

# REQUEST FOR PROPOSAL

FOR

SELECTION OF OPERATOR FOR OPERATION & MAINTENANCE OF CONTAINER FREIGHT  
STATION (CFS) OF CONWARE AT NHAVA SHEVA, MAHARASHTRA



December 2021

Volume I: Instructions to Bidders

Issued By:

PUNJAB INFRASTRUCTURE DEVELOPMENT BOARD (PIDB)  
SCO 33-35, Sector 34-A, Chandigarh - 160022

On Behalf of:

THE DEPARTMENT OF AGRICULTURE AND FARMER'S WELFARE,  
GOVERNMENT OF PUNJAB acting through PUNJAB STATE CONTAINER  
AND WAREHOUSING CORPORATION LIMITED (CONWARE)

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# NOTICE INVITING TENDER

Punjab Infrastructure Development Board (PIDB) &  
Punjab State Container and Warehousing Corporation Limited  
(CONWARE)



**CONWARE**

Punjab Infrastructure Development Board (PIDB) through Punjab State Container and Warehousing Corporation Limited (CONWARE) invite e-bids for the Operation and Maintenance of Container Freight Station (CFS) CONWARE at Dronagiri Node Nhava Sheva, Maharashtra.

## Operation and Maintenance of the Container Freight Station (CFS) at Plot No. 2, Sector 2, Dronagiri Node, Nhava Sheva (Taluka Uran) Navi Mumbai - 400707, Maharashtra

- Implementing Authority - Punjab State Container and Warehousing Corporation Limited (CONWARE)
- Project Site – 26.62 Acres including structures such as Warehouses, Container Yards and Administrative Buildings.
- Location – Dronagiri, Nhava Sheva (Taluka Uran), Navi Mumbai, District Raigad, Maharashtra
- Project Components – Operation and Maintenance of the CFS facility
- Project Period – 30 Years with an option to exit after the 10<sup>th</sup> Year

### Bid Process

- Request for Proposal (RFP) and O&M Agreement for the project can be downloaded from <https://eproc.punjab.gov.in>
- Pre-bid Meeting (Online and Physical modes) – 13th December, 2021 (Monday) (For details of time, please visit the website <https://eproc.punjab.gov.in>)
- Bid Due Date – (Online Submission) 3:30 PM, 27th December, 2021(Monday) and (Hard Copy Submission) 3:30 PM, 28<sup>th</sup> December, 2021 (Tuesday)

### Note

- The bidders shall have to get themselves registered at the website. Class 3 Digital Signatures are mandatory for participation.
- For clarifications on e-tendering, please contact E-procurement helpdesk or PIDB.
- For subsequent corrigendum's, addendums and clarifications and further information including Link for Pre-bid meeting, Please refer to the website <https://eproc.punjab.gov.in>.
- PIDB reserves the right to accept or reject any application and to annul the selection process at any time, without incurring any liability and without assigning any reason thereof.
- All corrigenda, addenda, clarifications and information shall be available only on <https://eproc.punjab.gov.in>. No separate press publication shall be made

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E-procurement Helpdesk  
Tel.: -0120-4001062 | 0120 4001002  
| 0120 4001005 | 0120 6277787  
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## DISCLAIMER

This RFP is issued by the Punjab Infrastructure Development Board ("PIDB") on behalf of the Government of Punjab, Department of Agriculture and Farmers' Welfare through Punjab State Container and Warehousing Corporation Ltd. ("CONWARE" or the "Authority") - A wholly owned Punjab State Government Company incorporated under Companies Act 1956..

This RFP represents an invitation for interested parties to submit their proposals for **Selection of Operator for "Operation and Maintenance of the Container Freight Station (CFS) of CONWARE located at Plot No. 2, Sector 2, Dronagiri Node, Nhava Sheva (Taluka Uran) Navi Mumbai 400707, Maharashtra State"** (hereinafter defined as the "Project"). The Project Facility admeasures 26.62 Acre of land leased by the City and Industrial Development Corporation of Maharashtra Ltd. ("CIDCO") and is located in the off dock hinterland of the Sea Port of Jawaharlal Nehru Port Trust.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Bids for qualification and in making their financial offers pursuant to this RFP (the "Bids"). This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require.

This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of

this RFP or arising in any way for participation in the Bidding Process. The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The prospective bidders are hereby informed that the Project facility is located at Nhava Sheva, Navi Mumbai, Maharashtra. The Project envisages Operation and Maintenance of the said Project Facility, details of which are mentioned in this RFP.

The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. The issue of this RFP does not imply that the Authority is bound to select or to appoint the Successful Bidder or Operator, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

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

The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator set forth the Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.



## **GLOSSARY**

|                                     |                                 |
|-------------------------------------|---------------------------------|
| Associate                           | As defined in Clause 2.1.14     |
| Authority                           | As defined in the Disclaimer    |
| Annual Fixed Fee                    | As defined in Clause 1.2.7      |
| Annual Variable Revenue             | As defined in Clause 1.2.6      |
| Bid (s)                             | As defined in Disclaimer        |
| Bidding Documents                   | As defined in Clause 1.1.7      |
| Bid Document Fee                    | As defined in Clause 1.1.8      |
| Bid Due Date                        | As defined in Clause 1.3        |
| Bidding Process                     | As defined in Clause 1.2.1      |
| Bid Security                        | As defined in Clause 2.23       |
| Consortium                          | As defined in Clause 2.5.1      |
| Empty Container                     | As defined in Clause 1.2.6      |
| EXIM                                | Export and Import               |
| Financial Capacity                  | As defined in Clause 2.5.3      |
| Government                          | Government of India             |
| Highest Bidder                      | As defined in Clause 1.2.6      |
| Joint Bidding Agreement             | As defined in Clause 2.1.12     |
| Lead Member                         | As defined in Clause 2.1.12     |
| LOA                                 | Letter of Award                 |
| Loaded TEU                          | As defined in clause 1.2.6      |
| Member                              | Member of a Consortium          |
| Net Worth                           | As defined in Clause 2.5.4 (ii) |
| Operation and Maintenance Agreement | As defined in Clause 1.1.1      |
| Operator                            | As defined in Clause 1.1.1      |
| Project                             | As defined in the Disclaimer    |
| Re. or Rs. Or INR                   | Indian Rupee                    |
| RFP or Request for Proposals        | As defined in Disclaimer        |
| SPV                                 | As defined in Clause 2.1.12     |
| Successful Bidder                   | As defined in Clause 3.7.1      |
| Technical Capacity                  | As defined in Clause 2.5.2      |
| TEU                                 | As defined in Clause 1.2.6      |
| Upfront Fee                         | As defined in Clause 1.2.7      |

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

**ABBREVIATIONS**

|       |                                 |
|-------|---------------------------------|
| CFS   | Container Freight Station       |
| DCR   | Development Control Regulations |
| FSI   | Floor Space Index               |
| GOI   | Government of India             |
| GOP   | Government of Punjab            |
| GOM   | Government of Maharashtra       |
| IST   | Indian Standard Time            |
| LOA   | Letter of Award                 |
| LM    | Lead Member                     |
| MGT   | Minimum Guaranteed Throughput   |
| RFP   | Request for Proposal            |
| Sq. M | Square Meters                   |
| TEU   | Twenty-foot Equivalent Unit     |
| YOY   | Year on Year                    |

**NOTICE INVITING BIDS**

- i. This RFP is issued by the Punjab Infrastructure Development Board (“PIDB”) on behalf of the Government of Punjab, Department of Agriculture and Farmers’ Welfare through Punjab State Container and Warehousing Corporation Ltd. (“CONWARE” or the “Authority”) - A wholly owned Punjab State Government Company incorporated under Companies Act 1956, and represents an invitation for interested parties to submit their proposals for Selection of **Operator for “Operation & Maintenance of Container Freight Station (CFS) of CONWARE located at Plot No. 2, Sector 2, Dronagiri, Nhava Sheva (Taluka Uran) Navi Mumbai 400707, Maharashtra State”** ( the “Project”).
- ii. The Project Facility admeasures 26.62 Acre of land leased by the City and Industrial Development Corporation of Maharashtra Ltd. (“CIDCO”) and is located in the off-dock hinterland of the Sea Port of Jawaharlal Nehru Port Trust. A brief information of the Project is provided below.

**Project Summary**

| No | Parameters                  | Details   |
|----|-----------------------------|---|
| 1  | <b>Project Title</b>        | RFP for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra   |
| 2  | <b>Location</b>             | Dronagiri Node, Plot No. 2, Sector 2, Navi Mumbai, Nhava Sheva, Maharashtra   |
| 3  | <b>Authority</b>            | Punjab State Container and Warehousing Corporation Ltd.   |
| 4  | <b>Project Site Area</b>    | 26.62 Acres including built-up structures such as multi storied Warehouses, Administrative Building), Token Room, Gate Structure, DG Room, Canteen Building etc.  |
| 5  | <b>Term of Agreement</b>    | 30 years (extendable with mutual consent) with an Option to the Operator to Exit after 10 years   |
| 6  | <b>Consortium</b>           | Allowed (Up to maximum of 2 (two) members)  |
| 7  | <b>Bid Variable</b>         | Rate per TEU (in INR) (excluding applicable taxes) Subject to a minimum of 15,000 TEUs per Quarter i.e. 60,000 TEUs (for 1 <sup>st</sup> April 2022 to 31 <sup>st</sup> March 2023). For the subsequent years from 1 <sup>st</sup> April 2023 till the end of agreement period; minimum 72,000 TEUs per Year will be considered.  |
| 8  | <b>Upfront Fee</b>          | <ul style="list-style-type: none"><li>i. Rs. 5,00,00,000/- (Rupees Five Crore Only) (all applicable taxes extra) at the time of signing the Agreement; and</li><li>ii. Rs. 5,00,00,000/- (Rupees Five Crore Only) (all applicable taxes extra) before completion of 14 months of effective date or 31st March 2023, whichever is earlier.</li></ul>   |
| 9  | <b>Annual Fixed Revenue</b> | <ul style="list-style-type: none"><li>i. Moratorium for first two months (Feb – March 2022) of 1<sup>st</sup> FY</li><li>ii. <b>INR 6 Crore (Rupees Six Crore Only)</b> for 2<sup>nd</sup> Financial Year (all applicable taxes extra) (for 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023); and</li><li>iii. <b>INR 13.50 Crore (Rupees Thirteen Crore Fifty Lakhs Only)</b> for 3<sup>rd</sup> Financial Year (all applicable taxes extra) (for 1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2024) with YoY escalation of 4% from 01.04.2024 till the end of Agreement Period. To be calculated on compounded basis.</li></ul> |
| 10 | <b>Bid Document</b>         | Bid Document Fee: INR 10,000 (Rupees Ten Thousand Only) excluding   |

|  |                    |   |
|--|--------------------|---|
|  | <b>Fee and Bid</b> | applicable taxes (Non-Refundable)                             |
|  | <b>Security</b>    | Bid Security: INR 10 lakh (Rupees Ten Lakh Only) (Refundable) |

The Bidders are encouraged to submit their bids after visiting the project site and ascertaining themselves with the project details. The Operator may review the requirement for refurbishment and modification as required.

- iii. The scope of work for the Successful Bidder will broadly include Operation and Maintenance of existing Project facilities more particularly as set forth in the Schedule B of the Agreement. The Operator shall provide best-in-class services and adhere to good industry practices. The Authority shall be responsible for handing over the site in the good condition to the Successful Bidder. However, the ownership of the assets would always remain with the Authority.
- iv. The Authority is now desirous of selecting a Bidder (the "Successful Bidder") through competitive bidding process in accordance with the procedure set out herein under this RFP who shall Operate and Maintain the Project for the determined period as mentioned in the RFP, through a Special Purpose Vehicle ("SPV") to be incorporated under the Companies Act, 2013 by the Successful Bidder.
- v. The Bidder may be an Individual entity or a Consortium of entities not exceeding 2 (two).
- vi. Interested Bidders may download the Bid Documents from: <https://eproc.punjab.gov.in> and may apply for the tender after payment of non-refundable fee of Rs.10,000/- (Rupees Ten Thousand Only)( exclusive of Goods and Service Tax (GST) as applicable) online. Bids unaccompanied with the RFP Fee or a receipt of payment thereof shall be liable for rejection by the Authority/ PIDB.
- vii. The Bids must be submitted online at <https://eproc.punjab.gov.in> in the manner set out in the RFP at the following schedule.

**Important Dates**

| Milestones   | Dates                          |
|--|--------------------------------|
| Issue of Bidding Documents                           | 06.12.2021                     |
| Last Date of Receiving Queries                       | 12.12.2021                     |
| Pre-Bid Conference                                   | 13.12.2021, Time to be decided |
| Proposal Due Date / Bid Due Date (Online Submission) | 27.12.2021, 3.30 pm            |
| Submission of Hard Copy of the Technical Bid Only.   | 28.12.2021, 3.30 pm            |
| Opening of Technical Bid                             | 27.12.2021, 4:30 pm            |

- viii. Any queries or request for additional information concerning this RFP shall be submitted in writing or by e-mail to the officer designated below

**Managing Director, PIDB**

SCO 33-35, Sector 34-A, Chandigarh

Tel: +91 172 2665 410 | 438 1111

[mdpibd@gmail.com](mailto:mdpibd@gmail.com) with a copy marked to [agmprojectspidb2@gmail.com](mailto:agmprojectspidb2@gmail.com)

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- ix. Title: "Queries/Request for Additional Information: RFP for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra."
- x. The Bidder shall bear all costs associated with or relating to the preparation and submission of Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in

connection with or incidental to Bid. The Authority shall not be liable in any manner whatsoever, for any costs or any other expenses incurred by the Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

The Bids received in response to this invitation/RFP shall be evaluated based on Eligibility Criteria as specified in this RFP document.

## **1 INTRODUCTION**

### **1.1 Background**

- 1.1.1 The Department of Agriculture and Farmers' Welfare, Government of Punjab through the Punjab State Container and Warehousing Corporation Ltd. (**CONWARE**) (**the "Authority"**) – A wholly owned Punjab State Government Company, is desirous to select an Operator for the Operations and Maintenance of the Customs Notified Container Freight Station of CONWARE at Plot No. 2, Sector 2, Dronagiri, Taluka Uran, Navi Mumbai, District Raigad, Maharashtra – 400707.

The Authority has developed a Customs Notified Container Freight Station (CFS) facility on approximately 26.62 acres of land at plot no. 2, Sector 2 of Dronagiri, Taluka Uran, Navi Mumbai on which City and Industrial Development Corporation Maharashtra Ltd (CIDCO) has consented to grant the lease to Punjab State Container and Warehousing Corporation Limited (Conware) for a period of 60 (sixty) years w.e.f. 15.12.1994..

Punjab Infrastructure Development Authority (PIDB), the nodal agency of the Government of Punjab for undertaking PPP projects has been entrusted to carry out a transparent competitive bid process for selection of Private Sector Player on behalf of the Authority to undertake the Project. PIDB has issued an RFP through e-procurement mode vide e-Tender Notice dated 6<sup>th</sup> December 2021 inviting interested parties to bid for Project on the terms and conditions as contained in this Bid Document.

The successful Bidder, (a Legal entity) under the Applicable laws, shall operate and maintain the Project for the determined period as mentioned in the RFP, through a Special Purpose Vehicle ("SPV") (the "**Operator**") to be incorporated under the Companies Act, 2013. The Operator shall be responsible for Operation and Maintenance of the Project facilities under and in accordance with the provisions of the Operation and Maintenance Agreement (the "**Agreement**") to be entered into between the Authority and the Operator as per the draft provided in Volume-II along with Appendices, Schedules, Annexures forming an integral part of the Bid Document.

- 1.1.2 This Bid Document has been prepared to enable the Bidders to participate in the tender process for carrying on the "**Permitted Activities**" in adherence to the CIDCO Lease Agreement (Schedule N of draft Agreement) at its Container Freight Station (CFS) Facility for a term of 30 (thirty) years wherein the Operator shall have right to exit the Agreement after completion of 10 years.
- 1.1.3 The scope of work for the Successful Bidder will broadly include Operation and Maintenance of existing Project facilities more particularly as set forth in the Schedule B of the draft Agreement. The Operator shall provide best-in-class services and adhere to good industry practices. The Authority shall be responsible for handing over the site in the good condition to the Successful Bidder, within the stipulated timeframe given in Agreement. However, the ownership of the assets would always remain with the Authority.
- 1.1.4 The Authority shall handover entire Project Facilities to the Operator in Good condition. The Authority has conducted a structural assessment of the buildings in the premises. The said structural assessment report (the "**Report**") identifies the repairs required in various parts of the buildings in the premises and also details out various methods of repairs and retrofitting to bring the buildings in 'good condition'. The said report has been shared through e-tender portal.

The Authority shall endeavour to get the identified repairs done before handing over the Project Facilities to the Operator. However, if all the repairs are not completed by the current Operator/Authority till the handing over of the site, the selected Operator may undertake the balance

work done at its own level in which case the expenses incurred shall be reimbursed by the Authority for carrying out such works at the rates as certified by the Independent consultant which shall not be more than the rates prescribed in the report. Such reimbursement shall be done through the escrow account, only after completion of such balance work and certification to the same by Independent Consultant and shall be set off from the immediate next quarterly Instalment of Annual Consideration to be paid by the Operator.

In case the Operator has a plan not to use the previous project facilities or has a plan to demolish and reconstruct a part of the premises, hence wouldn't carry out or require repairs, than no payment shall be made to the Operator for that part.

- 1.1.5 The draft Agreement sets forth the detailed terms and conditions for grant of the right for Operation and Maintenance to the Operator, including the Scope of the Project as detailed in Article 2 and Schedule B.
- 1.1.6 Deleted
- 1.1.7 Bids submitted by the bidders shall be in accordance with the terms set forth in this RFP and other subsequent documents, corrigenda addenda etc pursuant to this RFP as modified, altered, amended and clarified from time to time by the Authority, (collectively the "Bid Documents").
- 1.1.8 Interested Entities (the 'Bidder') may download the Bid Documents from: <https://eproc.punjab.gov.in>. Interested bidders may apply for the tender after payment of non-refundable fee of Rs.10,000/- (Rupees ten thousand only) (exclusive of Goods and Service Tax (GST)) online ("Bid Document Fee"). Bids unaccompanied with the RFP Fee or a receipt of payment thereof shall be liable for rejection by the Authority / PIDB.

## **1.2 Brief description of bidding Process**

- 1.2.1 The Authority has adopted online tendering process comprising of a single stage two envelop system. The Technical Bid and Financial Bid shall be submitted online at <https://eproc.punjab.gov.in>. The bidder is required to submit the Hard copy of the of the Technical Bid as per the schedule specified in clause 1.3 of the RFP, for scrutiny and evaluation. The process of selection of the Successful Bidder for the Project through transparent and competitive Bidding Process shall be referred to as the "**Bidding Process**".
- 1.2.2 The Bid shall be valid for a period of 120 days from the date specified in Clause 1.3 for submission of Bids.
- 1.2.3 Deleted
- 1.2.4 Deleted
- 1.2.5 Eligibility and qualification of the Bidder will be first examined based on the details submitted under first Envelop (Technical Bid) with respect to criteria as prescribed in this RFP. The Financial Bid of only technically qualified Bidders shall be opened.

### **1.2.6 Financial Bids**

The Bidders shall quote 'per TEU rate' in Indian rupees (excluding all applicable taxes) (as mentioned in Price Bid / BoQ excel file uploaded along with bid, Refer Appendix – IB of RFP, para 7 ) subject to Minimum Guaranteed Throughput (MGT) of 15000 loaded TEUs per quarter i.e. 60,000 loaded TEUs

per annum for FY April 2022 - March 2023. For the subsequent financial years after March 2023; Minimum Guaranteed Throughput (MGT) of 18000 loaded TEUs per quarter i.e.72,000 TEUs per Year till the end of agreement period will be considered. (“Annual Variable Revenue”). Any decrease / increase in the actual volume of business (measured in terms of TEU) as compared to the Minimum Guaranteed Throughput (MGT) for any quarter shall be adjusted in the subsequent quarters of that respective financial year. The annual MGT shall however remain at 60000 loaded TEUs (April 2022 - March 2023). For the subsequent Financial years after March 2023; Minimum Guaranteed Throughput (MGT) of 18000 loaded TEUs per quarter i.e.72,000 TEUs per Year till the end of agreement period will be considered

For the avoidance of the doubt, there is no MGT requirement for the First Financial Year i.e., 1<sup>st</sup> February 2022 to 31<sup>st</sup> March 2022. Therefore, the Annual Variable Revenue shall be calculated as per the actual TEU Volumes..

#### **Illustration for Payment of Annual Variable Revenue:**

##### **Assumptions**

|    |   |   |   |
|----|---|---|---|
| 1  | Effective date                                    | : | 01.02.2022  |
| 2  | Agreement period                                  | : | 30 years from Effective date with an option to exit after 10 years  |
| 3  | Financial Year                                    | : | Starting on 1st April of a calendar year & ending on 31st March on subsequent calendar year   |
| 4  | Total Financial Years during the agreement period | : | 31  |
| 5  | No. of months in 1st F.Y.                         | : | 2 months (February & March 2022)  |
| 6  | No. of months in last (31st) FY                   | : | 10 months (1st April 2051 to 31st January 2052)   |
| 7  | Annual MGT  | : | 60000 TEUs from 1st April 2022 till 31st March 2023<br>72000 TEUs p.a.from 1 <sup>st</sup> April 2024 onwards   |
| 8  | Quarterly MGT (based on Annual MGT)               | : | 15000 TEUs from 1st April 2022 till 31st March 2023<br>18000 TEUs from 1st April 2023 onwards   |
| 9  | Assumed rate per TEU                              | : | Rs A/- (as quoted and applicable for the financial year starting from 1 <sup>st</sup> April 2022 to 31 <sup>st</sup> March 2023; thereafter escalated as per provisions of draft agreement) |
| 10 | Yearly Escalation                                 | : | 4% per annum effective from 1st April 2023  |
| 11 | Rate per TEU for FY 2023-2024                     | : | $B = A \times (1 + 4\%)$ and so on.   |

#### **Calculations of Annual Variable Revenue for any financial year**



**1) Second Financial Year (April 2022 – March 2023)**

As yearly escalations are streamlined for the purpose of ease of calculations for financial year, the first escalation will be effective from 1st April 2023. The escalation shall be 4% as mentioned above and the rate per TEU will be  $B = A * (1 + 4\%)$  (here 'x' or '\*' means multiplication)

Based on the assumptions, the Operator would pay at the beginning of each Quarter, a minimum sum of Rate per TEU X Quarterly MGT, i.e.  $B \times 15,000$  to the Authority for the quarter under consideration. The adjustment based on actual calculations of a quarter shall be done in month subsequent to the quarter ended, as per the procedure set out in Article 16 of draft agreement. The computation of variable fees for each quarter in FY 2022-23 shall be as follows:

| Qtr. | MGT            | Actual Volume of Business (TEUs)<br>(Illustration) |  | Payment Due (for number of TEUs)   |  |   | Actual Payment of Variable Fees for the qtr. under consideration |
|------|----------------|--|--|--|--|---|--|
|      | Cumulative MGT | Assumed Volume of business during the qtr.         | Cumulative Volume (TEU) at the end of qtr. | Cumulative TEUs for which Payment is due till the qtr. under consideration (Higher of cumulative MGT & Actual Cumulative volume) | No. of TEUs for which Payment is done till previous qtr. | Actual no. of TEUs for which Payment should be done for current quarter = (Cumulative TEUs till the end of the qtr., less TEUs for which payment is done) |  |
| I    | II             | III  | IV   | V=Higher of II & IV  | VI   | VII = V-VI  | VIII= VII x B  |
| Q1   | 15000          | 14000  | 14000                                      | 15000  | 0  | 15000   | 15000*B  |
| Q2   | 30000          | 21000  | 35000                                      | 35000  | 15000  | 20000   | 20000*B  |
| Q3   | 45000          | 15000  | 50000                                      | 50000  | 35000  | 15000   | 15000*B  |
| Q4   | 60000          | 28000  | 78000                                      | 78000  | 45000  | 28000   | 28000*B  |
|      | <b>60000</b>   | <b>78000</b>                                       |  |  |  | <b>78000</b>  | <b>78000*B</b>   |

**Note :** As mentioned previously, any adjustment in the TEU volume against the MGT shall be done only for a financial year under consideration and any such adjustment shall not be carried forward in next financial year.

**Calculations of Variable Revenue for LAST financial year (FY 2051 – 52)**

The last financial year would have 10 months (April 2051 to January 2052). The calculations for last financial year of the agreement period will be done in above manner for the first three quarters (April-June 2051; July-September 2051 and October-December 2051) and the last quarter of last financial year shall have only one month, with MGT of 6000 TEUs. The entire reconciliation for the first three quarters shall be made in the subsequent month as per the procedure set out in Article 16 of agreement. While the payment for the last month i.e. January 2052 shall be paid in advance based on

monthly average value of TEUs for the first three quarters or MGT of 6000 TEUs, whichever is higher, by 10<sup>th</sup> January 2052. The reconciliation for the last month shall be done in the next month as per procedure set out in Article 16; and the difference amount can be settled as per the certificate of Independent Consultant.

**Note :** In case the operator chooses to exercise exit option after 15<sup>th</sup> year, the last financial year will be different; however, the treatment of payment of Annual Variable Revenue will be as per same methodology as mentioned for last FY above,

For avoidance of doubt, A “TEU” would mean ‘Twenty Foot Equivalent’ container with length of 20’ or more and height of 8’ or more. The containers with length 40’ or more and height of 8’ or more shall be considered as Forty Foot Equivalent (FEU). 1 FEU shall be considered as 2 TEUs for all intents and purposes. This shall include Dry, Reefer, Tank, Over Dimensional, High Cube or Open Top Units. A Container/ Palette of Length less than 20’ shall be considered as 1 TEU.

(“**Loaded TEU**”) Loaded TEU means a container with 20’ length entering or leaving the CFS facility with cargo / goods (in accordance with Permitted Activities in Article 3.1.1 of the Draft Agreement) within the same, and is not empty. A Loaded TEU shall include Loaded/Stuffed containers, buffer containers, back to Port/Town containers, and En-block containers. The containers shall not include empty containers with no goods or cargo within the same (“**Empty Containers**”).

For avoidance of doubt, a non-containerized cargo handled by the Operator in accordance with Permitted Activities in Article 3.1.1 of the Draft Agreement shall be converted to TEUs based on their Net weight or Volumetric weight whichever yields the resultant TEUs on higher side as follows:

For the purpose of calculations, 16 Tons Cargo Weight or Volumetric Weight whichever is higher = 1 TEU (rounded off to two decimals)

The Successful Bidder shall be selected on the basis of the Highest Annual Variable Revenue quoted by the Bidder in the Financial Bid which shall, constitute the sole criteria for evaluation of Financial Bids. The Annual Variable Revenue shall be payable in accordance with Article 16 of the draft Agreement.

In this RFP, the term (“**Highest Bidder**”) (or say H1 bidder) shall mean the Bidder who is offering the Highest Annual Variable Revenue in INR per TEU (excluding all applicable taxes). At places he may be also referred to as first ranked bidder.

1.2.7 In addition to Annual Variable Revenue, the Successful Bidder shall be required to pay to the Authority:

(a.) Upfront fee (the “**Upfront Fee**”) shall be payable as follows:

- i. Rs. 5,00,00,000/- (Rupees Five Crore Only) (all applicable taxes extra) at the time of signing the Agreement; and
- ii. Rs. 5,00,00,000/- (Rupees Five Crore Only) (all applicable taxes extra) before completion of 14 months of effective date i.e., the date of handing over of CFS/ Project Facility or 31st March 2023, whichever is earlier

through online payment or in form of Demand Draft in favour of Managing Director, CONWARE Payable at Chandigarh.

(b.) An Annual Fixed Revenue (the “**Annual Fixed Revenue**”) (AFR):

- i. Moratorium for first two months (1<sup>st</sup> Feb 2022 – 31<sup>st</sup> March 2022) of 1<sup>st</sup> Financial Year;

- ii. INR 6 Crore (Rupees Six Crore Only) for 2nd Financial Year (all applicable taxes extra) (for 1st April 2022 to 31st March 2023); and
- iii. INR 13.50 Crore (Rupees Thirteen Crore Fifty Lakhs Only) for 3rd Financial Year (all applicable taxes extra) (for 1st April 2023 to 31st March 2024)

with YoY escalation of 4% from 1st April 2024 on INR 13.50 Crore (Rupees Thirteen Crore Fifty Only) and YoY escalation of 4% on previous years' AFR every year, till the end of Agreement Period. To be calculated on compounded basis. The Annual Fixed Revenue shall be payable in accordance with Article 16 of the Agreement.

**NOTES:**

- 1) The above method of pro-rata payment for 1st, 2nd and last financial year and yearly escalation (@4%) as mentioned in 1.2.6 above would apply for Annual Fixed Revenue. The 1st escalation for Annual Fixed revenue shall also be w.e.f. 1st April 2024.
- 2) In case the operator chooses to exercise the exit option available in the Agreement after 10<sup>th</sup> year, the last financial year would be different. Accordingly, the treatment of payment of Annual Variable Revenue will be as per methodology as mentioned for 1st Escalation above.

Generally, the Highest Bidder (**H1**) shall be declared as the Successful bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3.7.3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the Bidder matches the Bid of the Highest Bidder, the Authority shall Annul the Process and invite fresh bids.

- 1.2.8 Other details of the process to be followed under the bidding process and the terms thereof as specified in this RFP.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing or by e-mail to the officer designated in notice inviting bid (NIB) along with the title mentioned therein.

**1.3 Schedule of Bidding Process**

The Authority shall endeavour to adhere to the following schedule:

| Milestones  | Dates   |
|---|---|
| Download of RFP document from e-procurement platform at: <a href="https://eproc.punjab.gov.in">https://eproc.punjab.gov.in</a>  | 06.12.2021                                      |
| Last date for receiving queries   | 12.12.2021                                      |
| Pre-Bid Conference  | 13.12.2021, at 11:00am                          |
| Last date for Online submission of Bid (Technical Bid and Financial Bid) ("Bid Due date") on e-procurement platform at: <a href="https://eproc.punjab.gov.in">https://eproc.punjab.gov.in</a> | 27.12.2021 up to 03.30 pm.                      |
| Last date for physical submission of hard copy Bid (Technical Bid only)   | 28.12.2021, upto 03.30 pm                       |
| Opening of Technical Bid  | 04.30 pm. on Bid Due Date for online submission |
| Declaration of technically qualified bidders  | To be declared later                            |

**RFP for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra**

|                                     |  |
|-------------------------------------|--|
| Opening of Financial Bid            | To be declared later                       |
| Issuance of Letter of Award (LOA)   | To be declared later                       |
| Acceptance of Letter of Award (LOA) | Within 3 days from the issuance of the LOA |
| Validity of Bids                    | 120 days of online Bid Due Date            |
| Signing of the Agreement            | Within 20 days of Issuance of LOA          |

## **2 INSTRUCTIONS TO BIDDERS**

### **(A) GENERAL**

#### **2.1 General Terms of Bidding**

- 2.1.1 Any Bidder, bidding individually or as a member of a Consortium shall furnish the Power of Attorney (PoA) stating its legal stature as to capacity to bid. The PoA shall be legalised/apostilled/notarized by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled.
- 2.1.2 International bidding is allowed but any Bidder from a country which shares a land border with India will be eligible to bid only if it is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020. The certificate to this effect to be as per Appendix VI.
- 2.1.3 The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids.
- 2.1.4 The Bid shall be furnished as per the formats given in Appendix-I- A and I-B. Bid amount shall be indicated clearly in both figures and words, in Indian Rupees, in prescribed format of Financial Bid and shall be signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be considered.
- 2.1.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder.
- 2.1.6 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of Lead Member, which in the format at Appendix – III. In case the Bidder is a Consortium, Joint Bidding Agreement in the format at Appendix IV shall be submitted by the Bidder.
- 2.1.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.8 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language. The provisions of this Clause 2.1.8 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.9 The Bidding documents including this RFP and all attached documents, provided by the Authority are and shall remain the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid.
- 2.1.10 Deleted
- 2.1.11 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.
- 2.1.12 The Bidder shall be required to form a Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (the "SPV"), to execute the Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of members in a Consortium shall not exceed 2 (two);
- (b) Subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 51% (fifty one per cent). The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- (d) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) An individual Bidder cannot at the same time be member of a Consortium applying RFP. Further, a member of a particular Consortium cannot be member of any other Consortium;
- (f) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Joint Bidding Agreement**”), for the purpose of submitting a Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
  - (i) convey the intent to form an SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ownership equity commitment(s) in accordance with this RFP, which would enter into the Agreement and subsequently perform all the obligations of the Operator in terms of the Operation & Maintenance Agreement, in case the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) commit the minimum equity stake to be held by each member as per clause 2.7;
  - (iv) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Operator in relation to the Project in accordance with the Operation and Maintenance Agreement.
- (g) Except as provided under this RFP, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.
- (h) Any entity which has been blacklisted by the Central/ Any State Government of India OR abroad, from participating in any project and if the blacklisting subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium. The Bidder including the Consortium Member or Associate should provide an undertaking to that effect in accordance with Annex V of Appendix I-A.

2.1.13 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform any contract, nor should have been barred from any project or contract by any public entity; nor have had any contract terminated by any public entity for breach. The Bidder including the Consortium Member or Associate should provide an undertaking to that effect in accordance with Annex VI of Appendix I-A.

The Authority will have right to undertake its due diligence and cross verify the self-certification as provided by the bidder in this regard.

2.1.14 In computing the Technical Capacity and the Financial Capacity of the Bidder/ Consortium Members under Clauses 25.2 and 2.5.3, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder (sole/ Consortium Member) shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium member as the case may be.

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

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (c) in responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with Clause 2.1.16 below; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

2.1.16 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or Consortium Member is held by persons resident outside India or where a Bidder or Consortium Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in the Bidder or Consortium Member; then the Eligibility of such Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

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

- 2.1.17 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall not consider such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.
- 2.1.18 Bidder has to submit list of work under Arbitration/ Court Cases or any dispute. The bidder shall submit final/ latest decision/ status of Arbitration/ Court Cases for all disputes and if it is found that the decision of dispute is against the bidder then such bidder is liable to disqualify even if other qualification criteria are met with. The Bidder including the Consortium Member or Associate should provide an undertaking to that effect in accordance with Annex VII of Appendix I-A

## **2.2 Bid validity**

- 2.2.1 Bids shall remain valid for a period of not less than 120 days (One Hundred and Twenty days) from the Bid Due Date (the “**Bid Validity Period**”). The Bid of the Bidder shall be considered non-responsive if such Bid is valid for a period less the Bid Validity Period.
- 2.2.2 Prior to expiry of the original Bid Validity Period, the Authority may request the Bidders to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing. A Bidder may refuse the request and in such a case, Authority shall not forfeit his Bid Security/EMD. However, the bid of such a bidder refusing to extend, shall not be considered for evaluation. A Bidder agreeing to the request will not be required or permitted to modify his Bid but will be required to extend the validity of his Bid Security/EMD for the period of the extension, and in compliance with Clause 2.23 in all respects.

## **2.3 Number of Bids and cost thereof**

- 2.3.1 No Bidder or its Associate shall submit more than one Bid pursuant to this RFP. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be. If a Bidder submits or participates in more than one proposal, all such proposals shall be disqualified.
- 2.3.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## **2.4 Governing Law and Jurisdiction**

The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Chandigarh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

## **2.5 Eligibility and qualification requirements of Bidder**

- 2.5.1 For determining the eligibility of Bidder, the following shall apply:
- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. The Bidder shall be legal entity competent to enter into a contract as



per prevailing Indian law, and can be either: (i) sole proprietorship firm or (ii) a partnership firm registered under Partnership Act 1932 or (iii) Trust incorporated under the Indian Trust Act or (iv) Limited Liability Partnership (LLP) registered under LLP Act, 2008 or (v) Corporation or (vi) a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 and having a valid Corporate Identification Number (CIN) issued by the Ministry of Corporate Affairs, Govt. of India etc. or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.12.

- (b) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the project. For avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 24 (twenty four) months from the date of completion of the Bid Submission
- (c) The Bidder (sole bidder in case of single bidder; or the lead member of the consortium in case of Consortium) shall have a valid license or obtain a valid license as a part of the Conditions set out in the Letter of Award prior to the signing of the draft Agreement. Where a "Valid License" means a license issued by the Customs Authority authorising the Bidder to act as a Customs Cargo Service Provider (CCSP) as maybe required under the Handling of Cargo in Customs Area Regulations, 2009 or any other rules and regulations as maybe issued by the CBIC from time to time.

2.5.2 To be eligible for this RFP, a Bidder shall fulfil the following conditions of eligibility:

- (A.) **Technical Capacity:** For demonstrating technical capacity and experience (the "Technical Capacity") the Bidders have at least 5 years' experience in "Similar Works" during the preceding 7 (Seven) Financial Years. True/Self Attested Copies of work orders along with Project Progress Status issued by client, work completion certificate, experience certificate, etc. to substantiate the period of experience and quantity of work along with a chartered accountant's certificate in support of the same must be submitted.

**For the purpose of this RFP, "Similar Works" shall include the following experience:**

- a) *Operating of a Container Freight Station (CFS)*
- b) *Operating of an Inland Container Depot (ICD)*
- c) *Handling of Customs Cargo*
- d) *Providing Third Party Logistic (3PL) Services*
- e) *Providing Warehousing Services*
- f) *Providing Logistics and Supply Chain Management Services or*
- g) *Handling Sea Bourne Container Traffic"*
- h) *Handling of Cargo and Container Traffic by Shipping lines"*

For ascertaining the technical capability criteria for this E-Tender, the terms above shall be construed as follows

- Container Freight Station (CFS) or Operating of an Inland Container Depot (ICD) means operation of CFS and ICD in lines with the Customs Regulation

- Handling of Customs Cargo means receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian in accordance with the Customs Regulation
- Providing Third Party Logistic Services means Inventory storage, Inventory management, Freight forwarding, Shipping and distribution and Packaging for Packaged Goods
- Warehousing Services means storage/stacking of road borne / rail borne/ sea borne bulk/break bulk EXIM/domestic cargo/ containers in open or covered spaces.
- Logistics and Supply Chain Management Services means conductance of permitted operations of multi-modal transportation and handling of cargo/containers at maritime sea ports, customs
- Handling Sea Borne Container Traffic means handling of such traffic by the shipping agent or shipping company or shipping line or customs house agent or Port container terminal operator.

*In case of a Consortium, the lead member of consortium shall fulfil the technical capacity requirements.*

2.5.3 **Financial Capacity:** For demonstrating financial capacity (the “**Financial Capacity**”), the Bidder (in case of consortium all the consortium members) shall have:

- (i) Average annual turnover from Similar Works of **Rs. 50,00,00,000/- (Rupees Fifty Crore Only)** during last five financial years i.e. (2015-16, 2016-17, 2017-18, 2018-19, 2019-20); and
- (ii) Positive Net Worth as per latest available audited balance sheet (CA certificate to be issued in case balance sheet is not audited on the date of submission of bid).

2.5.4 In case of a Consortium, for the determination of the Average annual turnover, the combined average annual turnover of all the members will be considered. However, for the purpose of Net worth, all the members of Consortium each member shall have positive Net worth as per latest available audited balance sheet (FY 2019-20) (CA certificate to be issued in case balance sheet is not audited as on the one week before date of submission of bid. The Bidders shall enclose with its Bid, to be submitted as per the format given in Appendix-I-A, complete with its Annexes, the following:

- (i) Certificate(s) from its statutory auditors<sup>1</sup> or any other relevant document to substantiate the period of experience. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor; and
- (ii) Certificate(s) from its statutory auditors specifying the average annual turnover, average annual turnover from Similar Services and net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.5.3 (iii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean as follows :
  - a. "Net Worth" for company shall mean the aggregate value of the paid-up share capital and all reserves created out of profits of the company and securities premium account after deducting aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

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<sup>1</sup> In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP.

- b. Net Worth for Partnership Firm would mean: [Fixed Assets +Trade Receivables + Current Assets]  
– [Firms Loan +Current Liabilities]
- c. Net Worth for Sole Proprietorship would mean: Total Assets- Total Liabilities

## **2.6 Change in Composition of Consortium**

- 2.6.1 Change in the composition of a Consortium will not be permitted by the Authority during the Bidding process.

## **2.7 Change in Ownership**

- 2.7.1 Provisions regarding Shareholding pattern in SPV

- a. Bidder or Members of the Consortium (as case maybe) undertake that they shall collectively hold in SPV, not less than 100% (hundred percent) of its issued and paid up Equity as on the date of signing of the Agreement (agreement date) and that the Lead Member shall hold at least 51% (fifty one percent) of Equity as on the date of signing of the Agreement till the end of lock-in-period. For the purpose of equity holding, lock-in-period shall be defined as 5 years from the agreement date. After such lock in period, each Consortium Member, together with their Associates, whose technical and financial capacity has been evaluated for the purposes of qualification in response to the Request for Proposal, shall hold in SPV, not less than 26% (twenty six per cent) of the issued and paid up Equity till the completion of Agreement by efflux of time or by exercise of option to exit or Termination of this Agreement. The Sole Bidder, together with its associates, shall hold in the SPV, at least 51% (fifty one percent) of Equity after lock-in-period, and shall continue to hold, till the completion of Agreement by efflux of time or by exercise of option to exit or Termination of this Agreement;
- b. At no stage during the Lock-in-Period shall any change in the shareholding pattern be made by the Bidder or Consortium Members and/or by any of the Associates without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the shareholding pattern shall be permitted by the Authority, which would make the Consortium Members or Associates or the Operator non-compliant in accordance Article 7. of the Agreement;

- 2.7.2 Provisions regarding Shareholding pattern in bidder / consortium members

By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same In the event such change in control occurs after signing of the Agreement it would, notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach of the Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Operator. In such an event, notwithstanding anything to the contrary contained in the Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or

remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement or otherwise.

## **2.8 Site visit and verification of information**

2.8.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water & other utilities, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project with in the stipulated time of submission of the Bid. It is understood that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in this RFP;
- (d) satisfied itself about all matters, things and information including matters referred to in this RFP as necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in this RFP and shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Agreement by the Operator;
- (f) acknowledged that it does not have a conflict of interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.8.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, including any error or mistake therein or in any information or data given by the Authority.

## **2.9 Verification and Disqualification**

2.9.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.

2.9.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

2.9.3 Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member of the Consortium may be

disqualified /rejected. If such disqualification/rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified /rejected, then the Authority shall proceed as per clause 3.7.3.

**(B) DOCUMENTS**

**2.10 Contents of the RFP**

- 2.10.1 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, granted by the Authority, that one or more of the eligibility and/or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LOA or entering into of the Agreement, and if the Successful Bidder has already been issued the LOA or the SPV has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Successful Bidder or the Operator, as the case may be, without the Authority being liable in any manner whatsoever to the Successful Bidder or the Operator. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFP, the Bidding Documents, the Agreement or otherwise.
- 2.10.2 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

**Invitation for Bids**

- Section 1 Introduction
- Section 2 Instruction to Bidders
- Section 3 Evaluation of Bids
- Section 4 Fraud and Corrupt Practices
- Section 5 Pre-Bid Conference
- Section 6 Terms of Reference
- Section 7 Miscellaneous

**Appendices**

- Appendix IA : Letter comprising the Technical Bid including Annex I to VII
- Appendix IB : Letter comprising the Financial Bid
- Appendix II : Power of Attorney for signing of Bid
- Appendix III : Power of Attorney for Lead Member of Consortium
- Appendix IV : Joint Bidding Agreement for Consortium
- Appendix VI : Certificate in Compliance with Notification no. F.No. 6/18/2019-PPD, dated 23rd July 2020 issued by Ministry of Finance, Department of Expenditure Public Procurement Division

- 2.10.3 The draft Agreement provided by the Authority as part of the Bid Documents shall form the part of the Bid Document.

## **2.11 Clarifications**

- 2.11.1 *Bidders* requiring any clarification on the RFP may notify the Authority in writing or by email at the address provided in Clause 1.2.10. Bidders should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3 in order to enable the Authority to have adequate notice of the said queries so that the same may be addressed at the pre-bid meeting. No queries shall be entertained after the conductance of the pre-bid meeting.
- 2.11.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders in a short span of time prior to Bid Due Date. The Authority may upload the queries and its responses on the website <https://eproc.punjab.gov.in>. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.11.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

## **2.12 Amendment of RFP**

- 2.12.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.12.2 Any Addendum issued hereunder will be uploaded on e-tendering website <https://eproc.punjab.gov.in>.
- 2.12.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

## **(C) PREPARATION AND SUBMISSION OF BIDS**

### **2.13 Language**

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bids, the English language translation shall prevail.

### **2.14 Format and signing of Bid**

- 2.14.1 The Bidder shall upload the documents listed in the Clause 2.15.2 in electronic mode through e-tendering website <https://eproc.punjab.gov.in>. The Authority will accept only those Bids that are received in the required formats and complete in all respects. Incomplete and/or conditional Bids shall be liable to rejection.
- 2.14.2 All the documents of the Bid under this RFP shall be uploaded on e-tendering website <https://eproc.punjab.gov.in> using digital signature.

2.14.3 The uploaded Bid documents shall be typed in indelible ink and signed by the Authorized Signatory on each page. The signature of the Authorized Signatory shall bind the Bidder to the agreement. The signed pages shall be scanned and uploaded in accordance with the requirements of this RFP. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the Authorized person(s) signing the Bid. Each page of the Bid must be numbered at the right-hand top corner.

## **2.15 Marking and Submission of Bids**

2.15.1 The Bidder shall upload the Technical Bid and the Financial Bid documents mentioned in Clause 2.15.2 below on e-tendering website <https://eproc.punjab.gov.in> in the specified formats. The bidder shall also submit the Hard copy of Technical Bid only within the time specified in this RFP.

2.15.2 The documents shall be marked as indicated below:

### **Envelope 1: Technical Bid**

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annex I to VII and supporting certificates / documents;
- (b) Power of Attorney for signing the Bid as per the format at Appendix-II;
- (c) if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (d) if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-IV;
- (e) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, copies of registered partnership deed in case of partnership firm; copies of sales tax registration, PAN/TAN in case of sole proprietorship concern;
- (f) Copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 5 years;
- (g) Certificate in Compliance with Notification no. F. No. 6/18/2019-PPD, dated 23rd July 2020 issued by Ministry of Finance, Department of Expenditure Public Procurement Division as per the format at Appendix - VI

### **Envelope 2: Financial Bid**

- (a) Appendix I-B (Letter comprising the Financial Bid)
- (b) Format of Financial bid

2.15.3 Bids submitted other than the on <https://eproc.punjab.gov.in>; shall not be entertained and shall be summarily rejected.

## **2.16 Bid Due Date**

2.16.1 Technical & Financial Bid comprising of the documents listed at Cause 2.15.2 of the RFP shall be submitted online through e-tendering website <https://eproc.punjab.gov.in> in accordance with the dates prescribed in Clause 1.3.

2.16.2 The hard copy of the Technical Bid shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification "Bid for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra" and shall clearly indicate

the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand top corner of the envelope.

2.16.3 The envelope shall be addressed to the following officer and shall be submitted at the respective address:

ATTN OF : Managing Director  
ADDRESS : PIDB  
SCO 33-35, Sector 34-A, Chandigarh  
Tel: +91 172 2665 410 | 438 1111  
E-MAIL ADDRESS : mdpidb@gmail.com with a copy marked to [agmprojectspidb2@gmail.com](mailto:agmprojectspidb2@gmail.com)

If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

## **2.17 Late Bids**

E-tendering website: <https://eproc.punjab.gov.in> shall not allow submission of any Bid after the prescribed date and time as mentioned in this RFP.

## **2.18 Procedure for e-tendering**

### **2.18.1 Accessing/ Purchasing of Bid documents**

2.18.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or organization) from any of the licensed Certifying Agency to participate in e-tendering of the Authority.

DSC should be in the name of the authorized signatory as authorized in Appendix II of this RFP. It should be in corporate capacity (that is in Bidder capacity). The Bidder shall submit document in support of the class III DSC.

The Authorized Signatory holding Power of Attorney shall only be the Digital Signatory. In case Authorized Signatory holding Power of Attorney and Digital Signatory are not the same, the Bid shall be considered non-responsive.

2.18.1.2 To participate in the bidding, it is mandatory for the Bidders to get registered their firm with e-procurement portal of the Authority <https://eproc.punjab.gov.in> to have user ID & password. Validity of online registration is one year. Following may kindly be noted:

(a) Registration with e-procurement portal of the Authority should be valid at least up to the date of submission of Bid.

(b) Bids can be submitted only during the validity of registration.

2.18.1.3 If the firm is already registered with e-tendering website, and validity of registration is not expired the firm shall not require a fresh registration



#### **2.18.1.4 Process for Online Submission**

- a) Before uploading their Bid, the Bidders are advised to familiarize themselves with the uploading process as detailed out on the e-tendering portal.
- b) For participation in the e-tendering process, the Bidders need to register themselves on e-tendering portal of the Government of Punjab i.e. <https://eproc.punjab.gov.in> and get issued Digital Class 3 signatures. The Bidder may be required to submit its documents including GST Certificate, PAN Card etc. at the time of registration. This process may take some time. The Bidder is advised to undertake and complete registration at least a week in advance of the Bid Due Date.
- c) In case the Bidder is a Consortium, the Lead Member of the Consortium shall register itself and submit the Bid.
- d) On registration. The Bidder shall be provided User ID and a system generated password enabling him to download/ submit his Bid, along with Digital System Certificate (DSC). For any clarification/ removal of difficulty regarding e-tendering process the Bidder may contact the e-procure helpdesk at 0172-2970263 or 0172-2970284.
- e) Bids without digital signatures shall not be accepted by the Electronic tendering system
- f) Bids must be submitted on-line through e-portal before the specified time (to be counted as per server clock). The Bidders should endeavour to submit their bids well in advance of the due time. The Authority shall not be responsible for the failure in submission of the bid for any reason including due to poor internet connection or network congestion or malfunction of the e-portal.

#### **2.18.2 Preparation & Submission of Bids**

- 2.18.2.1 The Bidder may submit his Bid online following the instruction appearing on the screen. A buyer manual containing the detailed guidelines for e-procurement is also available on e-procurement portal.
- 2.18.2.2 The documents listed at Clause 2.15.2 shall be prepared and scanned in different files (in PDF or JPEG format) and uploaded during the on-line submission of Bid.
- 2.18.2.3 Bid must be submitted online only through e-procurement portal <https://eproc.punjab.gov.in> using the digital signature of authorized representative of the Bidder on or before Bid Due Date and time.

#### **2.18.3 Modifications/ Substitution/ withdrawal of Bids**

- 2.18.3.1 The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.
- 2.18.3.2 For modification of e-Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, a Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.

## **2.19 Online Opening of Bids**

- 2.19.1 Opening of Bids will be done through online process.
- 2.19.2 The Authority shall open Technical Bids on-line in accordance with dates in Clause 1.3, in the presence of the authorized representatives of the Bidders, who choose to attend. The Bids shall be summarily rejected if it contains the figure of Financial Bid in the Technical bid.
- 2.19.3 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions of Section 3 of RFP.

## **2.20 Rejection of Bids**

- 2.20.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the entire Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.20.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

## **2.21 Confidentiality**

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority.

## **2.22 Correspondence with the Bidder**

The Authority may not entertain any correspondence from any Bidder in relation to acceptance or rejection of any Bid.

**(D) BID SECURITY / EMD**

**2.23 Bid Security / EMD**

- 2.23.1 The Bidder shall furnish as part of its Bid, a separate bid security (also referred to as "**Earnest Money Deposit**" or "**EMD**" or "**Bid Security**") of Rs.10,00,000/- (Rupees Ten Lakh Only) which shall be paid through any modes of e-payment as specified in the e-procurement platform at: <https://eproc.punjab.gov.in>. However, the Bidder may also furnish the EMD in the form of an unconditional and irrevocable bank guarantee from a nationalized bank payable at Chandigarh and in favour of "Managing Director, Punjab Infrastructure Development Board (PIDB)" as per the format provided at Annexure 2. The Bank Guarantee shall be initially valid for 180 (one hundred eighty) days from Bid Due Date, which may be extended, if required. No interest will be paid on the EMD/Bid Securities/Bank Guarantees by the Department.
- 2.23.2 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.23.3 The Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Preferred Bidder or when the Authority cancels the Bidding Process.
- 2.23.4 The Preferred Bidder's (also termed as 'Successful bidder') EMD will be returned, without any interest, upon the Preferred Bidder signing the Agreement and subject to the Preferred Bidder having furnished the Performance Bank Guarantee in accordance with the provision thereof.
- 2.23.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as damages inter alia in any of the events specified in Clause 2.23.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.23.6 The EMD/Bid Security shall be forfeited and appropriated by the Authority as damages without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, under the following conditions:
- (i) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
  - (ii) If a Bidder withdraws its Bid during the period of Bid validity Period as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
  - (iii) In case of Successful Bidder, if it fails within the specified time limit:
    - (a.) to sign and return the duplicate copy of LOA;
    - (b.) to sign the Agreement within the time period specified by the Authority; or
    - (c.) to furnish the Performance Security within the period prescribed in the Agreement.

### **3 EVALUTION OF TECHNICAL BIDS AND OPENING AND EVALUTION OF FINANCIAL BIDS**

#### **3.1 Opening and Evaluation of Technical Bids**

- 3.1.1 The Authority shall open the Technical Bids received online in accordance with the dates provided in Clause 1.3 and in the presence of the Bidders who choose to attend. The Authority shall accept the bid submitted online only.

Physical bid shall be used as reference for evaluation purpose.

- 3.1.2 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.3 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing or through email from any Bidder regarding its Bid.

#### **3.2 Tests of Responsiveness**

- 3.2.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:

- (a) Technical Bid is received online as per the format at Appendix-IA including Annex I to VII;
- (b) Technical Bid is accompanied by the Bid Security as specified in Clause 2.23;
- (c) Technical Bid is accompanied by the Power of Attorney in favour of authorized signatory as specified in Clauses 2.1.5;
- (d) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 2.1.6, if so required;
- (e) Technical Bid contain all the information (complete in all respects) as required by this RFP;
- (f) Technical Bid does not contain any condition or qualification; and
- (g) it is not non-responsive in terms hereof.

- 3.2.2 The Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

#### **3.3 Evaluation Parameters**

- 3.3.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.5.1 above shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.
- 3.3.2 A Bidder's competence and capability is proposed to be established by the following parameters:
- (a) Technical Capacity; and
  - (b) Financial Capacity

### **3.4 Details of Experience for purposes of evaluation Technical Capacity**

- 3.4.1 The Bidder should furnish the details of eligible experience to satisfy Technical Capacity as mentioned in Clause 2.5.2. In case of international bidder, the Financial year followed in their country shall be considered for evaluation;
- 3.4.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.

### **3.5 Financial information for purposes of evaluation**

- 3.5.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.5.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.5.3 The Bidder must establish the minimum Net Worth specified in Clause 2.5.3, and provide details as per format at Annex-III of Appendix-IA.

### **3.6 Opening and Evaluation of Financial Bids**

The Authority shall inform the venue and time of online opening of the Financial Bids to the technically responsive bidders through e-procurement portal of the Authority and e-mail. The Authority shall online open the Financial Bids on date and time to be informed in this clause in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority shall publicly announce the Bid Price for each of the technically responsive Bidder. The Authority shall prepare a record of opening of Financial Bids.

The Authority reserves the right to annul the entire Bid Process and may at its sole discretion invite fresh bids without assigning any reason thereof.

### **3.7 Selection of Bidder**

- 3.7.1 Subject to the provisions of Clause 2.20.1, the technically responsive bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and who quotes highest Annual Variable Revenue as acceptable to the Authority in form of variable amount in Indian Rupees per TEU subject to Minimum Guaranteed Throughput (MGT) of 15000 loaded TEUs per quarter shall be declared as the Successful Bidder (the "Successful Bidder"). The same shall be also known as Highest bidder or H1 bidder. The other qualified bidders shall be ranked as H2 (2<sup>nd</sup> highest), H3 (third highest) etc and so on upto Hn.
- 3.7.2 In the event that, the assessed Bid Price of two or more Bidders is the same (the "Tie Bids"), the Authority shall identify the Successful Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.7.3 In case the H1 Bidder withdraws or is not selected for any reason thereof, H2 bidder will be invited to match the financial bid of H1 and in case it agrees to do so, H2 bidder shall be declared as 'Successful bidder' for the purpose of Award of Work. However, if H2 bidder denies to match the financial bid of H1, H3 will be invited to match the financial bid of H1. The process will be repeated for all technically qualified bidders upto Hn in sequence till the time any bidder agrees to match the financial bid of H1 and the one who does that, will be declared as 'Successful bidder' for the purpose of award of work In

case, none of the Bidders agree to match the H1 Bidder than the authority shall , annul the bidding process and invite fresh Bids.

It may be noted that if other bidders (H2, H3,.... Hn) don't agree to match the financial bid of H1, their Bid security will not be forfeited.

### **3.8 Notification of Award**

- 3.8.1 After selection, two copies of the Letter of Award (the "LOA") shall be issued by the Authority to the Successful Bidder and the Successful Bidder shall, within 3 (Three) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof along with acceptance of LOA on his letter head. In the event the duplicate copy of the LOA duly signed by the Successful Bidder as well as the acceptance on their letter head is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Successful Bidder to acknowledge the LOA and provide the acceptance.
- 3.8.2 After issuance of LOA and before signing of the Agreement the successful bidder would be required to fulfil the Conditions as prescribed in the LOA:

### **3.9 Signing of Agreement**

- 3.9.1 After acknowledgement and acceptance of the LOA as aforesaid by the Successful Bidder, it shall cause the Bidder to fulfil the conditions set out in the LOA within the period prescribed in LOA in Appendix V.
- 3.9.2 The Successful Bidder shall get the correct amount of stamp duty adjudicated, at Chandigarh in accordance with the Applicable Law, and submit the same in two copies duly stamped and executed within 20 (twenty) days from the dispatch of LOA. The Authority shall return one copy duly sealed and signed as a token of acceptance of the Agreement. Stamp duty, and any other charges as may be levied under Applicable Law, shall be paid by the Successful Bidder. In the event the two copies duly stamped are not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as damages on account of failure of the Successful Bidder to acknowledge the LOA, and the 2<sup>nd</sup> ranked Bidder may be considered.

### **3.10 Contacts during Bid Evaluation**

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

#### **4 FRAUD AND CORRUPT PRACTICES**

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and the signing of the Agreement and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder, at the sole and absolute discretion of the Authority, shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Agreement or arising there from, before or after the \ execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.5.1(b) of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts;

- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.



## **5 PRE-BID CONFERENCE**

- 5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place in accordance with the details provided in Clause 1.3. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder. Considering the present pandemic situation, the Authority may convene the pre-bid conference on a virtual platform. The link for the same shall be shared with the Authorized representative of the bidder. All the interested Bidders shall be required to drop an e-mail at the address given in Clause 1.2.10 to the Authority with a copy to the Transaction Advisor for Virtual Pre-Bid meeting.
- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## 6 TERMS OF REFERENCE

The Authority shall hand over the entire Project facilities in the good condition to the Operator in accordance with the provisions of the Agreement. A brief about the Site is provided below:

### Site Details:

- Site Location: Dronagiri (Near JNPT), Navi Mumbai
- Site Area: 107748.72 sq. m. (26.62 acres)
- Buildings Area:
  - Covered Warehouses (2 nos.; G+1): 47465 sq. m. (Total)
  - Office Building (G+4): 4060 sq. m.
  - Other bldgs. (Token office, Gate site, others): 912 sq. m.
- Open Yard (Container yard + Roads): 52700 sq. m.
- The 'CONWARE CFS' is approximately 26.62 acres (107749 sq. m.) site located in close proximity to the Jawaharlal Nehru Port in Navi Mumbai.

The site is located at a distance of 11 kms from the port area and all the port facilities are within 19 km from Conware CFS, the site is connected to NSICT, JNPT, GTI terminals.

The Authority shall handover entire Project Facilities to the Operator in the good condition. The Authority has conducted a structural assessment of the buildings in the premises. The said structural assessment report (the report) identifies the repairs required in various parts of the buildings in the premises and also details out various methods of repairs and retrofitting to bring the buildings in 'good condition'. The said report has been shared through e-tender portal.

The Authority shall endeavour to get the identified repairs done before handing over the Project Facilities to the Operator. However, if all the repairs are not completed by the current operator / Authority till the handing over of the site, the selected Operator may undertake the balance work done at its own level in which case the expenses incurred shall be reimbursed by the Authority for carrying out such works at the rates as certified by the Independent consultant which shall not be more than the rates prescribed in the report. Such reimbursement shall be done through the escrow account, only after completion of such balance work and certification to the same by Independent Consultant and shall be set off from the immediate next quarterly Instalment of Annual Consideration to be paid by the Operator.

In case the Operator has a plan not to use the previous facilities or has a plan to demolish and reconstruct a part of the premises, hence wouldn't carry out or require repairs, then no payment shall be made to the Operator for that part.

### Existing Operation:

The CFS currently handled 91,512 TEUs (Loaded and Stuffed) in the year 2020-21. The indicative volumes of Import & Export TEUs (Loaded and Stuffed) handled at CFS facility in last 5 years as:

| S. No. | Year    | Import | Export | TOTAL |
|--------|---------|--------|--------|-------|
| 1      | 2015-16 | 23810  | 48620  | 72430 |
| 2      | 2016-17 | 24360  | 43693  | 68053 |

|   |         |        |        |       |
|---|---------|--------|--------|-------|
| 3 | 2017-18 | 30972  | 44137  | 75109 |
| 4 | 2018-19 | 44719  | 39521  | 84240 |
| 5 | 2019-20 | 39218  | 48105  | 87323 |
| 6 | 2020-21 | 29,992 | 61,520 | 91512 |

NOTE: CONWARE does not guarantee the handling of any volumes at the Project Site during the Agreement Period”

**Broad Scope:**

Broad scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Operation & Maintenance Period:

- (a) to operate and manage the Project as specified in Schedule B, in conformity with the Lease Agreement entered between the Authority and the City and Industrial Development Corporation of Maharashtra Limited (the “**CIDCO**”) enclosed at Schedule N, Customs Regulations and other Applicable laws;
- (b) to operate and maintain the Project in accordance with the provisions of this Agreement;
- (c) to provide Ancillary Facilities in accordance with the provisions of this Agreement;
- (d) to transfer the Project to the Authority upon Termination in accordance with the provisions of this Agreement; and
- (e) to perform and fulfil all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operation and Maintenance under this Agreement.

In addition to the above, the Operator shall adhere to the Scope of Work as detailed in Article 2 and Schedule B of Agreement.

**NOTE: In the event that the Project Site is de-notified by the Customs Authority, any punitive action by Customs for any contravention shall not affect the Agreement Period**

## **7 MISCELLANEOUS**

- 7.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts at Chandigarh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 7.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 7.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDICES

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**Appendix I**

**Appendix IA: Letter Comprising the Bid**

(Refer Clause 2.1.4, 2.15.2 and 3.2)

Dated:

To,

Managing Director, PIDB

SCO 33-35, Sector 34-A, Chandigarh

**Sub: Bid for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra**

Dear Sir,

1. With reference to your RFP document dated .....<sup>2</sup>, I/we, having examined the Bidding document and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Operator for the aforesaid Project, and we certify that all information provided in the Bid and in Annexes I to VII is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Operator for the, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor have been terminated/ banned/ blacklisted from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
  - (a) I/ We have examined and have no reservations to the Bidding documents, including any Addendum issued by the Authority.
  - (b) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for Bid issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - (c) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will

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<sup>2</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder

engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.20 of the RFP document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy (ies) the Technical Capacity, Financial Capacity and meet(s) all the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP we shall intimate the Authority of the same immediately.
15. The Statement of Legal Capacity as per format provided at Annex-IV in Appendix-IA of the RFP document, and duly signed, is enclosed. The Power of Attorney for signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
16. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Operator under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
17. I/ We understand that the Successful Bidder shall incorporate an SPV which would be incorporated under the Indian Companies Act, 2013 prior to execution of the Agreement.
18. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. In the event of my/ our being declared as the Successful Bidder, I/We agree to form an SPV and enter into the Agreement in accordance with the Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid and agree to abide by the same.



20. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Project.
21. I/ We offer a Bid Security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to the Authority in accordance with the RFP Document.
22. The Bid Security is paid through \_\_\_\_\_ via e-payment gateway.
23. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened or rejected.
24. The Annual Variable Revenue has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
25. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
26. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Operator under the Agreement.
27. I/ We confirm that I /We satisfy the criteria as mentioned in Clause 2.5.2 and Clause 2.5.3 to satisfy the Technical Capacity and the Financial Capacity.
28. I/We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
29. I/ We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement

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

Yours faithfully,

Date:

(Signature of the Authorised signatory)

(Name and designation of the of the Authorised signatory)

Class III DSC ID of Authorised Signatory

Place:

Name and seal of Bidder/Lead Member

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

**Annex-I: Details of Bidder**

1. (a) Name:  
(b) Country of incorporation:  
(c) Address of the corporate headquarters and its branch office(s), if any, in India:  
(d) Date of incorporation and/ or commencement of business:  
(e) Complaint Status of MCA:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:  
Name:  
Designation:  
Company:  
Address:  
Telephone Number:  
E-Mail Address:  
Fax Number:
4. Particulars of the Authorized Signatory of the Bidder:  
Name:  
Designation:  
Address:  
Phone Number:  
Fax Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.12 (g) should be attached to the Bid.
  - (c) Information regarding the role of each Member should be provided as per table below:

| Sr. No | Name of Member | Role*{Refer Clause 2.1.12 (d)} | Percentage of equity in Consortium {Refer Clauses 2.1.12 (a), (c) & (g)} |
|--------|----------------|--------------------------------|--|
| 1      |                |                                |  |
| 2      |                |                                |  |

\*The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-IV.

- (d) The following information shall also be provided for Bidder / each Member of the Consortium:

Name of Bidder/ member of Consortium:

| No. | Criteria  | Yes | No |
|-----|---|-----|----|
| 1   | Has the Bidder/ constituent of the Consortium been barred by the [Central/ any State] Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?   |     |    |
| 2   | If the answer to 1 is yes, does the bar subsist as on the date of Bid.  |     |    |
| 3   | Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years? |     |    |

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary)

**Note:**

1. In case Bidder is sole proprietorship concern it shall submit the copies of sales tax registration, PAN/TAN.
2. In case the Bidder is a partnership firm, Bidder shall submit copy of registered partnership deed.
3. In case the Bidder is a company Bidder, shall submit the copies memorandum and articles of association with CIN number. The Bidder shall submit the proof regarding complaint status of MCA.
4. In case the Bidder is an LLP, Bidder, shall submit copy of LLP agreement.
5. Similarly for any other form of legal entity, the Bidder shall be required to produce its constitutional/Charter document.

**Annex-II: Technical Capacity of the Bidder**

(Refer to Clauses 2.5.2, 2.5.4 (i) and 3.4 of the RFP)

**Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”) the Bidders have proven experience in (the “**Similar Works**”) for each year during the preceding 5 (Five) Financial Years. True/Self Attested Copies of work orders along with Project Progress Status issued by client, work completion certificate, experience certificate or any other relevant document to substantiate the period of experience and quantity of work along with a chartered accountant’s certificate in support of the same must be submitted.

**“Similar Works” shall include the following experience**

- (a) Operating of a Container Freight Station (CFS)*
- (b) Operating of an Inland Container Depot (ICD)*
- (c) Handling of Customs Cargo*
- (d) Providing Third Party Logistic (3PL) Services*
- (e) Providing Warehousing Services*
- (f) Providing Logistics and Supply Chain Management Services or*
- (g) Handling Sea Bourne Container Traffic”*
- (h) Handling of Cargo and Container Traffic by Shipping lines*

| No. | Project Name | Private Client/<br>Government Authority/ In-house | Type of Project<br>(As per Similar Works) | Date of      |            |                    | Reference Page No. of supporting document |
|-----|--------------|---|---|--------------|------------|--------------------|---|
|     |              |   |   | Commencement | Completion | Years in Operation |   |
|     |              |   |   |              |            |                    |   |
|     |              |   |   |              |            |                    |   |
|     |              |   |   |              |            |                    |   |

.....  
 .....  
 Signature, name and designation of  
 Authorised Signatory

For and on behalf of ..... (*Name of the Bidder*)

.....  
 .....  
 Name of the Statutory Auditor's firm:  
 Seal of the audit firm: (Signature, name and  
 designation and Membership No. of  
 authorised signatory)  
 UDIN: \_\_\_\_\_

Place : \_\_\_\_\_

Date : \_\_\_\_\_

**Annex-III: Financial Capacity of the Bidder**

(Refer to Clauses 2.5.3, 2.5.4 (ii) and 3.5 of the RFP)

(In Rs. crore)

| Bidder | Proposed Equity in the Shareholding Consortium (%) | Annual Turnover |            |            |            |            | Average Annual Turnover | Net Worth |
|--------|--|-----------------|------------|------------|------------|------------|-------------------------|-----------|
|        |  | FY 2015-16      | FY 2016-17 | FY 2017-18 | FY 2018-19 | FY 2019-20 |                         |           |
|        |  |                 |            |            |            |            |                         | Year 1    |
| (1)    | (2)  | (3)             | (4)        | (5)        | (6)        | (7)        |                         | (8)       |
|        |  |                 |            |            |            |            |                         |           |

.....  
 .....  
 Signature, name and designation of  
 Authorised Signatory

For and on behalf of ..... (*Name of the Bidder*)

.....  
 .....  
 Name of the Statutory Auditor's firm:  
 Seal of the audit firm: (Signature, name and  
 designation and Membership No. of  
 authorised signatory)  
 UDIN: \_\_\_\_\_

Place : \_\_\_\_\_

Date : \_\_\_\_\_

**Name & address of Bidder's Bankers:**

(In Rs. crore)

| Bidder | Annual Turnover from Similar Works as defined in Clause 2.5.2 |            |            |            |            | Average Annual Turnover |
|--------|---|------------|------------|------------|------------|-------------------------|
|        | FY 2015-16  | FY 2016-17 | FY 2017-18 | FY 2018-19 | FY 2019-20 |                         |
| (1)    | (2)   | (3)        | (4)        | (5)        | (6)        | (7)                     |
|        |   |            |            |            |            |                         |
|        |   |            |            |            |            |                         |

.....  
 .....  
 Signature, name and designation of  
 Authorised Signatory

For and on behalf of ..... (*Name of the Bidder*)

.....  
 .....  
 Name of the Statutory Auditor's firm:  
 Seal of the audit firm: (Signature, name and  
 designation and Membership No. of  
 authorised signatory)  
 UDIN: \_\_\_\_\_

Place : \_\_\_\_\_

Date : \_\_\_\_\_

Name & address of Bidder's Bankers:

**Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five ) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Worth shall mean aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated loses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.
3. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.17.
4. The Bidder shall also provide the name and address of the Bankers to the Bidder.
5. The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.5.4 (ii) of the RFP document.
6. For Conversion from Foreign Currency, the Foreign Exchange Rates prevailing 60 days prior to the Bid Due date provided by **FBIL (Financial Benchmarks India Ltd.)** shall be the Reference rates.



**Appendix IA**

**Annex-IV: Statement of Legal Capacity**

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref. Date:

To,  
Managing Director, PIDB  
SCO 33-35,  
Sector 34-A, Chandigarh

**Sub: Bid for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra**

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that ..... (insert member's name) will act as the Lead Member of our consortium.<sup>3</sup>

We have agreed that ..... (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFP. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

---

<sup>3</sup> Please strike out whichever is not applicable.

**Appendix IA**

**Annex-V: Pro-forma for Declaration of Non-Blacklisting**

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref. Date:

To,  
Managing Director, PIDB  
SCO 33-35,  
Sector 34-A, Chandigarh

**Sub: Declaration for Not Blacklisted with reference to Tender No. ....**

With reference to the abovementioned tender we hereby confirm that as on the Bid Due Date, we are not blacklisted by any State Government, Central Government or any other Public Sector Undertaking or a Corporation or any other Autonomous Organization of Central or State Government in India or abroad and our blacklisting does not subsist as on due date of submission of the tender under consideration.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Appendix IA**

**Annex-VI: Pro-forma for Declaration of Termination and Failing to perform Contracts**

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref. Date:

To,  
Managing Director, PIDB  
SCO 33-35,  
Sector 34-A, Chandigarh

**Sub: Declaration for Not Failing of Termination and Failing to perform Contracts with reference to Tender No. ....**

We \_\_\_\_\_ (Bidder Name) hereby declare that as on the bid due date, our firm has neither been terminated nor has failed to perform on any contract by any state / central Government body or Institution in India or abroad. We also hereby declare that as on bid due date, our firm has neither been expelled from any project or contract, nor have had any contract terminated by any state / central Government body or Institution in India or abroad for breach of contract or procedural violations.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Appendix IA**

**Annex-VII: Pro-forma for Declaration of Pending Arbitration/ Court Cases or any dispute**  
(Self-Declaration of Pending Arbitration/ Court Cases or any dispute by any court of Law)  
(Refer Clause 2.1.18)

We hereby declare that presently our Company \_\_\_\_\_ has \_\_\_ Number of / No Pending Arbitration or Court Cases or any disputes against Central/State Government or any other Government Institution in India/Firm or its owner/ Partner anywhere in India by any court of Law.

We also do hereby solemnly declare that the above declaration is true and correct to the best of the knowledge and belief and nothing has been concealed therein.

Signature and Stamp of the Authorized Representative  
Place:

*(The Bidder is required to attach the list of Pending Arbitration/ Court Cases or any dispute in the following format)*

| Sr. No | Party in Dispute With | Year of Initiation | Description of Dispute |
|--------|-----------------------|--------------------|------------------------|
|        |                       |                    |                        |
|        |                       |                    |                        |
|        |                       |                    |                        |

**Appendix – IB: Letter comprising the Financial Bid**

(Refer Clauses 2.1.4, 2.15.2 and 3.2)

(NOT TO BE SUBMITTED IN THE TECHNICAL BID)

Dated:

To,  
Managing Director, PIDB  
SCO 33-35,  
Sector 34-A, Chandigarh

**Sub:** Bid for Selection of Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra

Dear Sir,

1. With reference to your RFP document dated \*\*\* \*\*, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Operator for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Operation and Maintenance Agreement and its Schedules, our own estimates of costs and after a careful assessment of the site and all own the conditions that may affect the Project cost and implementation of the Project.
4. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event of my/ our being declared as the Successful Bidder, I/we agree to enter into an Agreement in accordance with the that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid and agree to abide by the same.
6. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
7. I/ We hereby submit our Bid consisting of Annual Variable Revenue of 'Rupees per TEU' (exclusive of applicable taxes) (as mentioned in Price Bid / BoQ excel file uploaded along with

bid) subject to Minimum Guaranteed Throughput (MGT) of 15000 loaded TEUs for the period 1st April 2022 to 31st March 2023 and 18,000 loaded TEUs per quarter increased at 4% per annum for the Annual Variable Revenue for the period commencing from 1st April 2023 till the expiry of the Agreement for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement .

8. I/ We hereby agree that the first payment of the Annual Fixed Revenue and Annual Variable Revenue shall be on the Effective Date till the end of the financial quarter in accordance with the draft Agreement and thereafter, the Annual Fixed Revenue and Annual Variable Revenue shall be due and payable on the quarterly basis for the subsequent financial quarters till the end of operation and maintenance period.
9. I/ We hereby submit that I/ We shall pay Upfront Fee and Annual Fixed Fee as mentioned in the RFP and the Agreement till the expiry of the operation and maintenance and period for undertaking the aforesaid Project in accordance with the Bidding Documents, the Agreement.

Yours faithfully,

(Signature of the Authorised signatory)

Date:

(Name and designation of the of the Authorised signatory)

Class III DSC ID of Authorised Signatory

Place:

Name and seal of Bidder/Lead Member

**Appendix II: Format for Power of Attorney for signing of Bid**

(Refer Clause 2.1.5)

Know all men by these presents, We \_\_\_\_\_ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), \_\_\_\_\_ son/daughter/wife of \_\_\_\_\_ and presently residing at \_\_\_\_\_, who is presently employed with us/ the Lead Member of our Consortium and holding the position of \_\_\_\_\_, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for "**Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra**" proposed or being developed by the Punjab State Container and Warehousing Corporation Limited (the "**Authority**") including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bid Conference and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project(s) and/ or upon award thereof to us and/or till the entering into of the Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, \_\_\_\_\_ THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2

For .....

(Signature, name, designation and address)  
of person authorized by Board Resolution (in  
Company/LLP/Partner in case of Partnership firms)

Witnesses:

1.

2

Notarised

Notarised Person identified by me/personally  
appeared before me  
/signed before me/Attested/Authenticated\*  
(\*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of the Notary

Registration Number of the Notary

Date\_\_\_\_\_

Accepted

(Signature, name, designation and address of  
the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.



**Appendix III: Power of Attorney for Lead Member of Consortium**

(Refer Clause 2.1.6)

Whereas the Punjab State Container and Warehousing Corporation Limited (the “**Authority**”) has invited Bids from interested parties for the Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra (the “**Project**”).

Whereas, \_\_\_\_\_ and \_\_\_\_\_ (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, \_\_\_\_\_ having our registered office at \_\_\_\_\_, (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S \_\_\_\_\_ having its registered office at \_\_\_\_\_, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all Bids and other documents and writings, participate in bidding process and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s Bid for the Project and/ or upon award thereof till the Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2\_\_\_\_

For .....  
(Signature, Name & Title)

For .....  
(Signature, Name & Title)

For .....  
(Signature, Name & Title)

Witnesses:

- 1.
- 2.

(Executants)

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

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

**Appendix IV: Joint Bidding Agreement**

(Refer 2.1.12 (g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

**AMONGST**

1. {\_\_\_\_\_ Limited, a company incorporated under the Companies Act, 1956/2013<sup>4</sup>} and having its registered office at \_\_\_\_\_ (hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. {\_\_\_\_\_ Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at \_\_\_\_\_ (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST AND SECOND, are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party"**

**WHEREAS,**

- (A) Punjab State Container and Warehousing Corporation Limited, a wholly owned Punjab State Government Company, incorporated under the Companies Act 1956 and having Corporate Identity Number (CIN) U63023CH1995SGC016299 and engaged in diversified activities relating to warehousing with the prime objective of establishing / Managing Container Freight Station Facility (CFS) and allied activities and having its office at S.C.O., 74-75, Bank Square, Sector 17-B, Chandigarh-160017. (hereinafter referred to as the **"Authority"** or **"Conware"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the **"Bids"**) by its Request for Bid No. \_\_\_\_\_ dated \_\_\_\_\_ (the **"RFP"**) for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Maharashtra. (the **"Project"**).
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

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<sup>4</sup> A Bidder who is registered abroad may submit the words viz "a company registered under Companies Act, 1956/2013" by the words viz "a company duly organized and validly existing under the jurisdiction of its incorporation".

NOW IT IS HEREBY AGREED as follows:

**1. Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act 2013 for entering into Agreement with the Authority and for performing all its obligations as the Operator in terms of the Agreement for the Project.

**4. Role of the Parties**

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

First Party:

Second Party:

(Please Specify Role of each Party such as Lead Member, financial Member etc. for the Project)

**5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Agreement, till the end of operation and maintenance period.

**6. Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party

Second Party

6.2 The parties undertake that they shall collectively hold not less than 100% (hundred percent) of its issued and paid up Equity as on the date of signing of the Agreement and that Lead Member shall hold at least 51% (fifty one percent) of Equity as on the date of signing of the Agreement and until the 5th (fifth) anniversary from the effective date. The Consortium Members, together with their Associates, whose technical and financial capacity has been evaluated for the purposes of qualification in response to the Request for Proposal shall hold not less than 26% (twenty six per cent) of the issued and paid up Equity till the completion of

Agreement by efflux of time or Termination by way of option to exit or Termination of this Agreement.

- 6.3 The parties also undertake that At no stage during the Lock in Period shall any change in the shareholding pattern be made by the Bidder or Consortium Members and/or by any of the Associates without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority.

## **7. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - (iv) violate any clearance, permit, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

## **8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Transfer Date of the Project is achieved under and in accordance with the Operation & Maintenance Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

## **9. Miscellaneous**

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS JOINT BIDDING AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER BY

By;

(Signature)

(Name)

(Designation)

For and on behalf of

SECOND PART BY

By;

(Signature)

(Name)

(Designation)

In the presence of:

1

2

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

**Appendix-V: Certificate in Compliance with Notification no. F.No. 6/18/2019-PPD, dated 23<sup>rd</sup> July 2020 issued by Ministry of Finance, Department of Expenditure Public Procurement Division**

To,  
The Managing Director,  
SCO 33 - 35,  
Sector 34-A, Chandigarh

**Sub: BID for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Taluka Uran, Navi Mumbai, Maharashtra**

Dear Sir,

With reference to your RFP document dated \*\*\* \*\*\$, I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

*I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;*

*I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.*

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

**Notes:**

{Where applicable, evidence of valid registration by the Competent Authority shall be attached}  
In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

**Appendix-VI: Bank Guarantee for Bid Security/ Earnest Money Deposit**

(Refer Clause 2.23)

(To be executed on Stamp paper of appropriate value)

Dated: \_\_\_\_\_

To  
Managing Director  
Punjab Infrastructure Development Board (PIDB)  
S.C.O. No. 33-34-35, Sec.34A,  
Chandigarh - 160022

Unconditional and Irrevocable

B.G. No.

1. In consideration of you, ....., having its office at ....., (hereinafter referred to as **"PIDB"**, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (name of the Bidder) and having its registered office at ..... (and acting on behalf of its Consortium)<sup>5</sup> (hereinafter referred to as the **"Bidder"** which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the "Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) of CONWARE at Nhava Sheva, Taluka Uran, Navi Mumbai, Maharashtra" Project on [PPP] basis (hereinafter referred to as **"the Project"**) pursuant to the Clause 2.23 of the RFP Document dated 6<sup>th</sup> December 2021 issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as **"Bidding Documents"**), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the **"Bank"**), at the request of the Bidder, do hereby in terms of Clause 1.2.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to PIDB an amount of INR. .... (Rupees ..... only) (hereinafter referred to as the **"Guarantee"**) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.

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<sup>5</sup> Delete reference to Consortium if not applicable



2. Any such written demand made by PIDB stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of PIDB is disputed by the Bidder or not, merely on the first demand from PIDB stating that the amount claimed is due to PIDB by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid Validity Period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR. ....(Rupees ..... only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date excluding the claim period as per the latest Guidelines of Reserve Bank of India, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that PIDB shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid Validity Period set forth in the said Bidding Documents, and the decision of PIDB that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between PIDB and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, PIDB shall be entitled to treat the Bank as the principal debtor. PIDB shall have the fullest liberty, without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid Validity Period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said

Bidding Documents or the securities available to PIDB, and the Bank shall not be released from its liability under these presents by any exercise by PIDB of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of PIDB or any indulgence by PIDB to the said Bidder or by any change in the constitution of PIDB or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for PIDB to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which PIDB may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of PIDB in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to INR. ....Crores (Rupees ..... Crores only). The Bank shall be liable to pay the said amount or any part thereof only if PIDB serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 (one hundred and eighty) days after the Bid Due Date)].

Signed and Delivered by ..... Bank

By the hand of Mr./Ms ....., its ..... and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

**Annexure I: Format of Letter of Award**

To,

The Successful Bidder

Address

**Subject:**

**LETTER OF AWARD**

1. We refer to your proposal dated ..... including the financial proposal dated..... submitted on \_\_\_\_\_ (the “**Proposal**”), in response to the Request for Proposal document dated \_\_\_\_\_ and the Addendums/ Corrigendum(s) thereto (herein collectively referred to as the “**RFP document**”) issued by Punjab Infrastructure Development Board (“**PIDB**”) on and behalf of Punjab State Container and Warehousing Corporation Limited (CONWARE), Government of Punjab for the captioned project for undertaking the implementation of the project.

For avoidance of doubt, it is hereby clarified that unless otherwise referred hereunder or repugnant to the context or usage thereof, the capitalized terms used herein shall have the meaning as respectively ascribed thereto under the RFP document and all subsequent addendum/clarifications thereto and this Letter of Award.

2. Pursuant to evaluation of proposals received w.r.t. the Project, we are pleased to inform you that your proposal has been accepted and (Successful Bidder)\_\_\_\_\_ has been identified as the selected bidder for undertaking the project, subject always & exclusively to the terms hereof, the RFP document and all the subsequent addendum/Clarifications and this Letter of Award.
3. It is hereby understood and for abundant clarity, reiterated that as per your financial proposal (copy attached herewith as **Annexure-1**), the rate quoted for the project is \_\_\_\_\_ and shall be payable in accordance with the provision of the RFP document and all subsequent addendum/clarifications thereto.
4. That in terms of the conditions of the RFP document and all subsequent addendum/clarifications thereto, you are requested to comply with and fulfil the following terms and conditions within the time and manner & sequence, as prescribed hereunder:-
  - a) Without prejudice to anything stated in this LOA and /or the RFP document, you are requested to return the duplicate copy of this LOA duly signed and stamped within 3 (Three) days from the date of its receipt, as token of the acknowledgement of this LOA as well as the absolute, unconditional and unqualified acceptance and compliance of the conditions mentioned hereunder.

- b) Comply with the Conditions provided in Annexure 2 of this LOA within 20 (twenty) days from the issuance of the Letter of Award. The period may be extended as per discretion of the Authority on written request of the Selected Bidder. On Completion of the conditions in Annexure 2, the Agreement would be signed by the Successful Bidder with CONWARE. Provided that upon request in writing by the Successful Bidder/Consortium, the Authority may, in its discretion, waive any of the Conditions set forth hereinabove.
5. After absolute and unconditional fulfilment of the conditions mentioned hereinabove and in addition thereof, you are requested to sign the Agreement with Punjab State Container and Warehousing Corporation (CONWARE) (the “**Authority**”) within 20 (twenty) days of issuance of this LOA and communicate to PIDB in writing or the date as mutually agreed amongst the parties to the Agreement. However, the Authority at its sole discretion may extend the aforementioned time period by such number of days as maybe specified in Annexure 2.
6. You shall comply with all the terms and conditions mentioned in this LOA and the RFP document.
7. You shall appoint one nodal person based at Chandigarh / Mohali.
8. It may kindly be noted that in the event of you fail to comply with any one or more of the terms and conditions mentioned in this LOA and/or the RFP document and all the subsequent addendums/clarifications thereto within the form, manner & sequence prescribed therefore, including without limitation the acceptance of this LOA, CONWARE/ PIDB, in addition to all other rights and remedies that may be applicable laws shall be at absolute liberty and freedom to disqualify you and treat the Proposal as rejected and this LOA shall forthwith stand automatically withdrawn and cancelled as well as resulting into forfeiture of the Bid security as per clause 2.23.6 of RFP. In that event, CONWARE/ PIDB shall deal with the captioned project as they deem fit in its/ their sole and absolute discretion.
9. In such an event you (or any person claiming under it) shall have no claim or demand against CONWARE/ PIDB/ Government of Punjab of any nature whatsoever. Further under any circumstances, the CONWARE/ PIDB/ Government of Punjab shall not liable or responsible to you or to any other entity whatsoever, for any loss of business, business competition, loss of investment or any other loss or damage, cost or expenses for any reason whatsoever. You (or any person claiming under it) shall not be entitled to claim any direct or indirect damages, costs, expenses for loss of business, loss of investment etc. Upon rejection of your proposal or cancellation/revocation of this LOA, howsoever and whatsoever.

10. As the selected bidder, you shall indemnify and keep indemnified the CONWARE/ PIDB/ Government of Punjab its respective directors, consultants, Contractors, Officers, employees and/ or agents against all claims and loss that they may suffer/ sustain or are likely to suffer/ sustain due to or in relation to all/any acts and omissions of the selected bidder, its employees, staff, personnel., etc. Pursuant to in relation to this LOA, the RFP document or the Service Level Agreement.
11. Notwithstanding anything to the contrary contained herein above, the arbitration clause hereunder shall be final and binding agreement between the Authority and the Selected Bidder and shall survive the cancellation / revocation / annulment of this LOA:-
- i) any and all disputes controversy or claim, relating to or arise out of the LOA or the rights and obligations of the Authority and the selected Bidder under this LOA, including but not limited to validity, interpretation, scope, effect, termination of the terms contained in this LOA, shall be settled by arbitration by a sole Arbitrator to be appointed by the CONWARE or its nominee with 30 (Thirty) days after receipt of a request for appointment of Arbitrator, which notice should contain all information regarding the dispute(s) between parties.
  - ii) The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act 1996 as amended. The venue of Arbitration shall be at Chandigarh, India and it shall be conducted in the English Language.
  - iii) The arbitral award shall be in writing state the reasons for the award and be final and binding on the Authority and the Selected Bidder. The award may include an award of costs, including reasonable attorney's fees and disbursements.
  - iv) It shall be governed by the Laws of India and all matters arising out or relating to this LOA, the court at Chandigarh, India shall have exclusive jurisdiction.
12. It may additionally be noted that this LOA save to the extent provided and required hereunder by itself does not create any rights or contractual relationship with CONWARE/ PIDB/ Government of Punjab or casts any corresponding obligation with respect to the project or otherwise on the CONWARE/ PIDB/ Government of Punjab. Any such right or relationship or obligations shall come into effect only upon your unconditional compliance with the terms and conditions set out herein and the execution of the Service Level Agreement as per the terms thereof and the RFP document.

We look forward to an early compliance of the abovementioned requirements by you.

Thanking You

**For & on behalf of the Authority**

**Managing Director**

Annexure 1: Financial Bid Quote

## **Annexure 2: Conditions to be fulfilled by Operator prior to the signing of the Agreement**

The following conditions need to be fulfilled by Operator within 20 (twenty) days from the issuance of the Letter of Award. However, the Authority at its sole discretion may extend this time period on written request of the Selected Bidder . The following conditions need to be fulfilled in order to sign the Agreement with CONWARE. **The Successful Bidder/ Consortium must carry out the following;**

1. Establish a Special Purpose Vehicle (SPV) for the purpose of this Project.
2. Make Payment of the Upfront Fee of Rs 5 Crore (Rupees Five Crore Only) Plus applicable GST
3. Annual Fixed Revenue for the respective quarter Rs. \_\_\_\_\_
4. Provide the Performance Security to the Authority pursuant to Article 9 of the Agreement
5. Procure at the cost of the Operator; all the Applicable Permits, licenses, grants and special licenses unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits, licenses, grants and special licenses are in full force and effect
6. Deliver to the Authority from the {Selected Bidder/Consortium Members}, their respective confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k) and (l) of Clause 7.1 of this Agreement
7. Deliver to the Authority a legal opinion from the legal counsel of the Successful Bidder/Consortium with respect to the authority of the Operator to enter into this Agreement and the enforceability of the provisions thereof
8. Deliver to the Authority the copies (certified as true copies by an authorised officer of the Operator) of the constitutional documents of the SPV formed
9. Provide proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the SPV
10. Obtain the Customs Cargo Service Provider (CCSP) License in accordance with the Request for Proposal
11. Submit to the CONWARE and the Independent Consultant Maintenance Programme in accordance with the Maintenance Requirement as set forth in Schedule E of this Agreement.
12. Appoint a representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement.

**Annexure 3: Conditions to be fulfilled by the Authority prior to the Signing of the Agreement**

The following conditions would be fulfilled by the Authority within 40 (Forty) days from the issuance of the Letter of Award by the Authority. The following conditions need to be fulfilled in order to sign the Agreement. **The Authority would carry out the following;**

1. Provide necessary Authorizations in the name of Operator so as to enable the Operator to procure the necessary Applicable Permits, licenses, grants and special licenses, if any required as per the Applicable Laws and in conformity with Schedule N;
2. communicate to the Customs Authorities regarding the change of Operator for the Facility as per the relevant Customs Rules & Regulations, as may be amended from time to time;
3. Communicate to the CIDCO regarding the change of Operator for the CFS Facilities on behalf of the Authority in lines with Schedule N.