in all other respects to conform to the provisions of the Government of India Arbitration Act, 1940 (Act No. 10 of 1940) or any reenactment of statutory modification thereof for the time being in force. The sole arbitrator shall have full power to open up, review, and revise any decision, opinion, direction, certificate or valuation of the Deputy Conservator or the Chairman neither party, shall be limited in the proceedings before the Arbitration to the evidence or arguments put before the Deputy Conservator or the Chairman or the purpose of obtaining his decision. No decision given by either the Deputy Conservator or the Chairman in accordance with the foregoing provisions shall disqualify them from being called as a witness and given evidence before the sole Arbitrator as aforesaid.

(v) The Arbitrator shall not enter on the reference until after the completion or the alleged completion of works, unless with the written consent of the Board/Chairman/Deputy Conservator and the contractor provided always:- In the event of the Arbitrator to whom the matter is originally referred, is unable to act for any reason, the Chairman shall appoint another Engineer serving or retired of Central Govt. Agencies including Defence Service and or a member of Indian Council of Arbitrators as Arbitrator and he shall be entitled to proceed with the reference afresh or from the stage at which it was left by his predecessor. In all cases, the Arbitrator shall give a speaking/reasoned award.

17.2 EXTENSION OF TIME

(i) The Contractor shall commence the works on site within the period indicated in the tender after the receipt of an order in writing to this effect from the Deputy Conservator and shall proceed with the same with due expedition and without delay except as may be expressly sanctioned or ordered by the Deputy Conservator or be wholly beyond the control of the Contractor.

(ii) The Contractor shall maintain the rate of progress required as per schedule. If the progress of work is held up owing to circumstances, which in the opinion of the Deputy Conservator are beyond the control of the Contractor such as war, stormy weather and for other reasonable causes in the opinion of the Deputy Conservator, the Deputy Conservator may at his discretion, grant to the work extension of time as he considers reasonable for the completion of the work. In such circumstances, the Contractor shall apply for extension of time within fifteen days of the hindrance on account of which he desires such extension as aforesaid.

(iii) The execution of the work during the extended period also, shall be only under the conditions and at the rates specified in the contract.

(iv) No claim shall be made by the Contractor on the grounds of executing the work beyond the completion period stipulated in the contract.

17.3 ARBITRATION

Disputes if any, between MPT and the Contractor during the currency of the Contract or after the completion of the work or abandonment thereof shall be settled in accordance with Indian Arbitration & Conciliation (Amendment) Act, 2015 or any statutory modification or re-enactment thereof and rules made there under and for the time being in force shall apply to arbitration proceedings under this Contract. The disputes so raised shall be referred to a panel of two arbitrators, of which one to be appointed by MPT and other by the Contractor. The arbitration proceeding shall take place in Goa or at Administration Building, MPT only, and the same shall be under jurisdiction of High Court of Goa.

17.4 DEFAULTS & TERMINATION

1. Default:

Occurrence of any one or more of the following will be considered as event of default:

- a) In case the completion of the work cannot be effected within completion period.
- b) Contractor fails to execute the terms and conditions of the contract and obligations under the contract within the period as specified in the contract, or any extension granted by the Board.

2. Termination

(a) If the contractor fails to complete the subject work during the contract period or extension period within notice period, the work order will stand cancelled, and security deposit will be forfeited.

(b) In the event of occurrence of default (b) as mentioned above MPT may proceed for terminating the contract by way of giving 3 months (termination period) notice within which time the Contractor will be required to peacefully vacate Port premises and remove equipment deployed by them under the contract from the Port premises. In case of failure on the part of the Contractor to do so, MPT shall be at liberty to remove such equipment from the dock premises and to keep the same at any location convenient to MPT. Necessary charges for such removal and rent for keeping of the same shall have to be paid in full by the Contractor before taking possession of such equipment. Also, in such event, the Contractor shall not be entitled to claim any compensation from MPT for any damage that may occur during such removal and keeping of the equipment at any location by MPT. Also in case of termination of the contract the security deposit will be forfeited.

(c) During the notice period of 3 months as at (b) above, the Contractor may be asked by MPT to continue to discharge its obligations under the contract which the contractor would be capable of performing and as may be mutually agreed upon with the object, as far as possible, of ensuring continued availability of the facilities and services to the port users in the wake of gradual winding up of the entire set-up of the contractor.

(d) No compensation shall be paid by MPT to the Contractor in the event of termination of the contract.

Penalty Clause stands revised.

FOURTH SCHEDULE; Clause No. 25; Penalty

(a) In case the offered Tug become un-available for operation, then a sister tug or substitute tug with similar/ better specification and satisfying the age criteria stipulated for offered

tug, shall be provided as a replacement by the contractor, at no extra charge to the Employer, within remaining downtime available with the contractor. If the fuel consumption of the substitute tug is more than that of the offered tug, the Employer shall have power to recover the extra cost incurred on account of the excess fuel consumption from the contractor's monthly bills.

(b) If the contractor has not deployed the replacement tug within remaining downtime days from the time and date the offered tug become unavailable for use then below clause will apply.

(c) If the tug is inoperative or unavailable or Contractor denies the use of tug, penalty will be levied from the time and date of such in operation / unavailability as follows, in addition to non-payment of pro rata hire charges from the time and date of such non-availability/ in operation the penalty charge will be as follows:

- i. upto 7th day ----- 40% of hire charges per day prorata
- ii. From 8th to 15th day ----- 60% of hire charges per day prorata
- iii. From 16th onwards ----- 100% of hire charges per day prorata

(d) In case of non-deployment of tug beyond 30 days and replacement tug has not been provided by the contractor, the contract shall be terminated and the Performance Bank Guarantee may be forfeited.

e) If the tug is required to be dry docked as required by Class (LRS/IRS/any other classification Society) or for any other reason whatsoever, the Contractor will be permitted to dry dock the tug/s to maintain her Class with the prior approval of Deputy Conservator. However the Dry Docking Charges will be borne by the Contractor but no hire charges will be paid for that period and penalty will be levied as per above, if applicable.

(f) Port reserve the right to forfeit/encash the performance Guarantee deposit in the event of non-deployment / unavailability of tug beyond 30 days.

(g) Contractors shall bear all expenses for mobilization and de-mobilization of tug.