

പതിമൂന്നാം കേരള നിയമസഭ
പതിനാറാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നമിടാത്ത

08-02-2016 ൽ മറുപടിക്ക്

ചോദ്യം നമ്പർ : 212

വിഴിഞ്ഞം തുറമുഖ പദ്ധതി

ചോദ്യം

മറുപടി

ശ്രീ. വി. ശിവൻകുട്ടി

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ശ്രീ. കെ. ബാബു

(മത്സ്യബന്ധനവും തുറമുഖവും എക്സൈസും
വകുപ്പു മന്ത്രി)

(എ) വിഴിഞ്ഞം തുറമുഖ പദ്ധതിയുടെ നിർമ്മാണ നിർവ്വഹണ മേൽനോട്ടത്തിനായി ഒരു സ്വതന്ത്ര ഏജൻസിയെ നിയോഗിക്കുമെന്ന് കരാറിൽ വ്യവസ്ഥ ചെയ്തിട്ടുണ്ടോ ; വ്യവസ്ഥ വിശദമാക്കാമോ ;

(എ) വിഴിഞ്ഞം തുറമുഖ പദ്ധതിയുടെ മേൽ നോട്ടത്തിനായി കരാർ കാലാവധിയിൽ ഒരു സ്വതന്ത്ര ഏജൻസിയെ (Independent Engineer) നിയമിക്കുവാൻ കൺസഷൻ കരാറിലെ ആർട്ടിക്കിൾ 23 പ്രകാരം വ്യവസ്ഥ ചെയ്തിട്ടുണ്ട്. സ്വതന്ത്ര ഏജൻസി നിർമ്മാണ കാലയളവിലും നടത്തിപ്പു കാലയളവിലും മേൽ നോട്ടം നിർവ്വഹിക്കുന്നതാണ്. അവരുടെ മേൽനോട്ടത്തിന്റെ വിശദമായ Terms & Reference കരാറിലെ ഷെഡ്യൂൾ P യിൽ ഉൾപ്പെടുത്തിയിട്ടുണ്ട്. ആർട്ടിക്കിൾ 23 അനുബന്ധം I ആയും Schedule P അനുബന്ധം II ആയും ചേർത്തിരിക്കുന്നു.

(ബി) സർക്കാർ നിയോഗിച്ച സ്വതന്ത്ര ഏജൻസി ഏതാണെന്നും, അതിന്റെ പ്രവർത്തനം ആരംഭിച്ചത് എപ്പോഴാണെന്നും, ഏജൻസിക്ക് ഫീസ് നൽകുന്നത് ആരാണെന്നും, സ്വതന്ത്ര ഏജൻസിയെ കണ്ടെത്തിയത് ഏത് നിലയിൽ ആരാണെന്നും വെളിപ്പെടുത്താമോ ;

(ബി) ഇൻഡിപെൻഡന്റ് എഞ്ചിനീയറെ (സ്വതന്ത്ര ഏജൻസിയെ) നിയമിക്കാനുള്ള ടെൻഡർ 2015 സെപ്തംബർ 21 ന് വിഴിഞ്ഞം ഇന്റർനാഷണൽ സീ പോർട്ട് ലിമിറ്റഡ് വിജ്ഞാപനം ചെയ്തതിന്റെ അടിസ്ഥാനത്തിൽ സ്വതന്ത്ര ഏജൻസിയെ നിയമിക്കാനുള്ള നടപടി ക്രമങ്ങൾ പൂർത്തിയായി വരുന്നു. കരാറിൽ നിഷ്കർഷിച്ചിട്ടുള്ള 'ഷെഡ്യൂൾ O' പ്രകാരം കേന്ദ്ര സർക്കാർ അംഗീ

കരിച്ച മാതൃക RFP (Request For Proposal) അവലംബിച്ച് നടത്തുന്ന ടെൻഡർ നടപടി ക്രമങ്ങൾ പൂർത്തിയാകുന്ന മുറയ്ക്ക് സ്വതന്ത്ര ഏജൻസിയെ നിയമിക്കുന്നതാണ്. ടെൻഡർ നടപടികൾ പൂർത്തിയാക്കുന്നത് വരെയുള്ള കാലയളവിലേയ്ക്കായി തുറമുഖ - വിദഗ്ദ്ധരും വിഴിഞ്ഞം തുറമുഖ കമ്പനിയുടെ സാങ്കേതിക ഉപദേഷ്ടാക്കളുമായ ശ്രീ. ശശി കുമാറും, ശ്രീ അബ്ദുൾ റഹീമും സ്വതന്ത്ര ഏജൻസിയുടെ ചുമതലകൾ കരാറിലെ വ്യവസ്ഥ 23.7 പ്രകാരം വഹിക്കുന്നതാണ്.

കരാറിലെ ആർട്ടിക്കിൾ 23.3 പ്രകാരം സ്വതന്ത്ര ഏജൻസിക്കുള്ള ഫീസ് നൽകുന്നത് സംസ്ഥാന സർക്കാർ ആയിരിക്കും. പ്രസ്തുത ഫീസിന്റെ 50 ശതമാനം കൺസഷനയർ (അദാനി പോർട്ട്സ് പ്രൈവറ്റ് ലിമിറ്റഡ്) സംസ്ഥാന സർക്കാരിന് നൽകുന്നതാണ്.

(സി) സർക്കാർ കണ്ടെത്തിയ ആഡിറ്റർ പാനലിൽ ആരൊക്കെയുണ്ടെന്നും അവരെ കണ്ടെത്തിയത് ഏത് നടപടിക്രമത്തിലൂടെയാണെന്നും വ്യക്തമാക്കാമോ ?

(സി) ഓഡിറ്റർമാരുടെ പാനൽ തയ്യാറാക്കുന്നതിന് 16-09-2015 ൽ കൂടിയ Project Implementation Committee വിഴിഞ്ഞം ഇന്റർനാഷണൽ സീ പോർട്ട് ലിമിറ്റഡിനെ ചുമതലപ്പെടുത്തുകയും വിഴിഞ്ഞം ഇന്റർനാഷണൽ സീ പോർട്ട് ലിമിറ്റഡ് താഴെ പറയുന്ന ചാർട്ടേർഡ് അക്കൗണ്ടന്റ് ഫേമു കളുടെ യോഗ്യത ലിസ്റ്റ് തയ്യാറാക്കുകയും ചെയ്തു.

1. എസ്.ആർ.ബി.സി & കോ എൽ.എൽ.പി, അഹമ്മദാബാദ്
2. വർമ്മ & വർമ്മ, തിരുവനന്തപുരം.

3. ഗ്യാനേന്തർ & അസോസിയേറ്റ്സ്,
ന്യൂഡൽഹി

4. എം.കെ.പി.എസ് & അസോസിയേറ്റ്സ്,
ബാസ്റ്റൂർ

5. ശ്രീധർ & കോ, തിരുവനന്തപുരം

യോഗ്യത നേടിയ ടി ഫേമുകളുടെ പട്ടിക എംപവേർഡ് കമ്മിറ്റിയുടെ അംഗീകാരത്തോടുകൂടി സമർപ്പിച്ചതിനുശേഷം മാത്രമേ സർക്കാർ അംഗീകാരം നൽകുകയുള്ളൂ.

ഓഡിറ്റർമാരുടെ പാനൽ തയ്യാറാക്കുന്നതിന് താഴെ പറയുന്ന നടപടി ക്രമങ്ങളാണ് സ്വീകരിച്ചത്.

1. പ്രോജക്ട് ഇംപ്ലിമെന്റേഷൻ കമ്മിറ്റി പാനൽ തയ്യാറാക്കുന്നതിനുള്ള നടപടികൾക്കായി VISL -നെ ചുമതലപ്പെടുത്തി. ഇത് കമ്പനിയുടെ ബോർഡും അംഗീകരിച്ചിട്ടുണ്ട്.
2. VISL ഈ നടപടികൾ കൺസഷൻ കരാറിന്റെ ആർട്ടിക്കിൾ 34 ഉം Schedule T യും പ്രകാരമാണ് പൂർത്തിയാക്കിയത്.
3. പാനൽ തയ്യാറാക്കുന്നതു സംബന്ധിച്ച് മലയാള മനോരമ, മാതൃഭൂമി, ദി ഹിന്ദു, ഇക്കണോമിക് ടൈംസ് എന്നീ പത്രങ്ങളിൽ പരസ്യം നൽകുകയുണ്ടായി. ഇതോടൊപ്പം തന്നെ ഇതുമായി ബന്ധപ്പെട്ട ടേംസ് ഓഫ് റെഫറൻസും അപേക്ഷയും കമ്പനിയുടെ വെബ്സൈറ്റിൽ പ്രസിദ്ധപ്പെടുത്തി. കൂടാതെ ഇൻസ്റ്റിറ്റ്യൂട്ട് ഓഫ് ചാർട്ടേഡ്

അക്കൗണ്ടന്റ്സ് ഓഫ് ഇന്ത്യയുടെ കേരളം, തമിഴ്നാട്, കർണ്ണാടകം എന്നീ സംസ്ഥാനങ്ങളിൽ പ്രവർത്തിക്കുന്ന ഓഫീസുകളിലേയ്ക്ക് അതതു സ്ഥലങ്ങളിൽ പ്രവർത്തിക്കുന്ന എല്ലാ ചാർട്ടേർഡ് അക്കൗണ്ടന്റ് ഫേമുകളെ അറിയിക്കുന്നതിനായി അയച്ചു കൊടുത്തു. (ഈ മൂന്നു സംസ്ഥാനങ്ങളിൽ പ്രവർത്തിക്കുന്ന ഫേമുകളെ മാത്രമേ പാനലിൽ ഉൾപ്പെടുത്തുകയുള്ളൂ.)

4. ചാർട്ടേഡ് അക്കൗണ്ടന്റുമാർ ഇതുമായി സംബന്ധിച്ച് ഉന്നയിച്ച ചോദ്യങ്ങൾക്കുള്ള മറുപടി വെബ്സൈറ്റിൽ പ്രസിദ്ധപ്പെടുത്തി.

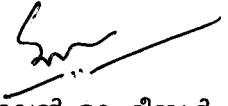
5. പാനൽ തയ്യാറാക്കുന്നതിന് താഴെ പറയുന്ന യോഗ്യതയാണ് കൺസഷൻ കരാറിൽ നിശ്ചയിച്ചിരുന്നത്.

a) ഫേമുകൾക്ക് 10 വർഷം വീതം പ്രവൃത്തി പരിചയമുള്ള 5 ചാർട്ടേഡ് അക്കൗണ്ടന്റ് മാരുണ്ടായിരിക്കണം.

b) 100 കമ്പനി ഓഡിറ്റുകൾ ചെയ്തിരിക്കണം അവയിൽ 10 എണ്ണമെങ്കിലും പൊതു മേഖലാ കമ്പനികളായിരിക്കണം.

c) ഫേമിന് കേരളത്തിലോ, തമിഴ്നാട്ടിലോ, കർണ്ണാടകത്തിലോ ഓഫീസുണ്ടായിരിക്കുകയും രണ്ടു ചാർട്ടേഡ് അക്കൗണ്ടന്റ് മാരെങ്കിലും ഈ സംസ്ഥാനത്തെ ഓഫീസുകളിൽ ഉണ്ടായിരിക്കണം.

6. അപേക്ഷകർക്ക് തങ്ങൾ ഓഡിറ്റ് ചെയ്ത കമ്പനികളുടെ തൊട്ടുമുന്നിലത്തെ 5 വർഷത്തെ വിറ്റുവരവിന്റെ അടിസ്ഥാനത്തിലാണ് റാങ്ക് നിശ്ചയിക്കപ്പെടുന്നത്. ഓരോ 100 കോടി വിറ്റുവരുള്ള ഓഡിറ്റുകൾക്കും 1 പോയിന്റ് വീതം നൽകുകയും ആദ്യം റാങ്കു ചെയ്യുന്ന 5 ഫേമുകളാണ് പാനലിൽ വന്നിട്ടുള്ളത്.



സെക്ഷൻ ഓഫീസർ

ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-O, to be the independent consultant under this Agreement (the "Independent Engineer"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule-O, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-P. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 23 shall not include Port Estate Development.

23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-P.

23.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

23.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

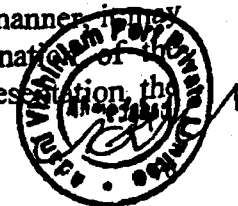
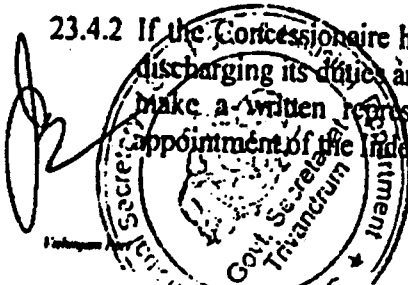
23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-O, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

23.4 Termination of appointment

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall...



Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

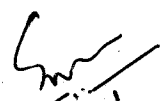
23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

23.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 23.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.




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Brasowoo - II

SCHEDULE - P
(See Clause 23.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

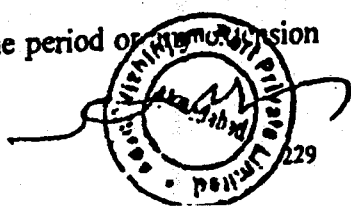
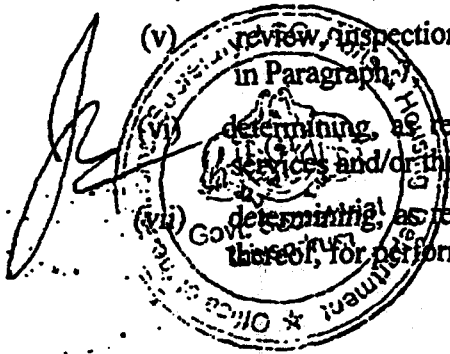
- 1.1 These Terms of Reference for the Independent Engineer (the "TOR") are being specified pursuant to the Concession Agreement dated (the "Agreement"), which has been entered into between the Authority and (the "Concessionaire") for undertaking the Port on design, build, finance, operate and transfer (the "DBFOT") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Port and shall apply, *mutatis mutandis*, to Capacity Augmentation thereof.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
 - (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
 - (iv) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (vii) determining, as required under the Agreement, the period of suspension thereof, for performing any duty or obligation;



- (viii) assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
- (ix) undertaking all other duties and functions in accordance with the Agreement.

3.2 The role and functions of the Independent Engineer shall not include construction works comprising Port Estate Development.

3.3 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

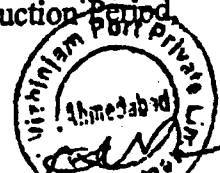
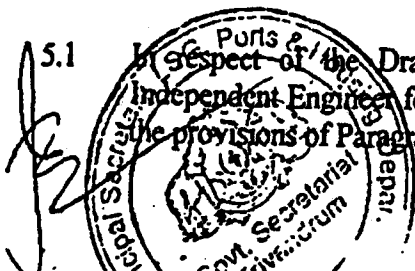
4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Port, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

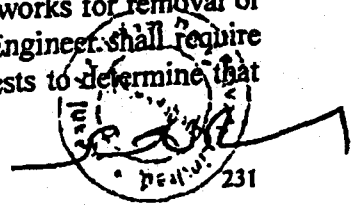
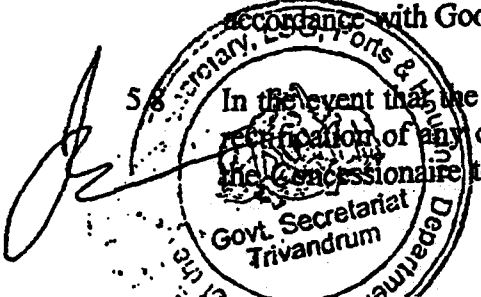
5 Construction Period

5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.



- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and the Port once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Port. The Inspection Report shall also contain a review of the maintenance of the existing water channels in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Port more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in (the "Quality Control Manual") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that



such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

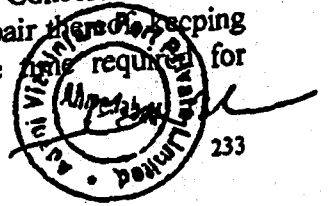
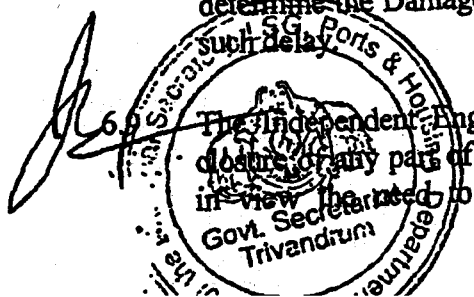
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Port is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.



6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Port once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Port. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Port more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Port is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.

6.9 The Independent Engineer shall examine the request of the Concessionaire for closing of any part of the Port for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for



completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such part of the Port, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.

6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.

6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Port, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6.12 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Article 22 and Schedule-N.

7 Termination

7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Port for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 39.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Port is such that its repair and rectification would require a larger amount than the sum set forth in Clause 40.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

7.2 The Independent Engineer shall inspect the Port once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 40, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

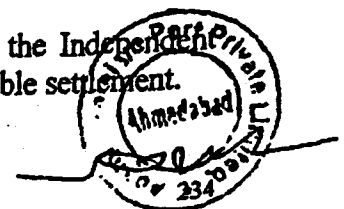
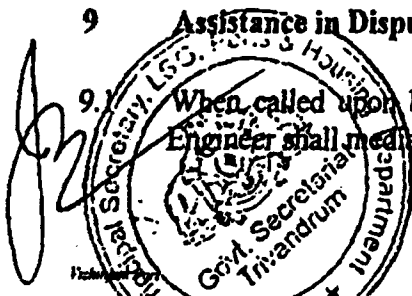
8 Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.



9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on Good Industry Practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.

11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

