

DEVELOPMENT OF VIZHINJAM INTERNATIONAL DEEPWATER SEAPORT

Minutes of the 23rd meeting of the Empowered Committee held on 07th May 2015 at the State Planning Board, Pattom, Thiruvananthapuram.

Present :

Shri. Jiji Thomson, IAS, Chief Secretary	-Chairman
Dr. K M. Abraham IAS, Additional Chief Secretary-Finance	-Member
Shri James Varghese, Principal Secretary to Govt.(Ports)	-Member
Shri. B. G. Harindranath, Secretary to Govt. (Law)	-Member
Shri A S Suresh Babu, Managing Director & CEO, VISL	-Convener

Special Invitees:

Shri K M Chandrasekhar, Vice Chairman, State Planning Board, GoK
Shri Gajendra Haldea, Former Principal Advisor (Infrastructure & PPP), Planning Commission
Shri G Vijayaraghavan, Member, State Planning Board

In Attendance:

Vizhinjam International Seaport Ltd. (VISL)

Shri Ajit S, Project Co-ordinator & Head (EHS & CSR)
Ms. Sankaran Suma, Company Secretary & CAO
Shri. Syam Aravind A.V, Chief Finance Officer
Shri Lazar Thomas Maliakal, Project Manager (Engineering & Construction)
Shri Sunil Kumar A, Project Manager – Commercial
Shri A Abdul Rahim, Technical Advisor (Planning)
Shri P K Sassi Kumar, Technical Advisor (Projects)

Ernst & Young (Financial Consultant & Transaction Advisor)

Shri Abhaya Krishna Agarwal, Partner & Team Leader
Shri Anshuman Srivastava, AVP & Deputy Team Leader

HSA Advocates (Legal Consultant)

Shri Pranav Kumar Singh, Partner & Deputy Team Leader

AECOM (Technical Consultants)

Shri Prafull Marwah, Project Manager



The meeting began at 10:30 AM with Chief Secretary in the Chair.

Leave of absence was granted to Shri Subrata Biswas, Principal Secretary to Chief Minister

1. Confirmation of the minutes of the 22nd Empowered Committee Meeting held on 08.04.2015.

The Minutes of the 22nd Empowered Committee Meeting held on 08.04.2015, enclosed as Annexure A to the agenda was discussed and confirmed.

The Committee noted the items of the Agenda circulated and decided to discuss Item 3 (Request for Additional Information/Queries and Extension of Bid Due Date from M/s SREI-OHL Consortium) and Item 4 (Letter from Special Envoy to India & South Asia (Infrastructure), Government of Malaysia) before discussing upon Item 2 (Selection of Concessionaire).

2. Request for Additional Information/Queries and Extension of Bid Due Date from M/s SREI-OHL Consortium

MD & CEO informed that VISL is in receipt of the following two letters from one of the bidders M/s SREI- OHL Consortium:

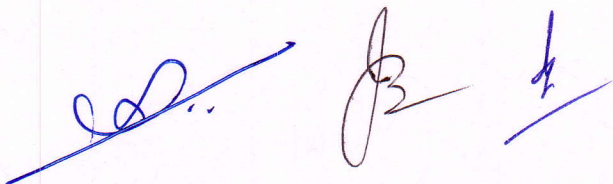
- (i). Letter dated April 15, 2015; seeking some clarifications on the provisions of DCA.
- (ii). Letter dated April 24, 2015 (although the letter itself refers to the date of issue as September 23, 2014), requesting extension of bid due date. In the letter the bidder pointed out that :

"As you are aware that we have qualified for this project along with our International partner Obrascon Huarte Lain, S. A. (OHL), the Spanish multinational construction and Civil Engineering Company.

We have been in discussion with them regarding the bid submission for this project but unfortunately, due to current economic environment and challenges in the Indian Infrastructure space, OHL, now at the last moment is not pursuing this bid and hence we are not able to proceed with the bid submission as signatures of both the consortium partners on the power of attorney of the bid signatory are required.

We still are very much interested and stand committed for this project and hence planning to induct a new partner. We therefore request you to give us two-three weeks' time to put up this consortium."

On the matter M/s HSA opined the Authority has, in fact, responded to all the queries received on time from the bidders, including SREI Finance Infrastructure Limited. The first



letter was received by the Authority on April 15 (i.e. only 9 days prior to Bid Due Date) and therefore, as per the provisions of the RFP (Clause 1.3, 2.8.1, 2.8.2 and 2.8.3) it is not required to respond to such belated query. The second letter requesting extension of bid due date for consortium change was received only on 11:30 Am, 24th April 2015 (i.e only about 5 hours prior to the submission time). As per provision of RFP (Clause 1.3, 2.2.2, 2.8.1, 2.8.2 and 2.8.3) such request cannot be considered in such short notice. The Committee noted that there is no valid proposal made by the bidder in respect of consortium change in accordance with clause 2.2.2 of RFP. Accordingly no responses were provided to the bidders. The committee noted that in the past, besides the extension of request referred above, SREI-OHL consortium had made 4 written requests for extension during the bid stage and the same were suitably considered.

Decision

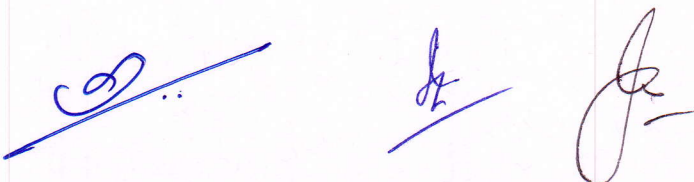
The Empowered Committee noted the action taken and ratified the same.

3. Letter from Special Envoy to India & South Asia (Infrastructure), Government of Malaysia

The Committee was informed that Sri. K. Mohan Das IAS (Rtd), former Secretary to Govt. of India vide letter dated 27th April 2015, wrote a letter to Honourable Chief Minister, enclosing a letter from Dato Seri Utama S. Samy Vellu, Special Envoy to India and South Asia (Infrastructure) Government of Malaysia expressing interest of Malaysian companies in developing Vizhinjam Seaport project under Design Build Finance Operate and Transfer (DBFOT). Government vide letter No.5349/E1/2015/F&PD dated 05-05-2015 has requested VISL to place the proposal to Empowered Committee Meeting and Meeting of Board of Directors, VISL.

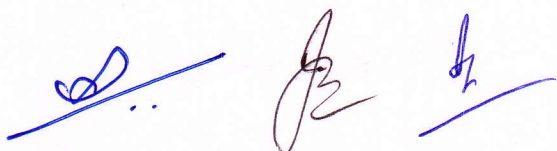
Managing Director & CEO informed the Committee that VISL remarks on the matter has been sent to GOK vide its letter No. VISL/PPP/2014/417 dated 29th April 2015. Managing Director & CEO explained that in this two stage tendering process, only those Applicants who have qualified in "Request for Qualification" (RfQ) stage can participate in the "Request for Proposal" (RfP) or bid stage. Last date for submitting Applications in RfQ stage was on 10th March 2014. During RFQ stage full efforts were made to intimate organisations and institutions world over on the tender notification.

Managing Director & CEO further elaborated on the process and mentioned that the following efforts were made during this process for comprehensive market exploration:-



- Notification of RfQ dated 3rd Dec 2013 was published in following publications.
 - International publications: Financial Times and Economist
 - National publications: Economic Times, Financial Express, Business Line and Business Standard.
 - National Malayalam publications: Malayala Manorama and Mathrubhumi.
- Notification of RFQ was floated in VISL's official website on 4th December 2013. All addendums related to RfQ process was also uploaded in VISL's Official website, www.vizhinjamport.in.
- Brief details of the project was send to Embassies Trade organisations including Malaysian consulate in India.
- Brief email detailing tenders floated for the development of Vizhinjam International Seaport project was also sent to the Malaysian Special Envoy, Dato' Seri Utama S. Samy Vellu.
- During the RfQ process invitation was sent to Malaysian Embassy for the Investor Meet conducted at Mumbai on 16th Jan 2014. Invitation was sent on 13th Jan 2014 by Financial and Transaction advisor for the Project, Ernst and Young on behalf of VISL. In response Assistant Trade Commissioner, Malaysia External Trade Development Corporation attended the Investor Meet/Road Show at Mumbai on 16th Jan 2014.
- On 24th Feb 2014, mail attaching Project Information Memorandum (PIM) and Addendum No 8 to RfQ was forwarded to all who attended the Investor Meet to update the status of tendering process.

Managing Director & CEO explained that none of the Malaysian companies purchased the RFQ document or even enquired about the project until last date of submitting application i.e., 10th March 2014. Under the current situation, participation by any company in the current tendering process now is not legally possible. In this circumstance, GoK/VISL is not legally in a position to consider the request of the Special Envoy in the current bid process. The Committee noted that mere initiation of interest by a third party at this stage does not ensure their future commitment for the project. As such, it is not in the interest of the project to consider the proposal at the current final stage of bid process. Vice Chairman, State Planning Board informed the Committee that the matter has been consulted by him with Former Ambassadors Shri T.P. Sreenivasan and Shri Shyam Saran (Former Foreign Secretary). They are of the opinion that all Government to Government proposals shall only be routed through respective embassy and Ministry of External Affairs, Government of India. As such in this particular case, the communication made cannot be considered under the category of Government to Government proposal.



Further, the Committee noted that a qualified bidder including the sole bidder have an enforceable right to get a tender awarded in their favour is evident from the order of Honourable Supreme Court's Judgement dated 12th August 2011 in Association of Registration Plates v. Union of India in the matter of High Security Registration Plates to motor vehicles.

Decision Taken

The Committee after noting the above facts decided not to consider the proposal from Special Envoy to India and South Asia, Government of Malaysia and authorised Managing Director & CEO to inform the Government accordingly.

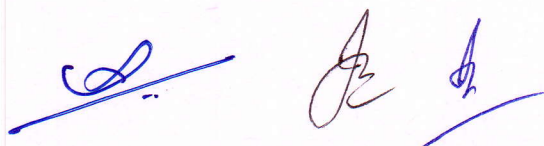
4. Selection of Concessionaire

Managing Director & CEO informed the Committee that based on the decisions of the 22nd Meeting of Empowered Committee, the bid due date for the project was fixed as 24th April 2015. By the close of bid time, only one bidder M/s Adani Ports & Special Economic Zone Ltd submitted its bid. Before detailing the bid opening and its evaluation, a Brief History, Current Development Model and the selection process undertaken for the project was presented.

4.1. Brief History

The Managing Director & CEO informed that the current development model was evolved after three unsuccessful attempts. In the Private Services Model resorted to in 2004-06 and 2008-09, M/s Zoom Developers and M/s LANCO Infratech were the chosen bidders respectively. Due to denial of security clearance in the first instance and legal tussle on qualification in the second instance, the attempts failed.

In 2010-12, the project was bid out on Landlord Model with PPP component and without VGF assistance from Government of India. M/s Welspun-Leighton Consortium was the single qualified bidder then and the bidder demanded a grant of Rs.399.50 Crore in NPV terms(The Bid Quote was Rs.479.50 crore in NPV terms). The demanded grant of Rs.399.50 crore (in NPV terms) were unacceptable to the Government and the selection process was cancelled. In the model, the grant quoted was for the PPP investment of Rs.970 Cr which comprised of Superstructure for port operation and Terminals. All civil works including breakwater, dredging & reclamation and berths were to be undertaken by Government on EPC basis for which the Concessionaire would have the first right of refusal. Government vide order, G.O(MS) No.65/2012/F&PD dated 06th August 2012 rejected the demand and decided to invite tenders afresh from the interested parties for being selected as a Port Operator on completion of EIA



studies and proceed with preparation of master plan and EPC tender. Government also authorised VISL to examine the matter of Viability Gap Fund to be sought from Government of India.

4.2. Current Development Model

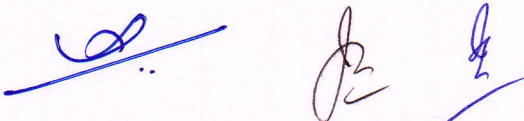
The Committee noted that Government vide order, G.O (MS) No.69/2013/F&PD dated 29th Nov 2013 approved the current model for development of the project. As per the Model approved by GoK, the State shall be responsible for funding and development of breakwater, and fishing harbour. The chosen private Concessionaire shall be responsible for funding and development of dredging & reclamation, berths, road, substations, superstructure & equipment and for operation. Under the Model, the chosen developer shall be eligible for a maximum VGF grant of 40% (from Central and State Governments). Accordingly, VISL on obtaining Environmental Clearance for the project initiated the following two International Competitive Bidding (ICB) / Global Tenders on 04th Dec 2013:

- (i). For selection of PPP Concessionaire (Developer Cum Operator) on PPP basis
- (ii). For selection of Engineering Procurement and Construction (EPC) contractor for the construction of breakwater and associated berths.

Meanwhile, in February 2014, Planning Commission introduced the concept of "Funded Works" in the Model Concession Agreement (MCA) for State Ports being prepared by the Commission then. The concept of Funded Works (wherein certain portion of works would be executed by Concessionaire by the lump sum funds provided by the Authority) was introduced in the MCA with the aim of avoiding interface disputes on engagement of different agencies for work of same project, thereby reducing conflicts, time/cost over runs and ensuring timely completion of the project.

Based on the recommendation of the 16th meeting of EC, Government (vide order No. G.O(MS) No.21/2014/F&PD dated 01st March 2014) modified its earlier order G.O (MS) No.69/2013/F&PD dated 29th Nov 2013. Pursuant to the modification, the EPC work for the construction of Breakwater and fishing harbour was included as Funded Works in the PPP tender for which State would provide funding.

The Committee noted that when compared with the earlier model of 2010, the current model offers huge savings on the cost to be incurred by the State Government. In addition, 50% of the grant sought by the bidder is borne by Gol under VGF scheme. In this context, the Committee noted the following:



- In the earlier model, the State's investments were on Breakwater, Dredging and Reclamation, Berths and external infrastructure including road and sub-station. In the current model, the State is making investment on Breakwater, Fishing harbour and external infrastructure excluding road and substation.
- In the earlier model, the price discovery for State's investment is through the EPC quote for the civil works and the bid quote for the PPP component. In the current model, the price discovery for State's investment is through the composite grant/premium quoted and as such all cash out flow on the side of Government has a ceiling in the beginning of the project itself.
- In the market tested Model of 2010-12, the bidder quote was Rs. 479.54 Cr (grant in NPV terms) for a PPP investment of Rs.970 Cr (49.4% of the PPP investment). In the current bid, the quote is a grant of Rs. 1635 Cr for a PPP investment of Rs.4089 Cr (39.985%), of which Rs.817.80 Crore shall be obtained under VGF scheme from Gol.
- In the current Model, the concession is granted for a period of 40 years including four years construction period extendable by 20years, whereas, in the earlier model it was for a period of 30 years excluding 3 years of construction period for civil infrastructure (effectively 33 years compared to the current model), with first right of refusal for phase 2 for unspecified term.
- In the earlier model, the site required for Port Development was handed over to the Concessionaire on lease, where as in the current model, the site is handed over to the Concessionaire on license basis, which bestows lesser right to the Concessionaire on the land.
- In the earlier model, no revenue share was payable to Government; however in the current model there is a revenue share from 15th Year of COD.
- In the earlier model, State was responsible for external infrastructure which includes Land, Power, Substations, Water, Rail and Road. In the current model, construction of the road and Substations are the responsibility of the Concessionaire's and balance with the State.
- In the earlier model, there was no provision for CSR including the construction of the Fishing Harbour. But the present model envisages the provisions for CSR. The fishing harbour will be a blessing to the poor fisher folk.
- In the earlier model, the draught of the port was lesser with the result that vessels upto the capacity of 14500 TEU's would have called on, but under the present model, vessels upto 18,000 TEU's can call on. Further, the berth length is increased from 600m to 800m. Thus the facility being constructed under the present model is far superior.



4.3. Bidding Process and Exploration of Markets for the Project

Transaction Advisors, M/s Ernst & Young explained to the Committee the process undertaken for exploring the market for the project and the comprehensive way in which it was done. They further explained that a two stage process involving Qualification Stage and Bid Stage was resorted to for selection of bidder/concessionaire, for which Request for Qualification (RFQ) and Request for Proposal (RFP), were prepared based on the Model RFQ and Model RFP documents approved by Planning Commission and Ministry of Finance, Government of India.

The Committee noted that RFQ for the Project was approved by Government Vide order G.O (MS) No.69/2013/F&PD dated 29th Nov 2013. The fee for Request for Qualification (RFQ) was Rs.4,00,000 (Rupees Four Lakhs Only). ICB/Global Tender notice for the project was published by Government of Kerala on 4th December 2013. The Notice was given wide publicity in the following print media.

- (i). International Publications; Global Editions of Economist and Financial Times.
- (ii). National Publications; Economic Times, Business Line, Business Standard, Financial Express, Malayala Manorama and Mathrubhumi.

The Transaction Advisors explained that as part of the marketing of the project and the PPP tender, the following were undertaken:

- (i). Email and written communication to various International and National Infrastructure Players were made intimating the invitation of prequalification application. A detailed mail attaching project information memorandum and RFQ details was sent by VISL and Transaction Advisors M/s Ernst & Young to a large number of potential investors and bidders. Embassies and their respective trade organisations were also informed.
- (ii). A road show was conducted for the project on 16th Jan 2014 at Mumbai. The event was attended by Minister for Ports, Government of Kerala, Vice Chairman, & Member, State Planning Board, officials of GoK/VISL and Project Consultants. The meeting was widely attended by Infrastructure Companies, Port Operators and representatives of Foreign Embassies and their respective trade organisations.

- (iii). Two Pre-Application Conferences were held at Trivandrum on 22nd Jan 2014 and 7th Feb 2014 to address prospective applicant queries and concerns. The meeting was represented by prospective bidders. Besides, during the Qualification Stage, written queries were made by various prospective applicants and the same were responded. Adequate time was provided to applicants for preparation of application for qualification.

On the culmination of the "Qualification Stage", five (5) applicants submitted their Qualification application on 10th March 2014. All the following five applicants were shortlisted strictly based on the financial and technical qualification set in the RFQ document:

- (i). ADANI Ports & SEZ Ltd.
- (ii). Concast – Hyundai Consortium
- (iii). ESSAR Ports Ltd.
- (iv). Gammon Infrastructure Projects Ltd.
- (v). SREI – OHL Consortium

The Committee noted that following the Pre-Qualification, RFP approved by Government vide order No. G.O(MS) No.36/2014/F&PD dated 12th May 2014, was issued. Along with RFP, Draft Concession Agreement (DCA) and Manual of Specifications and Standards approved by Government of Kerala were issued to the shortlisted applicants, who remitted the document fee of Rupees Eight Lakhs. As per the RFP, the selection of bidder is based on the highest premium/lowest grant quoted.

The following three bidders purchased the bid documents:

- (i). ADANI Ports & SEZ Ltd.
- (ii). ESSAR Ports Ltd.
- (iii). SREI – OHL Consortium

Transaction Advisors explained that as part of the bidder outreach activities, the following efforts were made:

- (i). For the benefit of all the applicants including those who did not purchase the RFP, one session on technical aspects of the project was conducted on 3rd June 2014 and one session on financial and legal aspects of the project was conducted on 9th July 2014.
- (ii). Three Pre-bid meetings for bidders who purchased the RFP were conducted during the bid stage on 21st May 2014, 14th July 2014 and 17th Nov 2014.

The session and the pre-bid meetings were attended by bidders who purchased the RFP. The bidders' queries in respect of the project as well as bidding documents were responded appropriately and adequate time as per RFP was provided for submitting the financial bid. Addenda to the RFP and DCA were sent to the bidders by email and post.

Due to delay in "In-Principle" Approval for VGF and request from bidders, the bid due date for the project was extended accordingly. Pursuant to the approval of VGF on 3rd Feb 2015, the Bid Due Date was extended to 20th February 2015. Since no bidder submitted bids, the Bid Due Date was extended.

During the extended period, as decided by 34th Meeting of Board of Directors, VISL, the Honourable Chief Minister, Chairman VISL discussed with Chairmen of three bidding companies to instil confidence and to identify concerns if any, for consideration within the legal framework of the bid process. A fourth Pre-bid meeting was conducted on 9th March 2015 at Mumbai. Concerns and queries with respect to the project and bidding documents were raised by bidders; the same were suitably addressed and responded to within the legal framework of the bid process. Consequently, the Bid Due Date was set on 24th April 2015.

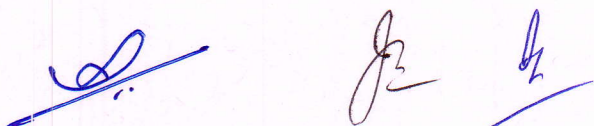
The Empowered Committee noted the bid process undertaken for selection of Concessionaire. The Committee felt that the market was explored adequately and comprehensively for identifying a Concessionaire.

4.4. Bidding Documents for the project

4.4.1. Draft Concession Agreement (DCA)

The Empowered Committee noted that Government (vide order No. G.O(MS) No.36/2014/F&PD dated 12th May 2014) adopted the MCA for PPP in State ports issued by Planning Commission for the project. Government then also approved the DCA for the project prepared on the basis of the MCA. Government authorised Empowered Committee to carryout changes in the DCA if required based on the feedback from Applicants and changes suggested by PPP Cell, Department of Economic Affairs (DEA), GoI while considering the VGF application. Government also authorised VISL to make drafting changes in the document, if suggested by Planning Commission in consultation with Legal Advisors.

Accordingly, VISL issued the DCA to the qualified applicants who purchased the RFP. Based on feedback from bidders, suggestion by PPP cell of DEA, drafting changes suggested by Planning Commission and Legal Consultants, certain changes, additions and substitutions



were made to the DCA, with the approval of the EC, as authorized by GoK. These changes were intimated to the bidders who have purchased the RFP by issuing Addenda 1 to 9. The Addenda were sent to bidders by email and post.

The Committee further noted that the Key changes in the DCA with respect to Total Project Cost (TPC) and Cost of Funded Works are as given below:

(i). **Revision of TPC to Rs. 4089 Crore.**

As per the DCA approved by GoK for the project, the TPC was Rs.3950 crore. Due to various changes made in the project structure and assumptions and considering the escalation owing to the delay in getting In-Principle Approval process for VGF, a change in TPC was very much necessitated during the bid process. Pursuant to which, 20th Meeting of EC held on 31 Dec 2014 authorised the Principal Secretary and MD to revise the Total Project Cost in discussion with DEA. Accordingly Principal Secretary (Ports) and MD, VISL met Additional Secretary, DEA and Joint Secretary (Infrastructure & Energy), DEA on 9th Jan 2015 at New Delhi. During discussion, it was agreed that Total Project Cost shall be revised. It was also decided that methodology for computation of the TPC will be done under the same methodology earlier adopted by DEA while calculating TPC in the 21st meeting of Empowered Committee of GoI for VGF. In line with the methodology, TPC has been revised by the Financial Consultant M/s Ernst & Young with inputs from Technical Consultant M/s AECOM. As per the revised calculation, the Total Project Cost (TPC) works out to Rs. 4089 Crore. This was approved by Empowered Committee of GoK and DEA, GoI.

(ii). **Revision of Cost of Funded Works to Rs. 1463 Crore.**

As per the approved DCA, the cost of Funded Works was Rs.1210 crore. During the fourth pre-bid meeting held on 9th March 2015, bidders raised the point that the cost of Funded Works of Rs.1210 crore is inadequate considering the design and drawings provided. The bidders informed that as per their assessment, inadequacy of the cost is reducing the viability of the project. Accordingly opinion of the Project Consultants were sought and based on consultant's recommendation, the cost of funded work was enhanced to the 2015 price level by taking Basic Engineering Report (BER), 2014 cost as the base cost, escalating the same to 2015 price level with annual average escalation of 6.6% and provision for interest charges on the working capital, aggregating to Rs.1463 crore. This was approved by 21st meeting of EC.

The Committee noted the statement of amendments made to DCA attached as Annexure C to the Agenda. MD & CEO informed that a revised DCA incorporating all the approved changes was issued to all three bidders on 13th Apr 2015 by registered post as authorized by EC. The same was also submitted to GoK vide VISL letter No.VISL/PPP/2014/382 dated 22nd April 2015.

The Empowered Committee noted the statement of amendments to DCA made with approval of EC.

Decision Taken:

The Committee recommended to Government to ratify the amendments made in the Draft Concession Agreement (DCA) as authorised by Government vide G.O(MS) No.36/2014/F&PD dated 12th May 2014, which was issued to bidders on 13th April 2015.

4.4.2. Manual of Specifications and Standards (MSS)

The Committee noted that the 17th Meeting of Empowered Committee held on 25th March 2014 approved the proposal to constitute the Technical Committee of VISL to review the MSS prepared by the Technical Consultant, M/s AECOM. The Technical Committee, thus constituted reviewed the MSS and got it vetted by the Legal Consultants. The 18th Meeting of Empowered Committee held on 23rd Sept 2014, approved and ratified the issue of the same to the bidders who purchased the RFP.

Technical Consultants informed the Committee that based on the feedback by bidders and drafting changes suggested by Technical Consultant, certain changes, additions and substitutions were made to the MSS. The changes were intimated to bidders by issuing Addenda. The Committee noted the statement of changes, additions and substitutions made to MSS attached as Annexure D to the Addenda.

MD & CEO informed that a revised MSS incorporating all the approved changes was issued to bidders on 13th January 2015 as authorized by Empowered Committee. The same was also submitted to GoK vide VISL letter No.VISL/PPP/2014/382 dated 22nd April 2015.

The Empowered Committee noted the issue of MSS with approval of EC.

Decision Taken:

The Empowered Committee approved the MSS and recommended the Government to ratify the same.



4.4.3. Feasibility Report (FR)

The Committee noted that Government (vide order No. G.O(MS) No.44/2014/F&PD dated 26th May 2014) approved the FR for the project. The approval was based on the recommendation of 17th meeting of EC held on 25th Mar 2014.

Consequent to the changes made in the DCA, approved by EC in its meetings, the Transaction Advisors and Financial Consultants, M/s Ernst & Young were advised by the 21st meeting of EC to submit a revised Feasibility Report. M/s Ernst & Young explained that as per the earlier FR, the project will generate an Equity IRR of 15% with an estimated VGF requirement of Rs.1640.7 Cr (41.5% of Rs.3950 Cr). Ernst & Young detailed that as per the Revised FR, the project will generate an Equity IRR of 15% with an estimated VGF requirement of Rs.1664 Cr (40.7% of Rs.4089 Cr). It was noted that quantum of VGF was arrived at on the assumption that VGF will be disbursed completely during the construction period, whereas actually this will be disbursed fully during operation phase. If this is factored the VGF requirement could be slightly higher.

MD & CEO informed that the revised Feasibility Report was submitted to GoK before the bid due date vide VISL letter No.VISL/PPP/2014/382 dated 22nd April 2015.

Decision Taken:

The Empowered Committee approved the revised Feasibility Report and recommended the Government to ratify the same.

4.5. Bid Opening and Evaluation

The Committee noted that pursuant to the approval of Empowered Committee in its 22nd Meeting, the Bid Due date for the project was scheduled to 05:00 PM, 24th April 2015. Up to the closing time of Bid Submission, only one qualified bidder M/s Adani Ports & Special Economic Zone Limited submitted its bid.

The Bid Opening Committee (constituted by Government vide order no. GO (Rt) No.238/2014/F&PD dated 07th March 2014) opened the bid at the scheduled bid opening time of 5:30 PM. The bids were evaluated by the Project Consultants (M/s Ernst & Young, Financial Consultant & Transaction Advisor and M/s HSA Advocates, Legal Advisor). The Committee noted the Minutes of the Bid Opening Meeting enclosed as Annexure E to Agenda.

The Transaction Advisors and Legal Advisors explained that the bid documents/submissions were found to be in conformity with the RFP requirement and are hence responsive. The Committee noted that the authenticity of the bid bond submitted by the bidder is also confirmed with the bank which issued the bid bond.

Transaction Advisors, M/s Ernst & Young explained that the Grant sought by the bidder M/s Adani Ports & Special Economic Zone Limited is INR 1,635 crore (Rupees One thousand six hundred and thirty five crore only). This works out to around 39.985% of the Total Project Cost as mentioned in the Draft Concession Agreement (INR 4,089 crore) and hence is within the range permitted under the Viability Gap Funding (VGF) guidelines. They also explained that the amount is within the range of 40.7% (Rs.1664 Cr) estimated in the revised Feasibility Report. The Committee noted the Bid Evaluation Report submitted by Consultants enclosed as Annexure A to this Minutes.

In the context of a sole bid received in a competitive bidding process and on whether the bid received at the RFP stage can be accepted for award of project. M/s HSA opined the following:

1. It is quite clear that the bid falls under the category of open tender, as the invitation to bid and bidding documents for the Project were widely publicised, including in several international, national and local publications and brought to the attention of the leading developers and operators in the infrastructure sector, several consultations were held with the stakeholders/potential bidders prior to and after the issuance of bid documents. As five bidders participated at RFQ (qualification bid) stage, the bid process for this Project would be squarely covered within the concept of "Open Tender" as envisaged under the guidelines set out by CVC.
2. Only in the event where the procuring authority has invited one entity, such bid would qualify as a 'single bid'. However, the present case, five bidders qualified at RFQ stage and were invited to participate in the RFP. Out of five qualified bidders, three bidders had purchased the RFP document. Therefore, the sole bidder who participated in the RFP, could not have known in advance that it would be a sole qualified bidder. Hence it cannot be called a 'single bid' case.
3. The above argument is supported by Clause 4.17 of the CVC guidelines which provides that "4.17 There are cases when only a single quote or a single valid acceptable quote is received even against LTE [Limited Tender Enquiry] or OTE

[Open Tender Enquiry], this results in a single vendor situation indicating lack of competition. These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable."

4. The primary obligation of Government authorities in a bidding process is to ensure that the bidding process is fair and transparent. It is in public interest to achieve maximum competition to ensure that price is determined by the market forces. In the present case, all criteria with respect to competition and transparency are met by the authority.

M/s HSA pointed out that "Considering that the Authority, in relation to the present bid process has: (i) provided adequate time to the prospective bidders, (ii) provided sufficient time to bidders and advertised the tender process; and (iii) conducted stakeholders consultation at large scale, there is no doubt that the Authority put in all efforts to ensure healthy competition and there is no law in force which prevents the Authority from awarding the Project to single bidder."

The opinion of M/s HSA is enclosed as Annexure B to this Minutes.

The Committee noted that the Chief Secretary had vide his D.O letter No. 4032/E1/2014/F&PD dated 25.04.2015 requested Shri. Gajendra Haldea, Former Principal Advisor (Infrastructure & PPP), Planning Commission to render his advice as to whether the market had been fully explored in the process of inviting bids. He was also requested to participate in the meeting of the Empowered Committee as a Special Invitee. Shri. Haldea presented his views to the Committee and stated that the market had been adequately explored.

Relevant extract of Shri Gajendra Haldea's expert opinion are reproduced below:

- "3. *Considering the aforesaid facts, it should be evident that the current bid process has led to a very advantageous outcome for the State of Kerala, despite all the adverse circumstances stated above. To argue that something better can be achieved in a future bidding process would only be speculative and may also have the potential of putting this entire initiative in jeopardy.*
4. *In view of the above, it may be concluded that –*



- (a) *the Vizhinjam Port project is encumbered by a chequered history as it could not take off earlier despite successive attempts of GoK over the past decade;*
 - (b) *the project is challenged by a high level of commercial risks arising from the stiff competition that would be posed by the Chinese-supported Colombo port as well as a newly constructed Sri Lankan port, also built with Chinese assistance;*
 - (c) *the investment scenario for PPP projects in India has been quite dismal during the recent past. Neither investors nor the banks seem to have much appetite for new projects. Nor does Kerala have a track record in attracting PPP investment;*
 - (d) *international investment climate for investment in infrastructure projects continues to be damp;*
 - (e) *the VGF outgo, in NPV, would be about Rs. 1,239.30 crore (30.3% of TPC), as against the nominal VGF outgo of Rs. 1,635 crore (39.985% of TPC). So far as GoK is concerned, its VGF outgo, in NPV, would be Rs. 421.5 crore (10.3% of TPC) as against the nominal VGF outgo of Rs. 817.2 crore (19.985% of TPC). These savings would be on account of deferred VGF payments (3% of TPC) and revenue share (6.7% of TPC), computed in terms of NPV;*
 - (f) *the bid received in April, 2015 implies a total financial outgo of Rs. 1,463 crore for breakwater construction and Rs. 421.5 crore on account of VGF, in terms of NPV. This will mean a total financial burden of Rs. 1,884.5 crore for GoK, which compares favourably with a possible outgo of Rs. 4,947 crore if the 2010 bid had been accepted. In effect, this means a real gain of about Rs. 3,062 crore, say Rs. 3,000 crore, for Kerala when compared to the 2010 bid, for which IFC (Washington) was the transaction advisor; and*
 - (g) *the total capital investment of Rs. 5,552 crore on this project will lead to substantial tax revenues for GoK, besides recurring tax revenues during the operation period. These revenues will offset much of the investment made by GoK. In addition, the employment and income generation arising from this project will have a significant impact on the growth prospects of Kerala.*
5. *To conclude, the entire process for selection of the concessionaire for the Vizhinjam Port project has been fair, transparent and competitive. GoK made all possible efforts*

to encourage and enable competition among all credible bidders interested in the project. The bid received is responsive and well within the permissible ceiling of VGF. In sum, there is no evidence to suggest that GoK could have done any better in this entire process."

The Expert opinion submitted by Shri Gajendra Haldea is attached as **Annexure C** to this Minutes.

Principal Secretary (Ports) explained that the matter was referred to Law Department and Stores Purchase Department for their comments.

Secretary (Law) informed the Committee that the present bid is not a single bid as per the specification of CVC guidelines as enunciated in Clauses 4.17 & 4.18. He further informed that the Hon'ble Supreme Court in *Association of Registration Plates v. Union of India* in the matter of High security registration of plates to motor vehicles ordered that the bid may be awarded to the single tenderer. He pointed out that this order of the Hon'ble Supreme Court was against the decision of State of Kerala to invite fresh tenders in the matter. It is clear that a tender cannot be rejected just because it is a sole bid.

Relevant Extracts of the opinion of Law Department is quoted below

"As per CVC guidelines, re-tendering can be considered by the Government only in cases of lack of competition due to restrictive specifications, designed to suit a particular person resulting in a loss to the exchequer. This can be resorted only if there are reasons for review of the specifications facilitate wider competition. Obviously if there are reasons as previously mentioned, sole bidder's tender could be turned down. Nevertheless, if the cancellation as such could bring loss to the exchequer then it would not be possible for the authorities to cancel the tender even if there is only one bidder"

The opinion of the Law Department is enclosed as **Annexure D** to this Minutes.

Principal Secretary (Ports) informed the Committee that the Store Purchase Department informed that *"Single tender can be acceptable if there is justification to accept it with the approval from Competent Authority....."*. The opinion of the Stores Purchase Department is attached as **Annexure E** to this Minutes.

In the context of the opinion from Law Department and Stores Purchase department with respect to fair competition, the Committee noted that no restrictive changes suiting any

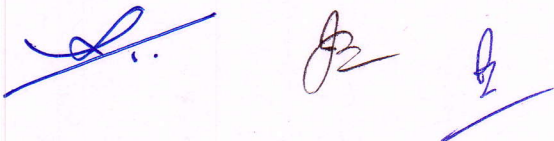
particular applicant or bidder were made during the selection process in respect of Project Structure, DCA, qualification criteria and specification. The Committee noted that retendering of the project will lead to further time delay resulting in loss to the State exchequer. Besides the chance of getting no bidders in a future bid is also very high.

Principal Secretary (Ports) explained to the Committee that in the current model, the cash outflow with respect to this particular concession from the State Government is limited to Rs. 2280.20 Cr (Rupees Two thousand two hundred and Eighty Crore Twenty Lakh only). This comprises of Rs.1463 Crore towards cost of funded works and Rs. 817.2 Crore towards GoK contribution of VGF. The cost of Funded Work will be adjusted for the WPI variation between the Bid Due Date and Appointed Date as per the provisions of DCA. The Committee noted that the current model offers considerable saving to State Government when compared to the earlier model on current price level.

The Empowered Committee discussed the bid process conducted, opinion of legal consultants, expert opinion of Shri Gajendra Haldea, opinion of Law Department and opinion of Stores Purchase Department. The Committee noted the certainty of cash outflow, potential savings and other merits of the current model. The Committee also felt that the chances of getting a better offer in a future bid is negligible considering the traffic risk involved, high investment needed and depressed market Internationally and Nationally. The chance of getting no bidders in a future bid is also high. Therefore it is a situation where in the project may not materialise in future, if it does not materialise now ("Now or Never") This is particularly important in the light of the fact that this is the fourth attempt to bid the project and in the context of the development of the proposed nearby competing port locations.

The Committee noted that any further time delay would also make huge loss to the State because of cost escalation. Development of this port is of great national importance considering the fact that the majority of Indian transshipment is currently handled by foreign ports of Colombo, Singapore and Dubai. The Project would shift these operations to India and thereby generate considerable saving in foreign exchange to the national economy. The port has the potential to become the transshipment hub serving the entire Indian Coast. The development of port and its allied facilities would significantly contribute to the large scale growth of Industry and Economy in Kerala, besides generating employment opportunities.

Shri K M Chandrasekhar, Vice Chairman, Planning Board and Shri G Vijayaraghavan, Member Planning Board who were special invitees to the meeting also opined that considering the above facts it is advisable to accept the present bid.



The Committee after detailed discussions and based on the above, decided to recommend to Board of Directors of VISL and Government of Kerala to accept the bid submitted by M/s Adani Ports and Special Economic Zone Ltd and issue the Letter of Award (LOA). The Committee discussed and approved the Draft LOA which was prepared and presented by Legal Consultants. The Committee recommended to Government to authorise Department of Ports to issue Letter of Award to the M/s Adani Ports and Special Economic Zone Ltd. The approved Draft LOA is enclosed as Annexure F to this Minutes.

Decisions Taken:

1. The Committee noted (i) the evaluation report of Transaction Advisors, (ii) opinion of Legal Consultants, (iii) expert opinion of Shri Gajendra Haldea, (iv) opinion of Law Department and (v) opinion of Stores Purchase Department. After noting the opinions and detailed discussions, the Committee decided to recommend to Board of Directors of VISL and Government of Kerala to accept the bid submitted by M/s Adani Ports and Special Economic Zone Ltd for a grant of Rs.1635 Cr (Rupees One thousand six hundred and thirty five crore) .
2. The Committee also recommended to Government to authorise Department of Ports to issue Letter of Award to the M/s Adani Ports and Special Economic Zone Ltd.

There being no other item to consider, the meeting ended at 12:45 PM with vote of thanks to Chair.



A S Suresh Babu
Managing Director & CEO, VISL
(Convener)



James Varghese
Principal Secretary to
Government – Ports & LSGD
(Member)



Jiji Thomson
Chief Secretary
Chairman of the Committee

APPENDIX - A

Development of Vizhinjam International Deepwater Multipurpose Port, Kerala

Request for Proposal (RfP) Submission

4 May, 2015

Transaction Advisors



Building a better
working world

Legal Advisors



Introduction

Department of Ports, Government of Kerala ("GoK"), through its special purpose government company -Vizhinjam International Seaport Limited ("VISL") has decided to undertake development and operation/ maintenance of the Vizhinjam International Deep water Multipurpose Seaport Project (the "Project") through Public-Private Partnership on Design, Build, Finance, Operate and Transfer basis, and decided to carry out a competitive bidding process for selection of a private entity as the bidder to whom the Project may be awarded.

Project
Development of Vizhinjam International Deepwater Multipurpose Port, Kerala

For this, VISL has appointed Ernst & Young LLP ('EY') for providing financial and transaction advisory services and HSA Advocates ("HSA") for providing legal advisory services (collectively called as a 'Team') for selection of the private developer for development of the Project.

Bidding Process

Request for Qualification (RfQ)

Introduction

A two stage process involving Qualification Stage and Bid Stage was exercised for selection of bidder. Request for Qualification (RfQ) and Request for Proposal (RfP) were prepared based on the Model RfQ and Model RfP documents approved by Ministry of Finance, Government of India.

RfQ for the Project was approved by Government Vide order G.O (MS) No.69/2013/F&PD dated 29th Nov 2013. The fee for Request for Qualification (RfQ) was Rs. 4,00,000 (Rupees Four Lakhs Only).

Marketing activities - RfQ stage

International Competitive Bidding / Global Tender notice for the project was published by Government of Kerala on 4th December 2013. The Notice was given wide publicity in the following print media.

- International Publications; Economist and Financial Times
- National Publications; Economic Times, Business Line, Business Standard, Financial Express, Malayala Manorama and Mathrubhumi.

As part of the marketing activities of the project, the following efforts were made:

- ▶ Email, telephonic and written communication to various International and National Infrastructure Players were made pertaining to invitation of prequalification application along with the Project Information Memorandum (PIM).
- ▶ A road show was organized for the project on 16th Jan 2014 at Mumbai. The event was attended by Ports Minister, Government of Kerala; Vice Chairman, State Planning Board and

other officials of GoK/VISL. The meeting was widely attended by Infrastructure Companies, Port Operators and representatives of Foreign Embassies/Trade bodies.

- ▶ Two Pre-Application Conferences were held at Trivandrum on 22nd Jan 2014 and 7th Feb 2014 to address prospective applicant queries and concerns. The meeting was represented by prospective bidders. Beside during the Qualification Stage, written queries were made by various prospective applicants and the same were responded. Adequate and ample time was provided to applicants for preparation of application for qualification.

RfQ Application

Five applicants submitted their Qualification application on 10th March 2014; applications from the following were received:

S #	Name of the Applicant	Lead Member	Other Member
1	Gammon Infrastructure Projects Ltd.	Single Business Entity	
2	Consortium of Concast Infratech Ltd. & Hyundai Engineering & Construction Co. Ltd.	Concast (74%)	Hyundai (26%)
3	Essar Ports Ltd.	Single Business Entity	
4	SREI-OHL Consortium	SREI (74%)	OHL (26%)
5	Adani Ports & Special Economic Zone Ltd.	Single Business Entity	

Based on the evaluation and clarifications sought and received, all five applicants were qualified for the RfP stage.

Request for Proposal

Introduction

Following the Pre-Qualification, Bid Stage for the project commenced with the issue of RFP. RFP for the project was approved by Government vide order No. G.O. (MS) No.36/2014/F&PD dated 12th May 2014. Along with RFP, Draft Concession Agreement (DCA) and Manual of Specifications and Standards approved by Government of Kerala were issued to shortlisted applicants. The documents were issued to the shortlisted bidders at a cost of Rs. 8,00,000/- (Rupees Eight Lakh only).

Subsequently, the following three applicants purchased the bidding documents:

1. Adani Ports & Special Economic Zone Ltd.
2. SREI-OHL Consortium
3. Essar Ports Ltd

Marketing activities - RfP stage

As part of the bidder outreach activities, the following efforts were made:

- ▶ For the benefit of all the applicants including those who didn't purchased the RFP, one session on technical aspects of the project was conducted on 3rd June 2014 in New Delhi and one

session on financial and legal aspects of the project was conducted on 9th July 2014 in Mumbai.

- ▶ Three Pre-bid meetings held in Mumbai for bidders who purchased the RFP were conducted during the bid stage on 21st May 2014, 14th July 2014 and 17th Nov 2014.

The bidder's queries in respect of the project as well as bidding documents were responded appropriately and adequate time as per RFP was provided for submitting the financial bid. Due to delay in "In-Principle" Approval from VGF and request from bidders, the bid due date for the project was extended suitably on a certain number of occasions. Pursuant to the approval of VGF on 3rd Feb 2015, the Bid Due Date was extended to 20th February 2015. However as no bidders submitted bids on the Bid Due Date, the Bid Due Date was extended.

During the extended period Chief Minister, Chairman, VISL discussed with Chairmen of three bidding companies to instil confidence and to identify concerns if any, for consideration within the legal framework of the bid process. A fourth Pre-bid meeting was conducted on 9th March 2015 at Mumbai. Concerns and queries with respect to the project and bidding documents were raised by bidders; the same were suitably addressed and responded within the legal framework of the bid process. Consequently the Bid Due Date was set on 24th April 2015 at 5 pm.

RfP Application - Technical

One bid of Adani Ports & Special Economic Zone Ltd. was received prior to Bid Due Date and was opened by the Bid Opening Committee.

VISL instructed us to assist them in bid evaluation. We have gone through all the below mentioned documents and they are in conformity with the RfP requirements:

1. Appendix I - Letter comprising the Bid
2. Appendix II - Bank Guarantee for Bid Security
3. Appendix III - Power of Attorney for signing of Bid
4. Appendix V - Guidelines of the Department of Disinvestment
5. Signed and stamped copy of the Draft Concession Agreement

RfP Application - Financial

As per the Viability Gap Funding guidelines The Grant sought by the bidder is INR 1,635 crores (Rupees One thousand six hundred and thirty five crores only) which come to around 39.985% of the Total Project Cost as mentioned in the Draft Concession Agreement (INR 4,089 crores) and hence is within the range permitted under the Viability Gap Funding guidelines.

Bidder name	VGF (in %)	VGF (in INR Crore)
Financial quote - Adani Ports & Special Economic Zone	39.985	1,635

We had submitted the revised feasibility report based on 20 April 2015. As per the financial analysis with Port estate development option; for attaining an equity internal rate of return of 15%, the VGF was calculated at 40.5%, being INR 1,664 crores. The methodology adopted for estimation of the Total project Cost was adopted on the recommendations of Department of Economic Affairs, Ministry of

Finance. Further, the applicable tariff was benchmarked to Vallarpadam Port (Kochi) as the tariff levied was the highest among its peers which was duly discounted keeping in view the competition and other charges were based on the norms suggested by TAMP. For the purpose of estimating the Viability Gap Funding for the instant project revenue streams from Port estate development were also considered. Comparison of the estimated grant for the project and the actual grant sought by the bidder has been elucidated in the table below -

Parameters	VGf (in %)	VGf (in INR Crore)	Equity IRR
With Grant and Port Estate Development for attaining an Equity IRR of 15%	40.7	1,664	15%
Financial quote - Adani Ports & Special Economic Zone	39.985	1,635	-

We are submitting the report to the Authority for kind consideration and for further necessary action.



APPENDIX - B

May 01, 2015

Managing Director & CEO
Vizhinjam International Seaport Limited
1st Floor, Vipanchika Tower
Thycaud PO, Thiruvananthapuram-695014
Kerala

Re: Opinion discussing the meaning and impact of 'single bid' received at the RFP (Financial Bid) Stage

This opinion sets out our views on the queries raised during our discussions in relation to the issue of 'single bid'.

I. BACKGROUND

Based on our discussions, our understanding of the factual background is set out below:

- 1.1 Ports Department, Government of Kerala ("**Authority**") is developing the Vizhinjam International Deepwater Multipurpose Seaport at Vizhinjam ("**Project**") on public private partnership mode. We understand that throughout during the bidding process starting from the time of commencement, the project was widely publicised and brought to the attention of the leading developers and operators in the infrastructure sector, including port. Several consultations were held with the stakeholders prior to as well as after the issuance of bid documents. Some instances of such consultations are the road show/investors meet held on January 16, 2014 at Mumbai, pre-bid meetings during RFQ stage as well as RFP stage held on January 22, 2014, February 07, 2014, May 21, 2014, July 14, 2014, November 17, 2014 and March 09, 2015.
- 1.2 Pursuant to the comprehensive stakeholder's consultation, the bid documents were finalised and finally issued to the prospective bidders. The tender was widely publicised, including in several international, national and local newspapers, such as Economist, Financial Times, Economic Times, Business Line, Business Standard, Malayala Manorma and Mathrubhumi.
- 1.3 The RFQ and RFP (based on the model bidding documents approved by the Ministry of Finance, Government of India) for the Project were issued to the public at large. Subsequently, at the qualification stage, five applications were received and evaluated by the Authority in accordance with the terms of the RFQ. Pursuant to the evaluation of the applications, five applicants were found and declared as qualified bidders, eligible for participating in RFP stage.
- 1.4 Pursuant thereto, three qualified bidders purchased the RFP documents and one bidder has finally submitted its bid at the RFP stage on April 24, 2015 (i.e. Bid Due Date). Thereafter, the Authority opened and evaluated the single Financial

Bid, and found it to be responsive and within the permitted financial benchmark as per the relevant Viability Gap Funding Guidelines issued by the Ministry of Finance, Government of India.

1.5 In light of the facts set out above, the Authority has requested us to analyse the applicable laws to provide our opinion on the following:

- Whether the single bid received at the RFP stage can be accepted for award of the Project?

II. ANALYSIS

2.1 Single bids

2.1.1 In order to ascertain whether the present case as described in paragraph 2 above is a single bid case or not, it is relevant to understand the meaning of the term 'single bid' as set out in Clause 4.2 of the Central Vigilance Commission ("CVC") guidelines:

"4.2 Single Tender.- As per note 27 of Annexure to Rule 102 (I) of GFR, "invitation to one firm only" is called Single Tender. Single Tendering for non PAC items may be resorted to only on the grounds of urgency or operational or technical requirements. The reasons for single tender enquiry (STE) and selection of a particular firm must be recorded and approved by the CFA prior to single tendering. Purchases on STE basis should be made from reputed firms after determining reasonableness of rates.

However, when defence PSUs/OFB have specifically developed an item for the department of defence or have taken TOT, such sources could be treated at par with the PAC firms."

Upon reading the relevant CVC guidelines, General Finance Rules and other available literature on bidding process, we understand that the tender can be broadly divided into three kinds: (a) open tender, (b) limited tender, and (c) single tender.

It is quite clear that the present case falls under the category of open tender, as we understand that the invitation to bid and bidding documents for the Project were widely publicised, including in several national and local newspapers and brought to the attention of the leading developers and operators in the infrastructure sector, several consultations were held with the stakeholders/potential bidders prior to and after the issuance of bid documents. We understand that five bidders participated at RFQ (qualification bid) stage. Therefore, the bid process for this Project would be squarely covered within the concept of "Open Tender" as envisaged under the guidelines set out by CVC.

Only in the event where the procuring authority has invited one entity, such bid would qualify as a 'single bid'. However, the present case where five bidders

qualified at RFQ stage and invited to participate in the RFP. Out of five qualified bidder, three bidders had purchased the RFP document, therefore, the sole bidder who participated in the RFP, could not have known in advance that it would be a sole qualified bidder, cannot be called a 'single bid' case.

- 2.2.2 The above argument is also supported by Clause 4.17 of the CVC guidelines, which provides that:

"4.17 There are cases when only a single quote or a single valid acceptable quote is received even against LTE or OTE, this results in a single vendor situation indicating lack of competition. These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable."

- 2.2.3 It is pertinent to note that the primary obligation of government authorities in a bidding process is to ensure that the bidding process is fair and transparent. It is in public interest to achieve maximum competition to ensure that price is determined by the market forces. However, the terms 'competition' or 'adequate competition' have not been defined under any CVC guidelines or State policy/guidelines. While the Authority is under an obligation to ensure a bid process which encourages competition and conduct a fair and transparent bidding, it is not the obligation of the Authority nor is it realistic to set a benchmark for minimum participation in any bid process. In this regard, it is essential to analyse the CVC's communication no. OFF/CTE/ dated 4.2.2002 which states that:

- "(a) In order to have wider, fair and adequate competition, it is important that sufficient time, say 4-6 weeks in case of Advertised/Global tenders is allowed.*
- (b) The tenders should preferably be kept open for sale till the date of tender opening or just one day prior to the date of tender opening.*
- (c) With the widespread use of Information Technology, the tender notices should also be put on the website and e-mail address of the organisation should be indicated in the tender notice."*

In the present case, all of the aforementioned criteria have been fulfilled. The tenders were kept open for sufficient time, were widely publicised and the bid due date was also extended several times to provide the bidders reasonable time to prepare and submit their bids. In addition to wide publicity in the print media, emails were also sent to several international and national infrastructure players informing them about the project and the issuance of the RFQ.

- 2.2.4 It is also pertinent to note that in a recent judgement by the High Court of Jharkhand in *M/S CWE-Soma Consortium Vs. State of Jharkhand & Others*¹, the Hon'ble High Court took the same view as discussed above in this opinion,

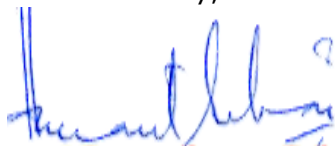
¹ W.P(C) No 2845 OF 2014

where the Tender Committee of the Water Resources Department, Government of Jharkhand sought re-tendering and denied awarding the tender to the qualified bidder as only one bidder was responsive as per the terms of the tender process. The Hon'ble High Court set aside the re-bidding order passed by the Tender Committee and held that:

"Answer to it seems to be embedded in clause 4.17 of the CVC guidelines. From perusal of this clause, which has been quoted above, it does appear that in case of single valid acceptable quote being received against open tender indicating therein the lack of competition, still it would not be treated to be a single tender...."

- 2.2.5 Based on the above discussion, it is clear that adequacy or inadequacy of competition cannot be determined solely on the basis of the number of bidders. Even in case of only one bid at the RFP stage, there is no law that prohibits the award of a project to such single bidder. In our view, the determining criteria would be whether the bid process was fair, transparent, satisfactorily advertised, whether all efforts were made to attract maximum competition, and whether the bid received is in compliance with the conditions specified in the bidding documents.
- 2.2.6 The opinion discussed above is also supported by an analysis of various bid processes which were concluded even in case of single qualified bidder. National Highways Authority of India has awarded several projects pursuant to bidding processes, where there was a single pre-qualified bidder. Few instances of such projects awarded by NHAI and other government authorities are:
- (i) Two Laning of Piprakpithi -Raxaul Section of NH-28A in the State of Bihar under NHDP Phase III on DBFOT basis (Sole Bidder); and
 - (ii) UP IT Park under DBFOT Model by UPECL (Sole Bidder).
- 2.2.7 In view of the discussions and the judgement cited above, the only obligation of the Authority is to conduct a fair and transparent bid process. Considering that the Authority, in relation to the present bid process has: (i) provided adequate time to the prospective bidders, (ii) provided sufficient time to bidders and advertised the tenders process; and (iii) conducted stakeholders consultation at large scale, there is no doubt that the Authority put in all efforts to ensure healthy competition and there is no law in force which prevents the Authority from awarding the Project to single bidder.

Yours sincerely,



FOR HSA ADVOCATES

APPENDIX - C

Selection of Concessionaire for the Vizhinjam Port Project

1. Chief Secretary, Government of Kerala (GOK), vide his D.O letter dated April 25, 2014, sought my views on the bid process for the Vizhinjam Port project, especially whether the market has been fully explored in order to enable competition in the bidding process. It may be recalled that at the request of GoK, I was associated in the structuring and bidding of this project in a *pro bono* advisory capacity.
2. Some of the relevant facts and circumstances that would shed light on the aforesaid selection process are briefly stated below:
 - (a) GOK invited several prospective investors to a road show held on January 16, 2014 at Hotel Taj Lands End, Mumbai in which the Ports Minister, GOK, Vice Chairman, Planning Board, GOK, Principal Secretary, Port Department, GOK and other concerned officials participated. I was also invited to this road show. The objective was to encourage investors to participate in the bidding process for this project. Such a road show was considered necessary not only for ensuring a fair, transparent and competitive bidding process, but also for marketing the project in the context of its chequered history, as the project could not be awarded earlier despite repeated efforts of GoK over the past decade. The road show was accompanied by extensive publicity in international, national and Malayalam newspapers with a view to attracting the attention of prospective investors in India and abroad.
 - (b) Following the wide publicity for attracting investors, the Request For Qualification (RFQ) received responses from five eligible bidders, three of whom were Indian companies while two others were consortia of Indian and foreign companies. This clearly indicated that the domestic and foreign markets had full knowledge of the project and that all interested companies got an opportunity to participate in the RFQ process that constituted the first stage of the bidding process.
 - (c) Of the five applicants who were prequalified and shortlisted as bidders at the RFQ stage, two dropped out at the RFP stage as they did not purchase the RFP documents for participation in the final stage of bidding. This left three bidders, including one consortium having a foreign company, in the final bid stage. It is noteworthy that these three bidders paid Rs. 12,00,000 (Rupees twelve lakh) each for purchasing the RFQ and RFP documents, besides expending considerable resources in undertaking the due diligence required for such a bid process. Thus, these three bidders could be regarded as serious participants in the competitive process.

- (d) GoK/VISL (Vizhinjam International Seaport Limited) held two pre-RFQ meetings and four pre-bid meetings at the RFP stage, besides a number of technical and financial discussions, with a view to addressing the concerns of the bidders and ensuring their full participation in the selection process. In response to the requests of bidders for more time to complete their due diligence and bid preparation, GoK/VISL notified several extensions of the bid due date. However, despite all these efforts, no bid was received on the bid date of February 20th, 2015, which had to be extended to April 24, 2015.
- (e) The above facts indicate that GoK/VISL made all possible efforts and explored all available avenues to encourage and enable competition in the selection of concessionaire for this project. In retrospect, it is difficult to identify what else could have been done in order to explore the market further with a view to attracting more participants. During the entire bid process, the said three bidders participated actively in the pre-bid meetings and were also in regular communication with the officials of VISL officials until the bid due date. As a result, GoK and VISL were expecting more than one bid, including from one of the bidders who had a foreign partner. However, as it turned out, only one responsive bid was received on April 24, 2015.
- (f) The issue that arises at this stage is whether the market was fully explored with a view to enabling all interested companies to bid for this project. In this context, it would be relevant to examine the financial viability of the project, as also the prevailing investment climate.
- (g) So far as this project is concerned, its advantages and strengths are well known. However, it is equally true that this project would face stiff competition from the Chinese-supported Colombo port, which currently handles bulk of the transshipment traffic in this region. With economies of scale, depreciated costs and an established dominance in the market, the Colombo port would pose a very stiff challenge for any new entrant. In addition, a new port has since been constructed at Hambentota in Sri Lanka, also with Chinese support. Hence, the traffic risks of the Vizhinjam project are very significant and substantial, implying a great deal of financial risk for any investor. This risk is further compounded by the additional costs arising out of the cabotage regime applicable to transshipment operations at Indian ports.
- (h) While the viability of this project is very challenging, the prevailing investment climate is also no less challenging. Following the slowdown in developed economies, foreign investment in infrastructure projects has been rather limited during the recent past. So far as the domestic market is

concerned, most of the large infrastructure companies are financially over-stretched because of multiple problems in different sectors. As a result, most of these companies are facing financial distress and several of them have been trying to offload some of their projects in order to satisfy their respective lenders. Since a large number of infrastructure companies are not able to fulfil their debt service obligations, the commercial banks are faced with increasing volumes of NPAs and stressed loans, which are perhaps, at the highest level ever. As a result, banks have adopted a very conservative approach in financing new infrastructure projects. In such a scenario, PPP projects across sectors have been receiving lukewarm investor response for the past two years. The aforesaid perceptions are further compounded by the fact that Kerala has virtually no track record in attracting PPP investments.

- (i) In order to improve project viability and minimise risk perceptions, GoK excluded the construction of breakwater from the project costs to be financed by the concessionaire. The bidding documents thus provided that GoK would reimburse the estimated lumpsum cost of Rs. 1,463 crore for construction of breakwater, leaving Rs. 4,089 crore as the Total Project Cost (TPC) to be funded on DBFOT basis, with a maximum permissible VGF grant of upto 40% of TPC.
- (j) At this juncture, it would be useful to take note of the bid received in 2010, when IFC (Washington) was the transaction advisor for this project. This is considered relevant as it provides the only bench mark for price discovery relating to this project. It is understood that if the said bid had been accepted, the total private investment in this project would have been about Rs. 605 crore (at April 2015 prices), leaving the entire balance to be invested by GoK, besides the recurring expenditure on maintenance dredging. In other words, GoK would have had to invest Rs. 4,947 crore (i.e. Rs. 5,552 crore – Rs. 605 crore), at 2015 prices, if it wanted to build a project comparable to the one contemplated in the 2015 bid. Though the 2015 configuration provided for a higher capacity which may have possibly improved the revenue prospects of the project, its impact on the 2010 bid may have been marginal.
- (k) As part of the 2015 bid, the private investor would be expected to invest Rs. 2,454 crore which is four times greater than the said Rs. 605 crore of the 2010 bid (both at April 2015 prices). So far as GoK is concerned, it will not only get the aforesaid private investment of Rs. 2,454 crore, it will also get central assistance of about Rs. 818 crore in the form of VGF. Thus, private investment and Central assistance for this project would add up to Rs. 3,272 crore. In other words, GoK would receive external investment of Rs. 3,272 crore as compared to Rs. 605 crore under the 2010 bid, implying a net financial gain of

about Rs. 2,667 crore for the state. In addition, GoK will also gain to the extent of Rs. 122.3 crore by way of deferred payments and Rs. 273.3 crore in revenue share, as explained in subsequent paragraphs. All of these add up to Rs. 3,062 crore, which is by no means a small gain.

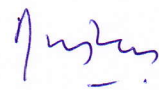
- (l) The 2015 bid includes a VGF grant of Rs. 1,635 crore (39.985% of TPC) which is Rs. 60 lakh less than the maximum permissible VGF for this project. This needs a closer scrutiny because the bid value, in real terms, would be much lower than the said Rs. 1,635 crore. In this context, it is relevant to recognise that VGF-based projects normally provide for disbursement of the entire VGF grant during the construction stage. This is permissible under the VGF Guidelines and has also been followed in more than a hundred PPP projects of NHAI. However, in the case of Vizhinjam project, only 30% of TPC would be disbursed during the construction stage while the balance would be released after COD. As a result, the entire GoI share of Rs. 817.8 crore of VGF would be disbursed during the construction period while Rs. 817.2 crore payable by GoK will be split into two parts. An amount of Rs. 408.9 crore out of GoK's share of VGF would be disbursed during the construction period while the balance of Rs. 408.3 crore would be payable in quarterly instalments spread over a period of one and a quarter years after COD. The financial consultants of GoK/VISL have estimated that assuming an interest rate of 11%, GOK would thus save about Rs. 122.32 crore, which implies that GoK would pay a VGF of only about Rs. 694.88 crore, in real terms, i.e. a saving equal to 3% of TPC.
- (m) Further, the VGF Guidelines do not normally allow for recovery of any revenue share by the project authority as it leads to an increase in the VGF grant. However, the Concession Agreement for this project requires the Concessionaire to pay a revenue share equal to 1% of its total revenues commencing from the 15th year of COD. This share will increase progressively by 1% every year, subject to a ceiling of 40%. According to the projections made by the financial consultants of GoK/VISL, the revenue share of GoK is likely to be about Rs. 31,838 crore over the concession period of 60 years, which will imply a NPV of Rs. 273.70 crore, i.e. a saving equal to 6.7% of TPC, using a discount rate of 11%. It may be clarified that the aforesaid amounts have been determined after accounting for some repayments to GoI, for which waiver is being sought. If full or partial waiver is received, the NPV would improve further in favour of GoK.
- (n) If the deferred payment of VGF as well as the aforesaid revenue share are taken into account, there would be a saving of about Rs. 395.70 crore that would be equal to 9.685% of TPC, in NPV terms. In other words, the total

VGF outgo of GoK would be Rs. 421.5 crore (10.3% of TPC), in real terms, as against Rs. 817.2 (19.985% of TPC) in nominal terms. Thus, the total VGF payable for this project, in real terms, could be considered as Rs. 1,239.3 crore (30.3% of TPC), which is far more favourable as compared to the nominal bid of Rs. 1,635 crore (39.985% of TPC).

- (o) It may be noted that the above projections could vary marginally depending on the assumptions used. However, the conclusions will virtually remain the same.
3. Considering the aforesaid facts, it should be evident that the current bid process has led to a very advantageous outcome for the State of Kerala, despite all the adverse circumstances stated above. To argue that something better can be achieved in a future bidding process would only be speculative and may also have the potential of putting this entire initiative in jeopardy.
4. In view of the above, it may be concluded that –
- (a) the Vizhinjam Port project is encumbered by a chequered history as it could not take off earlier despite successive attempts of GoK over the past decade;
 - (b) the project is challenged by a high level of commercial risks arising from the stiff competition that would be posed by the Chinese-supported Colombo port as well as a newly constructed Sri Lankan port, also built with Chinese assistance;
 - (c) the investment scenario for PPP projects in India has been quite dismal during the recent past. Neither investors nor the banks seem to have much appetite for new projects. Nor does Kerala have a track record in attracting PPP investment;
 - (d) international investment climate for investment in infrastructure projects continues to be damp;
 - (e) the VGF outgo, in NPV, would be about Rs. 1,239.30 crore (30.3% of TPC), as against the nominal VGF outgo of Rs. 1,635 crore (39.985% of TPC). So far as GoK is concerned, its VGF outgo, in NPV, would be Rs. 421.5 crore (10.3% of TPC) as against the nominal VGF outgo of Rs. 817.2 crore (19.985% of TPC). These savings would be on account of deferred VGF payments (3% of TPC) and revenue share (6.7% of TPC), computed in terms of NPV;

- (f) the bid received in April, 2015 implies a total financial outgo of Rs. 1,463 crore for breakwater construction and Rs. 421.5 crore on account of VGF, in terms of NPV. This will mean a total financial burden of Rs. 1,884.5 crore for GoK, which compares favourably with a possible outgo of Rs. 4,947 crore if the 2010 bid had been accepted. In effect, this means a real gain of about Rs. 3,062 crore, say Rs. 3,000 crore, for Kerala when compared to the 2010 bid, for which IFC (Washington) was the transaction advisor; and
- (g) the total capital investment of Rs. 5,552 crore on this project will lead to substantial tax revenues for GoK, besides recurring tax revenues during the operation period. These revenues will offset much of the investment made by GoK. In addition, the employment and income generation arising from this project will have a significant impact on the growth prospects of Kerala.
5. To conclude, the entire process for selection of the concessionaire for the Vizhinjam Port project has been fair, transparent and competitive. GoK made all possible efforts to encourage and enable competition among all credible bidders interested in the project. The bid received is responsive and well within the permissible ceiling of VGF. In sum, there is no evidence to suggest that GoK could have done any better in this entire process.

May 7, 2015
Place: Trivandrum


(Gajendra Haldea)

APPENDIX – D & E

No.9688/D/2015/Law

Law(Opinion-D) Department

No.1020/E1/2015/F&PD

In the wake of irregularities in the processing of *tenders* in *Government* Departments in respect of contracts by the government or procurement of goods or services the Central Vigilance Commission issued guidelines. The relevant clauses are reproduced below.

Clause 4.17 of CVC guidelines reads as follows:-

4.17 There are cases when only a single quote or a single valid acceptable quote is received even against LTE or OTE, this results in a single vendor situation indicating lack of competition. These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable."

Clause 4.18 of CVC guidelines reads as follows:-

4.18. Re-tendering - Re-tendering may be considered by the TPC/CFA with utmost caution, under the following circumstances:

(a) Offer do not confirm to essential specification.

(b) Wherever there are major changes in specification and quantity, which may have considerable impact on the price.

(c) Prices quoted are unreasonably high with reference to assessed price or there is evidence of a sudden slump in prices.

(d) There may be cases when the lack of competition is due to restrictive specification, which do not permit many vendors to participate. The CFA must consider if there are reasons for review of specification of the item to facilitate wider competition. Re-tendering will be done only after approval of IFA and CFA in all cases.

(di)

However, these guidelines are not applicable in the present case. In **State of Jharkhand v. CWE - SOMA Consortium and Ors**, the Water Resources Department of the Government of Jharkhand through its Executive Engineer invited item rate bids for the construction of Kharkai Dam at Icha with all control gates and its allied works including Civil, Mechanical, Electrical and SCADA system under SMP on 28.02.2014 through e-Procurement from eligible and approved contractors. Three firms namely M/s. SOMA, Hyderabad, M/s. IL & FS Engineering and Construction Company Limited, Hyderabad and M/s. Navyuga Engineering Co. Limited, Hyderabad, participated in the tender process by submitting their bids and other relevant papers. The Departmental Tender Committee (for short DTC') convened a meeting on 02.06.2014, for

taking decision on the pre-qualification bid. In the said meeting, SOMA was found to be responsive whereas the other two bidders were found to be non-responsive. Accordingly Tender Committee took a decision in terms of Clause 4.18(d) of Central Vigilance Commission (for short 'CVC') guidelines to cancel it and to go for re-tender to make the process of tender more competitive. SOMA, being aggrieved of the said decision challenged it before the High Court of Jharkhand. Single Bench of the High Court of Jharkhand set aside the decision of the Tender Committee. While confirming the judgement of the Single Bench, the Division Bench of the High Court of Jharkhand observed thus:

"If one reads Clause 4.17, single quote or single valid acceptable quote would certainly mean composite bid documents as supplied by the respective tenderer which would include the eligibility certificates as required, such as, completion certificate of the similar work within the specified financial period, experience and infrastructure etc. It would include financial bid as well. If this situation results into single vendor situation indicating lack of competition, the tender has to be progressed and processed and the financial bid has to be opened despite there being lack of competition. This is how Clause 4.17 is to be operated.

Situation is little bit different for the purposes of resorting to Clause 4.18(d) of CVC guidelines. It will apply only if there is lack of competition due to restrictive specification which did not permit many vendors to participate. The distinction is that in the first situation, attracting Clause 4.17, it turns out to be a case of single vendor indicating lack of competition which means the competition was there, whereas Clause 4.18 of CVC guidelines deals with a situation when there is no competition at all. In the case on hand, there was certainly a competition within three companies including SOMA in which SOMA turned out to be single vendor and therefore, it cannot be said to be a case for re-tendering on account of lack of competition due to restrictive specification. Lack of competition has to be construed in that manner only. In this eventuality, it is only Clause 4.17 of CVC guidelines which ought to have been invoked and not Clause 4.18 of CVC guidelines as rightly held by learned Single Judge."

Pursuant to the Judgment of the Supreme Court in *Association of Registration Plates v. Union of India*¹ in the matter of High Security Registration Plates to

¹The State of Jharkhand vs . CWE - SOMA Consortium and Ors . (13 . 03 . 2015 - JHRHC)
2(2005) 1 SCC 679

motor vehicles, the State of Kerala had invited tenders earlier and it had received a single tender within the time provided. The matter remained pending at that stage for a considerable time and thereafter, the State of Kerala filed a petition praying for permission to re-open applications for fresh tenders. Supreme Court vide its order dated 12th of August 2011 dismissed the application.³

In **S.I. Syndicate vs Managing Director, Kerala Irrigation Infrastructure Development Corporation**⁴ the Kerala Irrigation Infrastructure Development Corporation invited tenders for removal of silt accumulated in channel between Pavilion and Kayamkulam Pozhi at Kayamkulam Lake. M/s S.I. Syndicate, responded to the notification. E-tendering procedure was followed for awarding contract. The bidders had to submit technical bid as well as financial bid. Technical bids were opened and M/s S.I. Syndicate's technical bid alone was accepted. Kerala Irrigation Infrastructure Development Corporation later decided to reject the tender and to go for re-tender on ground that single tender was not acceptable. On record, the Kerala Irrigation Infrastructure Development Corporation knew that M/s S.I. Syndicate was only successful bidder. The High Court of Kerala held that the invitation for re-tender by the Kerala Irrigation Infrastructure Development Corporation was not sustainable.⁵

However, in **Nagendra Rai vs Howrah Improvement Trust and Ors**⁶ the Division Bench of the Calcutta High Court observed that it was well settled that when a single tender alone came up in response to inviting tender, it was open to authorities to refuse single tender and proceed with tender process afresh to avoid loss to public exchequer. At the outset it has to be said that the law is not well settled as opined by the Calcutta High Court because in the judgments cited above, the Apex Court as well as other High Courts have taken a contra view. Moreover, the cancellation and consequent retendering process can be resorted only to avoid loss to public exchequer. In the context, it is apposite to note that a single response to an open bid cannot be termed as Single Tender. It is a case of a sole bidder coming forward in response to an open tender.

³Maninderjit Singh Bitta Vs. Union of India (UOI) and Ors. (2011)14SCC273

⁴ MANU/KE/1700/2014

⁵ S.I. Syndicate vs Managing Director, Kerala Irrigation Infrastructure Development Corporation
MANU/KE/1700/2014

⁶MANU/WB/0088/2015

As per the CVC guidelines, re-tendering can be considered by the Government only in cases of lack of competition due to restrictive specifications, designed to suit a particular person resulting in a loss to the exchequer. This can be resorted only if there are reasons for review of the specifications to facilitate wider competition. Obviously if there are reasons as previously mentioned, sole bidder's tender could be turned down. Nevertheless, if the cancellation as such would bring loss to the exchequer then it would not be possible for the authorities to cancel the tender even if there is only one bidder.

B. S. S.
Law Secretary



GOVERNMENT OF KERALA

No. 1020/E1/15/F&PD

Fisheries & Ports (E) Department
Thiruvananthapuram
Dated: 06-05-2015

From

Principal Secretary to Government

To

The Managing Director,
Vizhinjam International Seaport Ltd,
Thiruvananthapuram

Sir,

Sub:- Vizhinjam International Deepwater Multipurpose Seaport
Project -Selection of Concessionaire- reg.

Ref:- Your letter No. VISL/PPP/2014/420 dated 02-05-2015

In inviting your attention to the reference cited, I am to request you to place the matter regarding the acceptance of bid submitted by M/s Adani Ports and Special Economic Zone Ltd before the Empowered Committee meeting scheduled to be held at 10.30 AM on 07-05-2015, since single tender can be acceptable if there is justification to accept it with the approval from competent authority.

Yours faithfully,

T.S.JAYASREE

Joint Secretary to Government,
For Principal Secretary to Government.

Approved for issue,

Section Officer.

APPENDIX – F

Draft for approval

Government of Kerala
Ports Department

To,

Date: May 4, 2015

Adani Ports & Special Economic Zone Limited

[Insert Address]

Attn: Mr. Sumeet Agrawal

Subject: Issuance of Letter of Award (“LOA”) pursuant to the Request for Proposal (“RFP”) for selection of a developer through international competitive bidding for undertaking development and operation/ maintenance of the Vizhinjam International Deepwater Multipurpose Seaport Project on Public Private Partnership mode on DBFOT basis (“Project”).

Dear Sir,

Re:

1. Request for Proposal as issued on [Date of RFP] (“RFP”) and as amended from time to time; and
 2. Bid submitted on April 24, 2015 submitted by Adani Ports & Special Economic Zone Limited (“Adani Ports”).
-
1. This is to inform you that pursuant to the completion of the bid evaluation process, the Bid submitted by Adani Ports, which comprises of the Grant of INR 1,635.00 (one thousand six hundred and thirty five) crores, has been accepted and Adani Ports has been declared the Selected Bidder for implementing the Project. As per clause 3.3.5 of the RFP, we are issuing this Letter of Award (“LOA”) as acceptance of your bid.
 2. In accordance with the terms of the RFP, Adani Ports shall achieve completion of various activities including but not limited to the following actions within the time period specified hereinbelow. All terms used herein but not defined, shall have the meaning ascribed to it in the RFP.
 - (i) Adani Ports shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof;
 - (ii) Adani Ports shall execute the Concession Agreement within 45 (forty five) days of the receipt of the LOA; and
 - (iii) Adani Ports shall furnish the Performance Security within the time prescribed in the Concession Agreement.

3. Please note that the Authority has the right to reject the Bid and/or forfeit and appropriate the Bid Security as per the terms of the RFP, in the event Adani Ports fails to comply with its obligations as specified in the RFP.
4. Further, please note that the issuance and contents of this LOA are based on the Bid submitted by Adani Ports in accordance with the RFP and the Bid Documents.
5. In the event the duplicate copy of the LOA duly signed Adani Ports is not received by the stipulated date, the Authority may appropriate the Bid Security of Adani Ports as Damages and revoke this LOA.

Yours Sincerely,

For Ports Department, Government of Kerala,

[Signature and name of the Representative of the Ports Department, Government of Kerala]