

Berhampur Municipal Corporation



TENDER FOR

**SUPPLY, DELIVERY, INSTALLATION AND O&M OF MODERN SEMI-
UNDERGROUND WASTE COLLECTION BINS AT DESIGNATED LOCATIONS**

IN

Berhampur Municipal Corporation

Document Sale Start Date : 08.08.2018 at 3.00 PM

Pre-Bid Meeting : 14.08.2018 at 11.00 AM

Last date of Submission of Bid : 23.08.2018 till 5.00 PM

Technical/ Financial Bid Opening Date: 24.08.2018 at 10.00 AM

Berhampur Municipal Corporation

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PART I – LETTER OF INVITATION

NOTICE INVITING TENDER (NIT)

Tender No: - 12761

Date: **07.08.2018**

Dear Sir,

1. The Commissioner, Berhampur Municipal Corporation (“TENDER INVITING AUTHORITY”) invites Tenders from the eligible tenderers for the “Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in BERHAMPUR(Project) in accordance with the provisions of this Tender document.

Sl. No	Name of work	EMD (Rs)	Performance Security Deposit (Rs)	Period of Contract
1	“Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in Berhampur Municipal Corporation.	Rs. 2.00 Lac (Rupees Two Lac Only)	<i>10% (Ten percent) of the total quoted value</i>	4(Four) months for Implementation & 60 (Sixty) Months for O&M

2. The Successful Tenderer will be selected from the tenderers who have submitted tenders in response to this Tender Document and in accordance with the evaluation criteria stated in this Section III of the Tender Document.
3. The Tender document includes the following:
 - Part I - Letter of Invitation
 - Part II - Instruction to Tenderers (ITT)
 - Part III - Tender Forms
 - Part IV – Special Conditions
 - Part V - Draft Contract agreement and Forms
4. The Tenderer shall submit its Tender in two forms, the technical proposal and the financial proposal. The Tenderer shall seal the technical proposal and the financial proposal in two separate envelopes, which shall be marked as “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL”. These two envelopes shall then be sealed in a single outer envelope and clearly mark as “**Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in Berhampur Municipal Corporation**”.
5. Implementing Agency and address for Communication:

Commissioner, BerhampurMunicipal Corporation, The Tender document shall be available website <http://berhampur.gov.in> and can be down loaded by paying Rs 11200/- (Eleven Thousand Two Hundred Only) as Demand Draft or FDR drawn in favor of the Commissioner, BerhampurMunicipal Corporation payable at Berhampur on the time of bid submission.

6. Deadline of submission of Tenders : 23.08.2018 at 05:00 PM
7. Date and time of opening of Technical bid: 24.08.2018 at 10:00 AM

Further clarifications if any may be had from the Commissioner, Berhampur Municipal Corporation.

The Authority reserves the right to Accept or Reject any or all bids without assigning reason thereof.

Sd/ 08.08.2018
Commissioner
Berhampur Municipal Corporation

PART II – INSTRUCTIONS TO TENDERERS (ITT)

Section I. Instructions to Tenderers (ITT)	
A. General	
1 Background	1.1 Berhampur Municipal Corporation now envisages to adopt these Modern Semi-Underground Waste Collection Bins. The overall goal of this project is the implementation of a reliable Semi-Underground Waste collection and monitoring & tracking system to monitor collection of waste, vehicles movement and maintenance etc. The primary objectives of the project is to install semi Semi-Underground bins in the area which has been selected by Berhampur Municipal Corporation to collect waste from semi Semi-Underground and tracking of waste collected and transported in semi Semi-Underground bins.
2 Scope of Tender	2.1 In connection with the Invitation for, the Tender Inviting Authority as named in the TDS, issues these Tender Documents for the Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in Berhampur Municipal Corporation.
	2.2 The scope of work for the tender includes, 2.2.1 Supply, Delivery, Installation of Modern Collection Systems by providing Semi-Underground Waste Collection Bins, sealing and stickering works, associated civil works with bin monitoring systems as well as O&M including collection & transportation of minimum assured tonnage of 25 tons/day waste collected of the bins for a period of 60 months. 2.2.2 A minimum of 17 bins to be installed and O&M to commence at 7 locations by 30 th August 2018, rest 33 bins to be installed within 4 months of issue of LoA (Letter of Acceptance).
	2.3 Throughout these Tender Documents: 2.3.1 The term “in writing” means communicated in written form and delivered against receipt; 2.3.2 Except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and 2.3.3 “day” means calendar day
3 Eligible Tenderer	Eligible tenderers shall be entities which fulfill the criteria stated below: 3.1 A tenderer may be a private or joint venture company or government-owned entity registered in India . The tenderer should submit a Power of Attorney as per the format enclosed at Annex 2 , authorizing the signatory of the Proposal to commit the tender. In case the tenderer is a Consortium, the lead bidder should be a company registered in India under the Companies Act 1956 or

	<p>2013 whichever is applicable it must comply with the additional requirements for tendering as a Consortium .if bidder fails to comply of additional requirement the bid will be disqualified. specified in the tender document. Detailed Eligibility conditions are given in Section III – Evaluation and Qualification Criteria in Part II of ITT.</p>
	<p>3.2 Any Tenderer found to have a conflict of interest shall be disqualified including the following.</p> <p>3.2.1 They receive or have received any direct or indirect subsidy from any of them; or</p> <p>3.2.2 They have the same legal representative for purposes of this Tender;</p> <p>3.2.3 The Successful Tenderer is prohibited to form a joint venture, with another tenderer that had participated in the Tender for the project. Such arrangement after the submission of Tender or after award of the contract shall result into disqualification of the Tender or contract as the case may be.</p>
	<p>3.3 If at any time before the acceptance of the tender, the Tender Inviting Authority receives information that a Tenderer who has submitted a tender has been banned by any procuring entity of any state or central government, then the Tender Inviting Authority shall not accept the tender of that Tenderer.</p>
	<p>3.4 Tenderer shall provide such evidence of their continued eligibility satisfactory to the Tender Inviting Authority, as the Tender Inviting Authority shall reasonably request.</p>
4 Corrupt Practices	<p>4.1 The Tender Inviting Authority requires that the Tenderer, and the suppliers, contractors, and vendors of such Tenderer, to observe the highest standard of ethics during the procurement and execution of such contracts.</p> <p>4.1.1 “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution;</p> <p>4.1.2 “fraudulent practice: means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Tender Inviting Authority, and includes collusive practices among Tenderer (prior to or after Tender submission) designed to establish Tender prices at artificial, noncompetitive levels and to deprive the Tender Inviting Authority of the benefits of free and open competition</p> <p>4.1.3 “collusive practice” means a scheme or arrangement between two or more Tenderer, with or without the</p>

	<p>knowledge of the Tender Inviting Authority, designed to establish Tender prices at artificial, noncompetitive levels</p> <p>4.1.4 “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract; and</p> <p>4.1.5 “obstructive practice” means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of the Tender Inviting Authority’s or its appointed agencies’ inspection and audit rights when necessary.</p> <p>4.1.6 The Tender Inviting Authority shall reject a proposal for award if it determines that the tenderer recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, obstructive or coercive practices in the tendering process.</p> <p>4.1.7 The Tender Inviting Authority shall disqualify the Tenderer and reject the tender submitted by such tenderer if it determines at any time that the tenderer has engaged in corrupt, fraudulent, collusive, obstructive or coercive practices during the procurement or the execution of that contract; and</p> <p>4.1.8 The Tender Inviting Authority shall debar the tenderer from any future contracts with the Tender Inviting Authority;</p>
<p>5 Implementation Flow</p>	<p>5.1 On receipt of the Letter of Award, the Performance Security in the prescribed format shall be submitted by within 15 days. After the Performance Security has been submitted, the selected tenderer shall enter into the Contract Agreement (Part V of the Tender documents) with the Tender Inviting Authority within 15 days or such extended period as prescribed by the Tender Inviting Authority.</p> <p>5.2 The selected tenderer shall undertake the Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated</p>

	Locations in BerhampurMunicipal Corporation
	5.3 After the supply and installation of Modern Collection Systems with provision of providing semi Semi-Underground Waste collection Bins, the successful tenderer shall commence the installation of bins with bin monitoring system. The Operation and Maintenance of the Bins will commence after the successful installation of the Semi Semi-Underground Bins.
B. Special Conditions	
	<ul style="list-style-type: none"> i. Tagging of underground bins to the nearest dumping point will be done on the basis of shortest distance between the Underground Bin and dumping point. ii. Distance to be measured by application Software. iii. Tender Inviting Authority reserves the right to add, remove or alter the locations of the Dumping points. iv. Arrangement should be made for emptying & disposal of Garbage from Wheel Barrow / Push Cart directly to the Bin.
C. Contents of Tender document	
6 Sections of Tender documents	<p>6.1 The Tender Documents shall consist of Parts 1, 2, 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT.</p> <p>PART 1: Letter of Invitation PART II Instruction to Tenderer Section I. Instruction to Tenderer (ITT) Section II. Tender Data Sheet (TDS) Section III. Evaluation and Qualification Criteria</p> <p>PART III: Tender Forms Annex A. Technical Proposal Annex B. Financial Proposal Annex C. Special Requirements Annex D. Conditions Governing the Letter of Award</p> <p>PART IV: Special Conditions PART V: Draft Contract Agreement and Forms</p>
	6.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document. Failure to furnish all information or documentation required by the Tender Document may result in the rejection of the Tender.
7 Clarification of	7.1 A prospective tenderer requiring any clarification

<p>Tender Document and Site Visit</p>	<p>regarding the Tender document shall contact the Tender Inviting Authority in writing at the Tender Inviting Authority's address indicate in clause 7.3 on its discretion may also hold further discussions with the Applicants to finalize the technical/ commercial/ legal parameters and other related issues for the Project, before submission of the Proposals.</p> <p>7.2 All doubts and clarification can be asked at the Pre-bid meeting. Tender Inviting Authority is not bound to give response on issue raised after Pre-bid meeting.</p> <p>7.3 For clarification purposes only, the Tender Inviting Authority's address is:</p> <p>Attention: The Commissioner, Berhampur Municipal Corporation</p> <p>Subject on Cover & letter: "Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in Berhampur Municipal Corporation"</p> <p>The Commissioner, Berhampur Municipal Corporation Address : Ramalingam Tank Road Berhampur-760002</p> <p>7.4 The Tenderer is advised to visit and examine the Site and its surroundings and obtain for itself and on its own responsibility all information that may be necessary for preparing the tender. The cost of visiting the Site shall be at the tenderer's own expense</p>
<p>Provision for Visit</p>	<p>7.5 The tenderer and any of its personnel or agents will be granted permission by the Designated Officer of the Tender Inviting Authority to visit the Site and surrounding lands for the purpose of such visit, but only upon the express condition that the tenderer, its personnel, and agents will release and indemnify the Tender Inviting Authority and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.</p>
	<p>7.6 The Tenderer is allowed to review the preliminary data available before the submission of its Tender. This data is provided only for the guidance purpose, and should not be treated as the basis for the Tenderer's Tender. The Tenderer should make its own assessments, calculations</p>

	and analysis before making its Tender, and collect any additional data as necessary to prepare its Tender.
8 Amendment of Tender document	8.1 Addendum to the Tender Document may be issued by Tender Inviting Authority not less than one(1) week prior to the deadline for submission of Tender.
	8.2 Any addendum issued shall form part of the Tender Document and shall be uploaded in the BeMC website www.berhampur.gov.in . This manner of communication binding on all.
D. Preparation of Tender	
9 Cost of Tender document	The Tenderer shall bear all costs associated with the preparation and submission of its Tender.
10 Earnest Money Deposit	10.1 Technical Proposal would need to be accompanied by an Earnest Money Deposit in the form of Demand Draft in favor of The Commissioner, Berhampur Municipal Corporation payable at Berhampur.
11 Language of Tender	11.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Tender Inviting Authority is required to be in the ENGLISH language. Supporting documents and printed literature that are part of the Tender and are in a language other than ‘English’ shall be permitted in case they are accompanied by an accurate translation in ‘English’, in which case, for purposes of interpretation of the Tender, such translation shall govern.
12 Documents Comprising the Tender	12.1 The Tender shall comprise the following: <u>Technical Proposal:</u> a) Letter of Tender; b) Tender Paper Cost c) EMD (Earnest Money Deposit); d) Power of Attorney for signing the Tender, e) Technical Plan f) Completed and signed Tender forms excluding Annexure A and B. <u>Financial Proposal:</u> a) Annexure A: Letter of Financial Proposal; b) Annexure B: Financial Proposal
	12.2 If the Tenderer proposes any deviations, reservations or omissions as defined in ITT 27.1, to any of the conditions given in Annex C, the sample letter of award or in any of the Tender Documents, its Tender will be treated as non-responsive and rejected.
13 Letter of Tender, and Securities	13.1 The Letter of Tender and Schedules and all other data/information shall be prepared using the relevant forms furnished in Part 2, Tender Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

14 Tenderer's Financial Proposal	14.1 A Tenderer's Financial Proposal shall be mentioned in INR.
	14.2 The Financial Proposal shall be proposed using the standard forms and formats as included in the Tender Forms.
	14.3 All duties, taxes, and other levies payable by the Tenderer under the Contract Agreement shall be deemed to have been included in the Financial Proposal.
15 Documents Comprising the Technical Proposal	15.1 The Tenderer shall furnish the details of documents to be submitted by the tenderer in proof of his technical qualification.
16 Documents Establishing the Qualifications of the Tenderer	16.1 To establish its qualifications to perform the Contract Agreement in accordance with Section III, Evaluation and Qualification Criteria, a Tenderer shall provide the information requested in the corresponding information sheets.
17 Period of Validity of Tender	17.1 Tender shall remain valid for the period 90 days after the Tender submission deadline date prescribed by the Tender Inviting Authority. A Tender valid for a shorter period shall be rejected by the Tender Inviting Authority as non-responsive.
	17.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Tender Inviting Authority may request Tenderer to extend the period of validity of their Tender. The request and the responses shall be made in writing. If the Tender validity period is extended the validity of the EMD shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its EMD. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT.
18 EMD	18.1 The EMD shall be in the form of a demand draft payable at Berhampur in favor of The Commissioner, Berhampur Municipal Corporation , issued by a scheduled bank/nationalized bank in India of value as mentioned in the TDS.
	18.2 The EMD shall be in the form as stated in the TDS. The EMD shall be valid at least for the number of days as stated in the TDS, beyond the original validity period of the Tender, or beyond any period of extension if requested.
	18.3 Any Tender not accompanied by an EMD shall be rejected by the Tender Inviting Authority as non-responsive. Any Tender not accompanied by the document fee receipt or the document fee demand draft shall be rejected by the Tender Inviting Authority as non-responsive.
	18.4 The EMD of unsuccessful Tenderer shall be returned

	after issue of Letter of Award to the Successful Tenderer and signing of contract agreement.
	18.5 The EMD of the Successful Tenderer shall be returned only after the successful completion of Contract period, however the EMD may be retained by BeMC till completion of the Audit by DAG, Odisha and Local Fund Audit. If any objection found by the Audit, the EMD may be adjusted as suggested by Audit.
	18.6 The EMD may be forfeited in the following conditions: 18.6.1 If a Successful Tenderer withdraws its Tender during the period of Tender validity specified by the Successful Tenderer on the Letter of Tender Form, except as provided in ITT22.1; 18.6.2 If the Successful Tenderer fails to: 18.6.2.1 Sign the Contract Agreement in accordance with ITT; or 18.6.2.2 Furnish a performance security in accordance with ITT. or 18.6.2.3 If the Tenderer does not accept the corrections made in the document as stated in clause 30 of ITT.
19 Format and Signing of Tender	19.1 A tenderer shall submit the Technical Proposal and Financial Proposal in separate sealed envelopes .
	19.2 In case of documents submitted offline, a tenderer shall prepare one original of the documents comprising the Tender as described in ITT and clearly mark it "ORIGINAL". In addition, the tenderer shall submit a copy of the Tender and clearly mark it as "COPY". In the event of any discrepancy between the original and copies, the original shall prevail.
	19.3 The original and copy of the tender shall be printed and shall be signed by a person duly authorized to sign on behalf of the tenderer in indelible ink. This authorization shall consist of a written confirmation and shall be attached to the tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the tender documents submitted shall be bound and all the pages shall be numbered. All pages of the tender where entries or amendments have been made shall be signed or initialled by the person signing the tender.
	19.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed and authenticated by the person signing the Tender.
E. Submission and Opening of Tender	
20 Sealing and	20.1 The documents are submitted offline, a tenderer shall

<p>Marking of Tender</p>	<p>enclose the original and all copies of the Tender, in separate sealed envelopes, duly marking the envelopes as “Original”, and “Copy”. The Original and Copy of the Technical Tender shall be enclosed in one cover, duly marked “Technical Proposal”. The Original and Copy of the Financial Proposal shall be enclosed in one cover, duly marked “Financial Proposal”. These envelopes containing the Technical Proposal and the Financial Tender shall then be enclosed in one single envelope.</p> <p>20.1.1 The Technical and Financial Tenders shall be submitted in separate sealed envelopes. These envelopes containing the Technical and Financial Tenders shall be placed into an outer envelope and sealed. This outer envelope shall bear the name of the Tenderer, submission address, Tender number, Tender title and the deadline for Tender submission. The inner, outer and all envelopes shall:</p> <p>20.1.2 If all the envelopes are not sealed and marked as required, the Tender Inviting Authority will take no responsibility for the misplacement or premature opening of the tender.</p> <p>20.1.3 For Tender submission purposes only, the Tender Inviting Authority’s address is:</p> <p style="text-align: center;">Attention: The Commissioner, Berhampur Municipal Corporation</p> <p style="text-align: center;">Subject on Cover & letter: “Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in BERHAMPURXMunicipal Corporation”</p> <p style="text-align: center;">Address: The Commissioner, Berhampur Municipal Corporation, Ram lingam Marg, Water Tank Berhampur</p>
	<p>20.1.4 The Earnest Money Deposit & Bid document submitted physically to the Tender Inviting Authority on before 23rd Aug 2018 by 05.00 pm</p> <p>20.1.5 The Tender Inviting Authority will not be held responsible for any sort of delay or the difficulties faced during the submission of the Tenderer.</p>
<p>21 Deadline for Submission of Tender</p>	<p>21.1 Tender must be received by the Tender Inviting Authority at the address and no later than the date and time indicated in the NIT. When so specified in the NIT.</p>
	<p>21.2 The Tender Inviting Authority may, at its discretion, extend the deadline for the submission of Tender by amending the Tender document, in which case all rights</p>

	and obligations of the Tender Inviting Authority and Tenderer previously subject to the deadline shall thereafter be subject to the deadline as extended.
22 Late Tender	22.1 The Tender Inviting Authority shall not consider any Tender that arrives after the deadline for submission of Tender, in accordance with ITT. Any Tender received by the Tender Inviting Authority after the deadline for submission of Tender shall be declared late, rejected, and returned unopened to the tenderer.
23 Withdrawal, substitution, and Modification of Tender	23.1 A tenderer may withdraw, substitute or modify his tender after submission subject to the applicable provisions of the relevant rules.
24 Tender Opening	24.1 The Tender shall be opened by the Tender Inviting Authority in the presence of Tenderer' designated representatives, and at the address, date and time specified in the NIT
F. Evaluation and Comparison of Tender	
25 Confidentiality	25.1 Information relating to the evaluation of Tender and recommendation of contract award shall not be disclosed to Tenderer or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.
	25.2 Any attempt by a tenderer to influence the Tender Inviting Authority in the evaluation of the Tender or award decisions may result in the rejection of its Tender.
26 Clarification of Tender	26.1 To assist in the examination, evaluation, and comparison of the Tender, and qualification of the Tenderer, the Tender Inviting Authority may, at its discretion, ask any tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer that is not in response to a request by the Tender Inviting Authority shall not be considered. The Tender Inviting Authority's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Tender Inviting Authority in the evaluation of the Tender, in accordance with ITT.
	26.2 If a tenderer does not provide clarifications of its Tender within seven (07) days from the Tender Inviting Authority's request for clarification, its Tender shall be rejected.
27 Deviations, Reservations, and Omissions	27.1 During the evaluation of Tender, the following definitions apply: 27.1.1 "Deviation" is a departure from the requirements specified in the Tender document; 27.1.2 "Reservation" is the setting of limiting conditions or

	<p>withholding from complete acceptance of the requirements specified in the Tender document; and</p> <p>27.1.3 “Omission” is the failure to submit any part or all of the information or documentation required in the Tender document.</p> <p>27.2 The Tender will be considered as non-responsive and rejected under any of the following conditions:</p> <p>27.2.1 Tenderer is not eligible in accordance with the provisions of the Tender document.</p> <p>27.2.2 Tender is not accompanied by the EMD equivalent to the amount and in the form as stipulated</p> <p>27.2.3 Any deviation, reservation, or omission in the Tender</p> <p>27.2.4 All Tender forms are not filled and signed by the Tenderer.</p> <p>27.2.5 Any willful misstatements or incorrect information provided in the Tender.</p>
28 Determination of Responsiveness	<p>28.1 If the tenderer is not a “Eligible Tenderer” in accordance with the ITT 3 then its Tender will be considered as non-responsive and rejected.</p>
	<p>28.2 The Tender Inviting Authority’s determination of a Tender’s responsiveness is to be based on the contents of the Tender itself, as defined in ITT.</p>
	<p>28.3 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,</p> <p>28.3.1 If accepted would:</p> <p>28.3.1.1 Affect in any substantial way the scope, quality, or performance of the Contract Agreement; or</p> <p>28.3.1.2 Limit in any substantial way, inconsistent with the Tender document, the Tender Inviting Authority’s rights or the tenderer’s obligations under the proposed Contract Agreement; or</p> <p>28.3.2 If rectified, would unfairly affect the competitive position of other Tenderer presenting substantially responsive Tender.</p>
	<p>28.4 The Tender Inviting Authority shall examine the technical aspects of the Tender submitted in accordance with ITT, Technical Proposal, in particular, to confirm that all requirements of specifications have been met without any material deviation or reservation.</p>

	28.5 If a Tender is not substantially responsive to the requirements of the Tender document, it shall be rejected by the Tender Inviting Authority and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
29 NonMaterial Nonconformities	29.1 Provided that if a Tender is substantially responsive, the Tender Inviting Authority may waive any nonconformities in the Tender that do not constitute a material deviation, reservation, or omission.
	29.2 Provided that if a Tender is substantially responsive, the Tender Inviting Authority may request that the Tenderer to submit the necessary information or documentation, within seven days, to rectify nonmaterial nonconformities in the Tender related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Financial Proposal. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
30 Correction of Arithmetic Errors	30.1 Provided that the if Tender is substantially responsive, the Tender Inviting Authority shall correct arithmetical errors on the following basis: 30.1.1 If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Tender Inviting Authority there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected; 30.1.2 If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and 30.1.3 If there is a discrepancy between words and figures, the lesser of the two shall prevail.
	30.2 If the Tenderer does not accept the correction of errors, its Tender shall be disqualified.
31 Qualification &Evaluation of Tender	31.1 The Tender shall be evaluated as below: 31.1.1 The Tenderers Technical Proposal will be examined to ensure that the qualification criteria is met. 31.1.2 Upon satisfying the qualification criteria, the Tenderer's Financial Proposal shall be opened and evaluated. The evaluation of the Tenderer's financial Proposal shall be carried out as per the methodology stated in Section III: Evaluation and Qualification Criteria. 31.1.3 The Tenderer quoting the lowest total cost as per the evaluation table in the financial Proposal (L1) will be

	chosen as the Successful Tenderer.
	31.2 The Tender Inviting Authority may seek for additional clarifications as may be required for the evaluation of the proposal which shall be readily provided by the Tenderer.
32 Tender Inviting Authority's Right to Accept Any Tender, and to Reject Any or All Tender	32.1 The Tender Inviting Authority reserves the right to accept or reject any Tender, and to annul the Tendering and reject all Tender at any time prior to contract award, without thereby incurring any liability to Tenderer. In case of annulment, all Tender submitted and specifically, Tender securities, shall be promptly returned to the Tenderer.
G. Award of Contract Agreement	
33 Selection of Successful Tenderer	33.1 The Tender Inviting Authority shall invite the Successful Tenderer for execution of the Contract Agreement.
	33.2 BerhampurMunicipal Corporation may either choose to accept the financial tender of L1 or invite him for further negotiations.
	33.3 In the event that the Successful Tenderer fails to sign the Contract Agreement or fails to furnish the Performance Security, the Tender Inviting Authority shall reject the Tender and invite the next lowest Tenderer for negotiations.
34 Notification of Award	34.1 The Tender Inviting Authority shall notify the Successful Tenderer, in writing, that its Tender has been accepted and issue a Letter of Award.
	34.2 Until a formal Contract Agreement is executed, the notification of award shall constitute a binding contract.
35 Performance Security	35.1 Within time period stated in the NIT, Successful Tenderer shall furnish the performance security before entering into the Contract Agreement, after receiving the Letter of Award, using for that purpose the Performance Security Form, or another form acceptable to the Tender Inviting Authority.
	35.2 The performance security shall be provided in the form as stated in the NIT. The amount of the performance security shall be as stated in the NIT and its period of validity as specified.
	35.3 Failure of the Successful Tenderer to submit the above mentioned Performance Security or sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the EMD unless such delays are approved by the Tender Inviting Authority.
36 Signing of Contract	36.1 Within the number of days as specified in the NIT, of receipt of the performance security, the Successful Tenderer and the Tender Issuing Authority shall execute the Contract Agreement. In case the Successful Tenderer

	fails to sign the Contract Agreement within the number of days as specified in the TDS, its Letter of Award will be terminated and the EMD shall be forfeited.
37 Completion Time	37.1 Implementation Period: Supply and Installation shall be completed within four months from the date of issue of LoA.
	37.2 The Performance Period for the Contract Agreement is as stated in the clause 37.3.
	37.3 The Performance Period may be extended for a further period as agreed on mutual agreement.
38 Implementation Agreement	38.1 The entities, agencies and persons involved in the Project are as stated, which will be applicable during the carrying out of the Project to completion.
39 Stages in Tender	39.1 The tender for “Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in Berhampur, Municipal Corporation” involves the following three stages. <ol style="list-style-type: none"> 1. Tender (Receipt of Proposals) 2. Letter of Award (LOA), and 3. Contract Agreement.
	39.2 The services and work under this Tender shall be executed as follows: <ol style="list-style-type: none"> 1) The Tender Inviting Authority shall release the Letter of Acceptance to the Successful Tenderer; 2) After the acceptance of the LoA, the Successful Tenderer shall furnish the Performance Security; 3) The Tender Inviting Authority shall then enter into the Contract Agreement with the Successful Tenderer to implement the Project. <p>The Successful Tenderer shall</p> <ol style="list-style-type: none"> a. supply and install the modern collection systems with provision of Semi-Underground waste collection bins b. commence the O&M of the installed bins
40. Pre-Tender Meeting	14 th Aug 2018 at 11.00 AM at BeMC Office.
41. Cost of Tender Document	Document fee of Rs.11,200/- in the form of Demand Draft to be submitted along with the technical proposal without which the proposal will not be considered for evaluation.
42. Opening of Tender	The Tender shall be opened in presence of the Tenderer / Tenderer’s Authorised representatives on 24 th Aug 2018 at 10:00 AM at BeMC Office. Both Technical and Financial Bid opening will be done on the same day.
Section II. Tender Data Sheet (TDS)	
ITT 17.1	The Tender validity period shall be 90 (ninety) days after the deadline for Tender submission.

ITT 18.1	An EMD (Earnest Money Deposit) shall be required and the amount and currency of the EMD shall be Rs.2,00,000/- (Rupees Two Lac Only)
ITT 18.2	The EMD shall be in the form of a Crossed demand draft payable at Berhampur in favor of the Commissioner, Berhampur Municipal Corporation , issued by a scheduled bank/nationalized bank in India valid for a period of at least 90 days.
ITT 35.1	1) The Performance Security shall be provided within Thirty(30) days from the date of issue of Letter of Award.
ITT 35.2	1) Performance Security shall be in the form of an unconditional and irrevocable bank guarantee or FDR issued by any scheduled bank in India that is acceptable to the Tender Inviting Authority/Commissioner, Berhampur Municipal CorporationThe performance security shall be valid for the entire Contract Period.
ITT 36.1	The Parties shall sign the Contract Agreement within Thirty (30) days of providing the Performance Security.
ITT 38.1	<ul style="list-style-type: none"> i) Tender Inviting Authority is the Commissioner, BerhampurMunicipal Corporation, ii) Tender Scrutiny Committee is headed by the Tender Inviting Authority iii) Executive Authority is The Commissioner, BerhampurMunicipal Corporation iv) Authorityis the BerhampurMunicipal Corporation v) Tender Accepting Authority is Commissioner of the Berhampur, Municipal Corporation

Section III. Evaluation and Qualification Criteria

1. QUALIFICATION CRITERIA-:

Sl. No	Subject	Requirement	Single Bidder	Joint Venture/ Consortium/ Authorized Agency	Documentation
1	Technical Experience	<p>The Tenderer shall be a manufacturer of Semi-Underground bins in India/Abroad having facilities for manufacturing the same and also having manufactured and installed 100 semi Semi-Undergroundbins in India/Abroad in the last three years as per material specifications & Design, Size mentioned in the tender document under Section IV.</p> <p>Or</p> <p>The Tenderer shall be an authorized Agency / joint venture in India/Abroad with a manufacturer of Semi-Underground bins in India/Abroad having facilities for manufacturing Semi-Underground bins and having manufactured and installed at least 100 Semi-Underground bins in India/Abroad in the last three years as per material specifications mentioned in the tender document.</p>	Shall meet on its own	Shall meet collectively	In order to prove the Technical Experience as above, the Tenderer shall attach client certificates indicating the number of installations completed along with notarized copies of manufacturing license or Authorized agency letter or joint venture agreement, as the case may be.

2	Financial Experience	The Tenderer shall have a minimum annual turnover of Rs. 5.00 (Five) Crores as per the annual financial statements in any of the last three years.	Shall meet on its own	Shall meet collectively.	In order to prove the Financial Experience as above, the Tenderer shall attach a Certificate from a Chartered Accountant/ Certified Public Accountant along with his Technical Proposal.
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*The lead bidder/Authorised agency should be a company registered in India under the Companies Act 1956 or 2013 whichever is applicable. if lead bidder/Authorised agency is not registered in India under the Companies Act 1956 or 2013 the bid will be considered as disqualified.

2. FINANCIAL PROPOSAL – Evaluation Process

- 2.1 The Financial Proposal has to be quoted by the Tenderer after taking into consideration all the terms and conditions stated in the tender document, draft Contract Agreement, after careful assessment of the site, all the conditions that may affect the project cost and implementation of the project.
- 2.2 The Tenderer shall undertake to keep its Financial Proposal valid for a period of atleast 90(Ninety) days from the date of deadline of submission.

2.3 Evaluation of Financial Proposal (Refer Financial Proposal)

Sl. No.	Activity	Calculation
(1)	Cost of Part I	Total of (P) Column
(2)	Cost of Part II	Total of (Q) Column
(3)	Cost of Part-I + Part-II	

The Successful Tenderer will be the one who will quote the lowest overall value for the Part I &II.

Note:

1. The Tenderer shall submit its Financial Proposal substantially in the following manner:

Part I :Supply, delivery, installation of Modern Semi-Underground Waste Collection Bin units comprising of Semi-Underground bins of 2.5 cum as stated in the Tender Specifications. including associated civil works and bin level sensor system

A. Supply and Delivery of bins

- 1.1 Bin Type to be supplied is given herein below:

Sl. No	Details	Volume in cum	Nos.
1	Semi-Underground Bins	2.5 Cubic Meter	50

B: Civil Works

- 1.2 Civil Works for Bin installations

- (a) The quote shall be as per requirements provided under the Technical Specifications.

C: Bin Level Sensor System

- 1.3 A comprehensive bin monitoring system to be implemented with Bin fill level sensors along with associated software system

Sl. No	Details	Nos.
--------	---------	------

1	Bin Level Sensors	50
2	Tracking Device and Navigation Panel	1
3	Software Development and Commissioning	1

Part II: Operation and Maintenance (including collection & transportation) of waste from these modern waste collection bins for 60 months

The operation and maintenance shall be done effectively using Bin Level Sensor System and associated software. The entire services to be provided for a period of 5 years (60 months) and shall be paid at the actual tonnage/Km collected in the bins with minimum assured tonnage (MAT) of waste collected considered at 25 tons/ day (MAT). For evaluation, MAT shall be used to calculate the gross quote.

Sl. No	Details	Rate per ton/Km
1	Operation and Maintenance including collection and transportation of waste from Modern Waste Collection Bins	

Gross Quote shall be calculated as below:

1. First year Quote = Rate per ton/Km (r) x Minimum Assured Tonnage(MAT) x 365 x 5 Km (Average)
2. Next year Quote = Previous year quote x (1+ escalation of 10%)
3. Gross Quote (R) = sum of yearly quotes estimated as above for 5 years

Payment Terms

Payment terms to the tenderer shall be as follows:

Part I

Sl. No.	Activity	% of payment	Documents required
1	Supply and Delivery to Client (BerhampurMunicipal Corporation) Unit Wise	30%	Material Delivery Report
2	Installation of bins and Bin Levelling Systems at the specified locations (Unit Wise)	70%	Against completion and Commissioning of the system

Part II

Sr. No.	Activity/Milestone	Payments	Documents required
1	Operation and Maintenance of bins including collection and transportation of waste through specialized vehicles	Monthly payment based on actual tonnage or minimum assured tonnage whichever is higher	Invoice with supporting documents

Note:

1. The prices shall be inclusive of 5 years warranty, provision for training staffs, insurance and all taxes and duties.
2. Density of garbage is taken as 0.5 MT/cum. Payment will be interpolated accordingly based on the MIS data through application software..
3. Payment will be made on actual garbage transported till full installation, and issue of due installation Certificate by Competent Authority of BeMC. MAT condition will apply only after obtaining Completion Certificate.

Section IV. Technical Specification & Guidelines Sheet

Part I: Supply, delivery, installation of Modern Semi-Underground Waste Collection Bin units comprising of Semi Semi-Underground bins of 2.5 cu including associated civil works and Bin Level Sensor System.

Type 1: 2.5 Cubic Meter Semi-Semi-Underground Bins

Supply and installation of international standard semi-Semi-Underground bins, confirming to European standard EN:13071 equivalent or above, made of galvanized steel having water proof, closed construction, good quality, the top cover lid to be fixable in water tight condition, with longer empty intervals, improved hygiene and space saving above ground profiles suitable for handling municipal solid waste including paper, glass and organic waste for receiving the solid waste from the top with a 2-hook lifting system suitable to lift through special lift/ crane fitted from special purpose vehicle and also having the provision for emptying through floor flaps at the bottom.

The entire bin should be free from fire risk, vandalism and safety. The containers should have the 2-hook lifting mechanism to be connected to the lid of the lifting container.

Specification for 2.5 cu. m. model is as follows:

- bolted container made from galvanized steel sheet, capacity 2.5 m³
- two trough shaped bottom trap doors made from steel
- operated by traverse and bars, prepared for perforated intermediate floor, hot-dip galvanized finish
- 2-Hook lifting system with traverse and bars made from steel, hot-dip galvanized finish

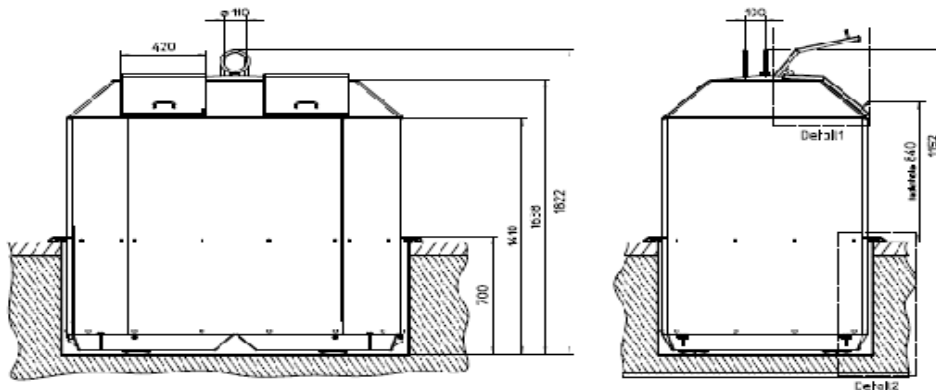


Figure 1: Details of 2.5 cu. m. bin

Sealing and stickering: The Operator shall provide separate coloured stickers on the bins carrying wet and dry waste and use pictograms writings, etc. to help people clearly identify the category of waste to be deposited in each type of bins. The bins shall be distinctively numbered/ coded for easy identification and tracking.

Installation Procedure:

- Pit excavation
- Construction of rectangular concrete casing
- Installation of edge protection metallic ring
- Loose filling and closing of the pits surroundings and installation of the container

Component B: Civil Works: An RCC (not less than M20) cavity of 100mm thickness with provision for metallic edge protection shall be constructed with a platform of 100mm height above grade level for installing the bin. The platform shall extend to at least 100mm on all the sides. The platform shall be finished with anti-skid tiles.

Component C: Bin Level Sensor System

The operator shall install Bin Level Sensors on each location on all bins and shall provide a software solution for tracking the fill level of waste inside bin, if the waste from these Semi-Underground bins is emptied at various locations and also vehicle movement. The software solution shall have a provision for alerting the monitoring agency once the bins are full upto 80%.

Part II: Operation and Maintenance including collection & transportation of waste from these waste collection systems for 60 months.

- One or more number of cabin chassis of GVW 16 Ton capacity or similar with tipper hydraulically controlled up & down operation mend for easy collection and disposal of municipal solid waste collection with GPS and 12 ton meter knuckle boom crane will require for transportation of waste.
- The work consists of operation of specialized vehicle i.e. knuckle boom crane mounted on truck with tipper body.
- The work consists of emptying the 50no's. Bins by specialized vehicle i.e. knuckle boom crane mounted on truck with tipper body, transportation and disposal of loaded Truck at the designated site.
- The Modern Semi-Underground Bins will be emptied by the Truck after full loaded with garbage from the designated locations.
- Minimum assured tonnage per day is considered to be 25 tonnes
- The Specialized Vehicles will be operated on all days in a month including Sundays & Holidays during less traffic time when ever required. However duty hours may be changed as per requirement of the department. In case of break down /accident no extra payment will be made for extra time duty. Each location of Modern Semi-Underground bins shall be emptied one times per day when it is full. It is not necessary to empty the partially filled modern Semi-Underground bins.
- Driver must have Heavy driving license & capacity to drive vehicle efficiently from city to dumping site.
- During duty hours if any driver is found intoxicated he will be suspended immediately and the agency will provide his substitute on the next day.
- Safety & security of the vehicle during working hours will be looked after by the Agency. Sufficient stock of spares or accessories should be kept by Agency. Parking place for the trucks will be provided by BerhampurMunicipal Corporation.
- Required fuel (Diesel, Mobile, and Hydraulic Oil) will be the Bidder scope.
- In case violation of traffic rule by the concerned driver necessary penalty charges will be paid by the agency & he will contact Police/Traffic authority to settle the issue.
- In case of accident during operation agency will keep in touch with police/ Traffic authority for releasing the vehicle as well as driver on behalf of the department
- Compensation due to minor accident /damage of any public property will be made by the agency to the concerned victims/owner of the property as per insurance policy terms.
- Bills to be submitted quarterly wise or as per mutual consent of parties.
- Insurance of the vehicle will be taken care of by the agency at their own cost.

- Through the work is for 5 years, review will be done after completion by Berhampur Municipal Corporation. Based on the performance of the agency and mutual consent by both the agency and BerhampurMunicipal Corporation this contract can be extended to more years. No tender is required by the tender inviting authority to extend this contract. However, work may be extended up to ten years based on the mutual consent of all terms and conditions of Agreement by both parties.

PART III – TENDER FORMS

1. Letter of Tender

Date:---/---/-----
Tender No:-----/

TITLE: Supply, Delivery, Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in BerhampurMunicipal Corporation

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender document, including Addenda issued in accordance with Instructions to Tenderer (ITT);
- (b) Our Tender, which consist of the tender forms as per the list of attachments enclosed with this Letter of Tender, is based on the Instruction to Tenderer and other parts of the Tender document.
- (c) Our Tender shall be valid for a period of 90days from the date of submission of the Tender and it shall remain binding upon us and may be accepted at any time before the expiration of that period. The Tender Inviting Authority is at liberty to extend the validity on mutual agreement for another 60 days.
- (d) We agree to provide the performance security in the event of signing the Contract Agreement;
- (e) We, for any part of the contract, do not have any conflict of interest in accordance with ITT2.2;
- (f) We are not participating, as a tenderer in more than one Tender in this Tendering in accordance with ITT-6;
- (g) We, including any of our subcontractors or suppliers for any part of the contract, have not been declared ineligible by the Government of Odisha or the Tender Inviting Authority;
- (h) We understand that this Tender, together with your written acceptance thereof included in the Letter of Award, shall constitute a binding contract between us, until a formal contract is prepared and executed. We also understand that any addenda or minutes of the negotiation meetings issue by you shall become integral part of our Tender and the Contract Agreement;
- (i) We understand that you are not bound to accept the best evaluated Tender or any other Tender that you may receive;

- (j) We agree that the Tender Inviting Authority can reject any or all the Tender and drop out the Tendering, or reject all the Tender and invite fresh Tender without any liability of whatsoever nature from us;
- (k) We agree to turn over all the equipment, materials, spares as built, operated and maintained by us in a good form, to the Tender Inviting Authority free of cost as stipulated in the Tender document on expiry of the Contract Agreement;
- (l) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery; and

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the Tender for and on behalf of _____

Dated on __ day of _____, _____

List of Attachments (as applicable):

- **EMD (Earnest Money Deposit)**
- **Tender Paper Cost.**
- **Power of Attorney for Signing of Tender**

2. FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF TENDER
(On Non – judicial stamp paper of Rs. 100/-
duly attested by a Notary Public)

POWER OF ATTORNEY

Know all men by these presents, we (name and address of the registered office of the Tenderer) do hereby constitute, appoint and authorize Mr. / Ms. -----
----- R/o (name and address of residence) who is presently employed with us and holding the position of ----- as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to the tender of (please state the name and address of the Tenderer) for the “Supply, Delivery, Installation of Modern Semi-Underground Waste Collection Bins at Designated Locations in BERHAMPUR Municipal Corporation”(the “Project”), including signing and submission of all documents and providing information / responses to BERHAMPUR Municipal Corporation representing us in all matters in connection with our tender for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

For (Signature)

(Name, Title and Address)

Accept

.....(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of 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 executant(s) 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 executant(s).

3. Letter of Financial Tender

Date: ----/----/-----

Tender No.:-----

TITLE: Supply, Delivery, Installation and O&M of Modern Waste Collection Bins at Designated Locations in BerhampurMunicipal Corporation

To: _____

Subject: Financial Proposal

In reference to our Technical Proposal for the Invitation for Tender referred above, we hereby submit our Financial Tender along with all documents as stated in the Instruction to Tenderer.

Our Financial Tender shall be binding upon us subject to the modifications resulting from contract negotiations, up to expiration of the validity period of the Tender and any further extensions given to the validity period of the Tender.

We confirm that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act 1988".

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of the Firm:

4. Financial Proposal

Sl. No.	Activity	No. of units	Rate per Unit (INR)	Gross Amount (Rs)
Part I:				
A	Supply, installation of waste collection bin units comprising of Semi Semi-Underground bins of 2.5 cum as stated in the Tender Specifications. including associated civil Works including Bin Level Sensors	50		
Total (P)		50	NA	(P)
Part II:				
B	Quoted rate for Operation and Maintenance of the smartbins including collection and transportation of waste from the smartbins to dumping site for 60 months.	Per ton/ Km		
Total (Q)			NA	(Q)
C	Total Amount (Rs)		NA	(P+Q)
Amount in Words (Rupees)		P+Q		

*In Part II:

- a. The rates must be inclusive of all cost of drivers/ operators/ mechanics, including of consumables i.e. diesel, petrol, POL, insurance etc.
- b. The quoted price shall be inclusive of all the taxes and duties as applicable.

For

Sign:

Name:

(Authorized Signatory)

5. Format for Financial Capability

The following format shall be used for statement of financial capability of tenderers:

Financial Year	Annual Turnover
2015 – 16	
2016-17	
2017-18	

Signed:

Authorized Signatory

1. The financial year would be the same as the one followed by the Tenderer / Manufacturer for its annual report. For the FY 2017-18, even provisional financials are acceptable but the turnover shall be certified by a statutory auditor
2. A certificate from the chartered accountant/statutory Auditor/certified public accountant should be provided as supporting document certifying the Financial Capability as above.

6. Format for Technical Experience

Financial Year	Number of Installation Projects	No of UG/ Semi Bins installed in each year

Signed:

Authorized Signatory

1. The financial year would be the same as the one followed by the Tenderer / Manufacturer for its annual report.
2. A certificate from the chartered accountant/statutory Auditor/certified public accountant should be provided as supporting document certifying the Technical Experience as above.

PART IV - CONDITIONS GOVERNING THE LETTER OF AWARD

Conditions Governing the Letter of Award

1. Definitions	Refer Section I: General Conditions of Contract
2. Successful Tenderer's Representative	The Successful Tenderer designates a <i>Project Manager</i> as Successful Tenderer's representative who will be responsible for the coordination of activities under Letter of Award, reporting to the Successful Tenderer and its appointed agencies, for receiving and issuing notices and responsible for delivery of the services.
3. Performance Standards	The Successful Tenderer shall promptly replace any employees assigned under the Letter of Award that the Tender Inviting Authority considers unsatisfactory.
4. Confidentiality	The Successful Tenderer shall not, during the term of the Letter of Award, disclose any proprietary or confidential information relating to the Letter of Award or the Tender Inviting Authority's business or operations without the prior written consent of the Tender Inviting Authority.
5. Ownership of Material	Any studies reports or other material, graphic, software or otherwise, prepared by the Successful Tenderer for the Tender Inviting Authority under the Letter of Award shall belong to the Tender Inviting Authority. The Successful Tenderer may retain a copy of such documents. All the material information data preliminary report gathering as part of the preparation shall be transferred in soft copies (in hard copy if Tender Inviting Authority requests).
6. Successful Tenderer Not to be Engaged in Certain Activities	The Successful Tenderer agrees that, during the term of the Letter of Award and after its termination, that its personnel shall not undertake any activity that would conflict with the activities assigned to them.
7. Assignment	The Successful Tenderer shall not assign the Letter of Award or sub-contract any portion of it without the Tender Inviting Authority's prior written consent.
8. Law Governing Contract and Language	The Letter of Award shall be governed by the laws of India and the laws framed by the Government of Odisha , from time to time. The language of the Letter of Award shall be English.
9. Termination of the Contract	The Tender Inviting Authority may, by not less than thirty (30) days' written notice of termination to the Successful Tenderer, terminate the contract if the Operator fails to sign the contract agreement as per the provisions of this document.
10. Successful Tenderer's Actions Requiring Prior Approval	The Successful Tenderer shall obtain the prior written consent from the Tender Inviting Authority for any actions of the Successful Tenderer which will result in public risk and inconvenience, interruption to the functions and services provided by the Tender Inviting Authority.

11.Taxes and Duties	The prices and costs considered by the Successful Tenderer shall include all taxes, duties, levies as per the applicable law governing the Letter Of Award or the Contract.
12.Dispute Resolution	Any dispute arising out of and during the course of the Contract shall first be amicably settled by mutual consultation. In the event of the failure to reach a mutual settlement, the dispute shall be referred to the Adjudicator appointed by the TENDER SCRUTINY COMMITTEE. If either of the Party is not satisfied with the decision of the Adjudicator, by giving a written notice of seven (7) days to the other Party, the Party shall invoke arbitration proceedings in accordance with the Indian Arbitration and Conciliation Act.
13.Independent Contractor	A Tenderer or consortium of Tenderers shall be an independent Contractor performing the work. The Letter of Award or Contract does not create any agency, partnership, joint venture or other joint relationship between the Tender Inviting Authority and Successful Tenderer.
14.Sample Letter of Award	The Tenderer agrees to the Sample Letter of Award as provided in Part 3 (Sample Contract and Forms) of the Tender Document, which shall be the integral part of this Annex D of the Tender.

PART V– DRAFT CONTRACT AGREEMENT AND FORMS

A. Letter of Acceptance

(On Letterhead of Tender Inviting Authority)

Ref No.:

Date:

Tender

Tender Title:

Successful Tenderer Name and Address

We are pleased to issue this Letter of Acceptance (“LoA”) in response to your Tender no _____ dated _____ and subsequent negotiations in relation to the “Supply, Delivery and Installation and O&M of Modern Semi-Underground Waste Collection Bins of given numbers at Designated Locations in Berhampur Municipal Corporation” as envisaged by the Tender Inviting Authority, under the terms and conditions set forth in your Tender and in the LoI hereof.

The Commissioner (“Tender Inviting Authority”), on behalf of and as authorized by the BeMC, intends to enter into a Contract Agreement with you following this LoA.

The Tender Inviting Authority reserves the right to terminate this LoA or decide not to enter into the Contract Agreement in future, in accordance with the Tender conditions.

You are requested to sign and send us a copy of this LoA as a token of your acceptance.

Yours sincerely,

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency:

B. Letter of Acceptance
[Letterhead of the Tender Inviting Authority]

Ref No.:

Date:

LoI No.:___ LoI Date_____

Tender No.:___ Tender Date

Tender Title: _____

To: *[name and address of the Successful Tenderer]*

This is to notify you that in accordance with the Letter of Award (“LoA”) and your Tender as referenced above, is hereby approved by us. Following the negotiations, you are hereby invited to sign the Contract Agreement, using for that purpose the Sample Contract and Forms included in Part 3 of the Tender Documents.

You are requested to furnish the stipulated Performance Security in accordance with the Tender conditions and in the format enclosed with the Tender Document.

In the event you fail to sign the Contract Agreement or furnish the Performance Security within the stipulated time in accordance with the Tender conditions, the Letter of Award issued on you stands terminated and the EMD provided by you shall be forfeited, after providing due notice. In such event, we will engage the next best Tenderer without any liability of whatsoever nature from you.

Upon signing, the Contract Agreement shall supersede the Letter of Award, your Tender and all communications and agreements that are not included in the Contract Agreement.

You are requested to sign and send us a copy of this letter as a token of your acceptance.

Yours sincerely,

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

C. Contract Form: Contract Agreement

This Contract Agreement (the “**Agreement**” or the “**Contract**”) is made and entered into between < *Company Name* > (“Successful Tenderer”), having its principal offices at <Address>, <Company Name> and

<BERHAMPUR>

WITNESSETH

WHEREAS, AUTHORITY desires to establish undertake the project involving the “Supply, Delivery and Installation of Modern Semi-Underground Waste Collection Bins at Designated Locations in BERHAMPUR Municipal Corporation”;

WHEREAS, Successful Tenderer is engaged in the business of [●];

WHEREAS, the Authority is a government body that select the Successful Tenderer, negotiate and sign the Contract, and administer all contractual responsibilities on their behalf;

WHEREAS, Successful Tenderer has submitted a response to the Tender Inviting Authority pertaining to the Supply, Delivery and Installation and O&M of Modern Semi-Underground Waste Collection Bins at Designated Locations in BERHAMPUR Municipal Corporation.

and

WHEREAS, Tender Inviting Authority relying on the tender submitted by the Successful Tenderer and based on the representations made by the Successful Tenderer issued Letter Of Acceptance to the Successful Tenderer and the parties have hence agreed to execute this Contract.

THEREFORE, the parties agree as follows:

The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

- (a) Schedule A: Letter of Acceptance
- (b) Schedule B: Key Technical and Financial Schedules
- (c) Schedule C: Conditions of Contract (Section 1 to 3)
- (d) Schedule D: Supplementary Information, if any

IN WITNESS HEREOF, the parties below execute this Agreement.

Successful Tenderer

Date
BERHAMPUR MUNICIPAL CORPORATION

Date

ATTACHMENTS:

- Schedule A: Letter of Acceptance
- Schedule B: Key Technical and Financial Schedules
- Schedule C: Conditions of Contract (Section 1 & 2)
- Schedule D: Supplementary Information, if any

Schedule A. Letter of Acceptance

[Enclose a copy of the Letter of Acceptance, Letter of Award and Letter of Tender]

Schedule B. Key Technical and Financial Schedules

SECTION 1. TECHNICAL DETAILS

1. Technical proposal as approved by the Tender Inviting Authority

SECTION 2. FINANCIAL DETAILS

1. Financial Proposal as approved by the Tender Inviting Authority

Schedule C. Conditions of Contract

SECTION-1: GENERAL CONDITIONS OF CONTRACT

A. Contract and Interpretation

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) **“Baseline Conditions”** means the conditions prior to implementation of the Project, which will be used as a basis for verification of the actual conditions in the identified zones of the Authority.
- (b) **“Tender Conditions”** means the Instruction to Tenderer, Tender Forms, and Sample Contract and Forms, any minutes of the meetings, addendums thereto or any other document issued in pursuance to the Tender Documents in connection with this tender.
- (c) **“Installation”** means setting up of all the Modern Collection Systems or any part thereof by the Successful Tenderer.
- (d) **“Contract”** means this Contract Agreement entered into between the Authority and the Successful Tenderer, together with the Contract Documents and the Letter of Award referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- (e) **“Contract Documents”** means the documents listed in Form of Contract Agreement (including any amendments thereto).
- (f) **“Contract Period”** means the period for which this Contract is valid, starting from the date of execution of the Contract and ending on the expiry of the Performance Period. In case of any extension of the Construction Completion Date, the Contract Period shall be equally extended without reducing the Performance Period.
- (g) **“Successful Tenderer’s Equipment”** means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Modern Collection Systems that are to be provided by the Successful Tenderer.
- (h) **“Successful Tenderer’s Representative”** means any person nominated by the Successful Tenderer and approved by the Tender Inviting Authority.
- (i) **“Day”** means calendar day of the Gregorian Calendar.
- (j) **“Warranty Period”** or **“Defects Liability Period”** means the period of validity of the warranties given by the Successful Tenderer commencing at Completion of the Performance Period, during which the Successful Tenderer is responsible for defects with respect to the Modern Collection Systems (or the relevant part thereof)

- (k) **“Effective Date”** means the date of fulfillment of all conditions in the Form of Contract Agreement, for the purpose of determining the Construction Completion Date.
- (l) **“CC”** means the Conditions of Contract hereof.
- (m) **“Month”** means calendar month of the Gregorian Calendar.
- (n) **“Operational Acceptance”** means the acceptance by the Authority of the Modern Collection Systems (or any part thereof), which certifies the Successful Tenderer’s fulfillment of the Contract in respect of technical standards.
- (o) **“Performance Period”** means the period for which the Successful Tenderer shall mean a period of five years commencing from the Completion Date.
- (p) **“Tender Scrutiny Committee”** means the committee named in the Tender Data Sheet or as amended by the Tender Inviting Authority from time to time, having authorities as defined there in.
- (q) **“Project Manager”** means the person appointed by the Successful Tenderer and named to perform the duties delegated by the Successful Tenderer.
- (r) **“Site or Project Area”** means the land and other places upon which the Modern Collection Systems are to be stored for the purpose of assembling, and such other land or places as may be specified in the Contract / or as temporarily allocated by the Tender Inviting Authority as forming part of the Site.
- (s) **“Sub-contractor”** shall mean and include vendors and sub-contractors to whom execution of any part of the Modern Collection Systems, including preparation of any design or supply of the Modern Collection Systems, is sub-contracted by the Successful Tenderer, and includes its legal successors or permitted assigns.
- (t) **“Completion Date”** means the date on which the Authority certifies that all the Modern Collection Systems are erected and installed at the identified locations.
- (u) **“Termination Value”** means the amount the Authority may pay to Successful Tenderer after the first anniversary of Completion Date to terminate this agreement for convenience. This amount shall be the total price less any payments already made.
- (v) **“Third Party”** means any entity other than the Parties to the Contract.
- (w) **“Construction Completion Date”** means the time period from the date of issue of Letter of Acceptance till the Completion Date including any reasonable extension of time as accepted by the Authority.
- (x) **“Minimum Assured Tonnage”** means the minimum daily quantity of waste available as assured by the Authority.
- (y) **“Modern Collection Systems”** means the modern garbage bins that are to be designed and installed by the Successful Tenderer in terms of this Contract.
- (z) **“Project”** means the implementation of Modern Collection Systems of the Bins.

Contract Documents

2.1 All documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

2.2 Effectiveness: The Contract shall become effective from date of signing.

2. Interpretation

3.1 Language

3.1.1 The ruling language of the Contract shall be English.

3.1.2 The language for communications shall be English

3.2 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.3 Headings

The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

3.4 Persons

Words importing persons or parties shall include firms, Authority and government entities.

3.5 Not used

3.6 Entire Agreement

The Contract constitutes the entire agreement among the Tender Inviting Authority, Authority and Successful Tenderer with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) that are not included in the Contract.

3.7 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, is approved by the Tender Scrutiny Committee, and is signed by a duly authorized representative of each party hereto.

3.8 Independent Contractor

The Successful Tenderer shall be an independent Contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

Subject to the provisions of the Contract, the Successful Tenderer shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Sub-contractors engaged by the Successful Tenderer in connection with the performance of the Contract shall be under the complete control of the Successful Tenderer and shall not be deemed to be employees of the Authority, and

nothing contained in the Contract or in any subcontract awarded by the Successful Tenderer shall be construed to create any contractual relationship between any such employees, representatives or Sub-contractors, the Authority.

3.9 Not used

3.10 Non-Waiver

3.10.1 No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.10.2 Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.11 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3. Notices

4.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party.

4.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

4.3 All notices, instructions and approvals to the Successful Tenderer shall be given only by the Tender Inviting Authority. The notices, instructions and approvals given by the Tender Inviting Authority to the Successful Tenderer, shall be binding upon the Authority.

4. Governing Law

5.1 The Contract shall be governed by and interpreted in accordance with the Indian laws and shall be subject to the jurisdiction of the courts in **Odisha**.

5. Settlement of Disputes

6.1 Mutual Consultation

6.1.1 If any dispute of any kind whatsoever shall arise between the Tender Inviting Authority and the Successful Tenderer in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Contract—whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation by taking professional opinion from a Third Party.

6.2 Adjudicator

- 6.2.1 If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred in writing by either party to the Adjudicator, with a copy to the other party.
- 6.2.2 The Tender Inviting Authority shall have the right to nominate the Adjudicator/ Secretary, Urban Development, Government of **Odisha**.

6.3 Arbitration

- 6.3.1 If either the Tender Inviting Authority or the Successful Tenderer is dissatisfied with the Adjudicator's decision give notice to the other party, with a copy for information to the Adjudicator, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 6.3.2 Any dispute in respect of which a notice of intention to commence arbitration has been given shall be finally settled by arbitration.
- 6.3.3 Arbitration proceedings shall be conducted in accordance with the Indian laws.
- 6.3.4 The Arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by the Employer and the Successful Tenderer. The third arbitrator shall be chosen by the two Arbitrators so appointed by the parties and shall act as Presiding arbitrator. In case of failure of the two arbitrators to reach upon a consensus within a period of 30 days from the appointment of the arbitrator, the Presiding Arbitrator shall be appointed by the Indian Council of Arbitration.

- 6.4 Notwithstanding any reference to the Adjudicator or arbitration herein the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree

6. Successful Tenderer's Responsibilities

- 7.1 The Successful Tenderer shall supply and install the Modern Collection Systems with due care and diligence as per best industry practice and in accordance with the provisions of the Contract.
- 7.2 Supply and Installation of Modern Collection Systems
 - a) The Successful Tenderer shall supply and install the Modern Collection Systems as per the provisions of this agreement.
 - b) Within fifteen (15) days of the issuance of the Letter of Acceptance or any other date as further approved by the Tender Inviting Authority, the Successful Tenderer shall prepare and submit the installation plans to the Authority for review and approval prior to beginning of the installation of Modern Collection Systems.
 - c) The Successful Tenderer shall be responsible for quality control during the installation of the Modern Collection Systems. Successful Tenderer shall inspect and test all work performed to ensure compliance with Contract requirements. Successful Tenderer shall maintain all necessary records and data of inspections and tests, including any conducted by or for a utility or other regulatory agencies. The Successful Tenderer shall also give the Project Scheduling Plans (Bar Charts) for the implementation and installation of Modern Collection Systems.
 - d) The Successful Tenderer shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification

thereof provided or designated by or on behalf of the Authority, by giving a notice of such disclaimer.

- e) Codes and Standards: Wherever references are made in the Contract to codes and standards in accordance with the most relevant Indian and International standards as applicable and acceptable to the Authority.
- f) Any disputes related to the specifications, codes and standards shall be referred to the Adjudicator.
- g) Upon the successful installation of the Modern Collection Systems the Successful Tenderer shall implement the Bins as per the terms of this Contract and commence the O&M of the UGBs.
- h) The Successful Tenderer shall also provide a 5-year Manufacturer's warranty for the Modern Collection Systems wherein he shall be responsible for the repair / rectification of malfunctioning components occurring due to events other than normal wear and tear and unauthorized or improper handling during operation and maintenance.

7.3 Notice of Completion

The Successful Tenderer shall notify to the Authority in writing when the Modern Collection Systems are installed and substantially complete by submitting a Notice of Completion and a written request for inspection. The request shall identify the location of Modern Collection Systems, the planned inspection of the Modern Collection Systems to verify performance, and recommended dates for inspection. Upon receipt of the request from Successful Tenderer the Authority shall inspect the Modern Collection Systems installations. The Authority's representatives and Successful Tenderer representatives will simultaneously inspect the Modern Collection Systems to facilitate mutual agreement on satisfactory completion of the installation of Modern Collection Systems. Following satisfactory inspection report given by the representatives of the Authority a Certificate of Completion shall be issued by the Authority.

7.4 Procurement of Modern Collection Systems

The Successful Tenderer shall undertake all the necessary procurement of the Modern Collection Systems for the Project.

7.5 Installation and Operational Acceptance

7.5.1 The date of installation of the Modern Collection Systems or any part thereof shall be taken as the date of issue of the Certificate of Completion, inspection and acceptance.

7.6 The Successful Tenderer shall comply with all applicable law in force. The Successful Tenderer shall indemnify and hold harmless the Authority from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Successful Tenderer or its personnel, including the Subcontractor and their personnel.

7. Authority's Responsibilities

8.1 The Authority shall be responsible for acquiring and providing the physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way and clearing the various obstructions including the utilities like

pipelines and electricity cables both under and above the ground. The Authority shall give full possession of and accord all rights of access thereto the Successful Tenderer.

8.2 Review and Approval

The Authority shall review and reply to Successful Tenderer submitted materials (that is, Modern Collection Systems installation plans) within 15 days of receipt by the Authority.

8.3 Project Office

The Authority shall be providing a project office within its premises or any other property in its possession for the operator to carry out his operations.

8.4 Designated Officer

The Authority shall designate one its officials as the Designated Officer for reviewing and approving various project components.

8.5 Information, Education and Communication (IEC) Activities

The Authority shall carry out necessary information, education and communication activities through various IEC materials viz., pamphlets, posters, street plays, radio jingles, rally, competitions, video films etc., to motivate the residents on segregation of waste and also to impart the knowledge on waste management , cleanliness, public health and environment.

8. Payment

9.1 The Authority shall pay the price quoted and approved for the supply and installation of the Modern Collection System as per the payment terms stated in the Tender Documents.

9.2 The Authority shall be entitled to deduct TDS as per the provisions of the Income Tax Act 1961, as amended from time to time, from the payments made to the Successful Tenderer.

9.3 The Authority shall maintain an Escrow Account dedicated exclusively for the Project and all monies received from the State Government for the Project and all other monies required/ allocated towards the same shall be housed in this Account.

9. Performance Security

10.1 The Successful Tenderer shall provide the performance securities specified stated in the TDS in favor of the Authority at the time, and in the amount, manner and form specified. The security shall be denominated in Indian Rupees and shall be in one of the forms of bank guarantees provided in the Tender documents, as stipulated by the Authority.

10.2 In case of extension of the Contract Period, the Successful Tenderer shall extend the period of validity of the performance security.

10.3 The Performance Security shall be released on completion of one year of implementation of the project.

10. Taxes and Duties

11.1 Except as otherwise specifically provided in the Contract, the Successful Tenderer shall bear and pay all taxes, duties, levies and charges assessed on the Successful Tenderer, its Sub-contractors or their employees by all municipal, state or national government authorities in connection with the Modern Collection Systems.

11. Confidential Information

12.1 The Authority and the Successful Tenderer shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Successful Tenderer may furnish to its Sub-contractor(s) such documents, data and other information it receives from the Authority to the extent required for the Sub-Contractor(s) to perform its work under the Contract, in which event the Successful Tenderer shall obtain from such Sub-Contractor(s) an undertaking of confidentiality similar to that imposed on the Successful Tenderer.

12.2 The obligation of a party, however, shall not apply to that information which

(a) now or hereafter enters the public domain through no fault of that party

(b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto

(c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

12.3 The above provisions shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Modern Collection Systems or any part thereof.

12.4 The provisions of this shall survive termination, for whatever reason, of the Contract.

12. Representatives

13.1 The Successful Tenderer shall appoint an Successful Tenderer's Representative ("Project Manager") at least a week in advance from the commencement of work, after obtaining prior approval from the Authority. All notices, instructions, information and other communications given by the Successful Tenderer to the Authority under the Contract shall be given by the Project Manager, except as herein otherwise provided.

13. Staff Safety

The Successful Tenderer shall provide the necessary safety gears to its staff including reflective jackets, gloves, mask, safety boots etc to facilitate a safe working environment.

14. Emergency Work

15.1 If by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to

prevent damage to the Modern Collection Systems, the Successful Tenderer shall immediately carry out such work.

15. Force Majeure

- 16.1 “Force Majeure” shall mean any event beyond the reasonable control of the Parties, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:
- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war,
 - (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts,
 - (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority,
 - (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague,
 - (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster,
 - (f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.
- 16.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
- 16.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered or delayed.
- 16.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract.
- 16.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall constitute a default or breach of the Contract, if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.
- 16.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than fifteen (15) days or an aggregate period of more than thirty(30) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution.

16. Change in Scope of Tender

- 17.1 The Authority shall have the right to instruct and issue an order from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Project (hereinafter called “Change”), provided that such Change falls within the general scope of the Project and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Project and the technical compatibility of the Change envisaged with the Project as specified in the Contract.
- 17.2 The Successful Tenderer may from time to time during its performance of the Contract propose to the Authority any change that the Successful Tenderer considers necessary or desirable to improve the quality, efficiency or safety of the Modern Collection Systems.
- 17.3 Changes in the Contract shall not be made without the prior written approval of the Authority. In case upon the issuance of the order for any change the Authority in its sole discretion finds it necessary for a change in Construction Completion Date or an increase in the contract price it shall issue written instructions in this regard.
- 17.4 Any Change in the quantum of Modern Collection Systems shall ordinarily be only to the extent of one hundred (100%) per cent of the total quantities fixed at the time of signing this Contract. Provided however, the Tender Inviting Authority shall have the unfettered right to order additional numbers of Modern Collection Systems from the Successful Bidder at the same cost, terms and conditions as is agreed upon between the parties during the signing of the Agreement. In such an event, no fresh tender will be required to be issued by the Tender Inviting Authority for such additional procurement.
- 17.5 The Tender Inviting Authority, from time to time, may require the Successful Tenderer to perform certain additional tasks which may be outside the specified scope of the Tender. The Tenderer shall be willing to perform such tasks and claim the costs so incurred along with the subsequent monthly bill.

17. Termination

- 18.1 The Authority or the Successful Tenderer can terminate this Contract by giving a notice of not less than sixty (60) days. Upon receipt of the notice of termination, the Successful Tenderer shall either immediately or upon the date specified in the notice of termination
- (g) cease all further work, except for such work as the Authority may specify in the notice of termination for the sole purpose of protecting that part of the Modern Collection Systems already executed, or any work required to leave the Site in a clean and safe condition
 - (h) terminate all subcontracts, except those to be assigned to the Authority pursuant to paragraph (d) (ii) below
 - (i) remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition
 - (j) In addition, the Successful Tenderer shall:
 - (i) deliver to the Authority the Modern Collection Systems executed by the Successful Tenderer up to the date of termination.

- (ii) to the extent legally possible, assign to the Authority all right, title and benefit of the Successful Tenderer to the Modern Collection Systems as of the date of termination, and, as may be required by the Authority, in any subcontracts concluded between the Successful Tenderer and its Sub-contractors.
 - (iii) deliver to the Authority all non-proprietary drawings, specifications and other documents prepared by the Successful Tenderer or its Sub-contractors as at the date of termination in connection with the Modern Collection Systems.
- (k) Termination Value: Upon termination, the Authority shall take over the Modern Collection Systems and spares and pay to the Successful Tenderer the termination value of the Modern Collection Systems equivalent to the quoted value after adjusting for all the payments made towards the value of the products supplied till the date of termination.

18.2 Termination for Successful Tenderer's Default

18.2.1 The Authority, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Successful Tenderer:

- (a) if the Successful Tenderer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Successful Tenderer is a Authority, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Successful Tenderer takes or suffers any other analogous action in consequence of debt
- (b) if the Successful Tenderer assigns or transfers the Contract or any right or interest therein without prior consent from the Authority.
- (c) if the Authority determines that the Successful Tenderer has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the Authority may, after giving 30 days' notice to the Successful Tenderer, terminate the Successful Tenderer's Contract.

For the purposes of this Sub-Clause:

- (i) "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "Fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "Collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (iv) "Coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) "Obstructive practice" is

- (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
- (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights.
- (d) If the Successful Tenderer
 - (i) has abandoned or repudiated the Contract.
 - (ii) has without valid reason failed to commence work on the Modern Collection Systems promptly or has suspended the progress of Contract performance for more than thirty (30) days without providing any justification, after receiving a written instruction from the Authority to proceed.
 - (iii) Persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause
 - (iv) Refuses or is unable to provide sufficient materials, services or labor to execute, complete, and operate and maintain the Modern Collection Systems.
 - (v) Fails to obtain all necessary statutory licenses, clearances or permits obtained by the Successful Tenderer in a reasonable time or such licenses are revoked.
 - (vi) Fails to provide the performance security and insurance coverage within the time stated in the Contract.
 - (vii) Fails to perform the Emptying Services as per the terms of this Contract.

18.2.2 Payment upon termination for Successful Tenderer's default

Upon termination, the Authority shall pay to the Successful Tenderer the sums which are payable to the Successful Tenderer until then as per the Contract based on the products supplied till the date of the termination as well as any other outstanding dues on the services delivered. The Authority will retain all the Modern Collection Systems supplied and installed as part of this contract as thereof.

18.3 Termination for Authority's Default

18.3.1 If

- (a) The Authority has failed to pay the Successful Tenderer any sum due under the Contract without just cause after repeated request by the Successful Tenderer

18.3.2 Payment on termination for Authority's default

Upon termination, the Authority shall pay to the Successful Tenderer the entire sum payable to the Successful Tenderer for the duration of the Contract Period towards the implementation of the Project.

18.3.3 The Authority shall not forfeit the performance security provided by the Successful Tenderer in event of termination of Contract for Authority's default.

18. Assignment

19.1 The Successful Tenderer shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Successful Tenderer shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

19.2 Any transfer, sale or merger of the selected firm or acquisition by other firm with/without liabilities that may affect the contract directly and indirectly shall not be allowed. Similarly the Successful Tenderer cannot authorize anybody else other than the one indicated herein to receive payment as agreed upon for the duties performed under this contract.

19. Indemnities

20.1 The Successful Tenderer and the Authority shall indemnify, defend and hold each other harmless from any and all claims, actions cost, expenses, damages and liabilities including the attorney's fees, arising out of connected with or resulting from sole negligence or willful misconduct of that party's employees or agents.

20.2 However neither Party shall indemnify the other against the claims, damages, expenses or liabilities resulting from alleged, claimed or concurrent negligence or misconduct of the other party.

20.3 The Successful Tenderer shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise

20.4 The Successful Tenderer shall be responsible for damages or injury caused by the Successful Tenderer agents and employees in the course of their employment to the extent that the Successful Tenderer's liability for such damage or injury has been determined by a court or tribunal or otherwise agreed to by the Successful Tenderer, and the Successful Tenderer shall pay for such damages and injury to the extent permitted by prevailing laws in India.

20. Representations and Warranties

21.1 Each Party warrants and represents to the other that:

(l) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, necessary to execute and deliver this Contract and to perform its obligations;

(m) Its execution, delivery, and performance of this Contract has been duly authorized by, and is in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories and constitutes its legal valid and binding obligation;

(n) Its execution, delivery, and performance of this Contract will not result in a breach or violation of or constitute a default under any agreement, lease, or instrument to which it is a party or by which it or its properties may be bound to be affected; and

- (o) It has received no notice, nor to the best of its knowledge is there pending or threatened any notice, decree, award, permit, or order that would materially adversely affect its ability to perform hereunder.

21. Change in law

- 22.1 If as a result of change in Law, the Successful Tenderer suffers a reduction in net after tax return the aggregate financial effect of which exceeds 2.5% of his projected profits or if the Successful Tenderer enjoys an increase in net after tax return the aggregate financial effect of which exceeds 2.5%, in any Accounting Year, the Successful Tenderer may notify the Authority and propose amendments to this Contract so as to put the Successful Tenderer in the same financial position in terms of net after tax return as it would have occupied had there been no such change in Law.
- 22.2 Upon notification by the Successful Tenderer as aforesaid, the Parties shall meet as soon as reasonably practicable as but not later than 30 (thirty) days and agree on amendments to the rates to implement the foregoing.
- 22.3 Provided that if no contract is reached as aforesaid by the Parties within 60 (sixty) days of the meeting pursuant to this Clause the Successful Tenderer may by notice in writing require the Authority to pay in an amount that would put the Contractor in the same financial position it would have occupied had there been no such change in Law resulting in reduction in net after tax return as aforesaid.
- 22.4 If the Authority or the Successful Tenderer shall dispute the quantum of such compensation claims of the Successful Tenderer or Authority, the same shall be finally settled in accordance with the Dispute Resolution Procedure.”

SECTION 2: TERMS AND CONDITIONS FOR GOODS AND SERVICES

GENERAL PROVISIONS

1. Ownership Of Installed Modern Collection Systems

- 1.1. All Modern Collection Systems including the bins and the associated civil works installed by the Successful Tenderer will become the property of Berhampur Municipal Corporation after the completion of the payments quoted in the Part I of the financial proposal and the Successful Tenderer shall not have any claim on these assets subsequently.

2. Protection of Lien Holder's Interest

- 2.1. The Tender Inviting Authority recognize that project financing associated with **Successful Tenderer** performance on the contract may be accomplished using third party financing, and as such, may be secured by a security interest in this contract and the Successful Tenderer equipment or facilities referred to herein. To protect any lien holder's interest, the **Successful Tenderer** may be required to assign to its lenders, some or all of its rights under this contract, which will be null and void after the completion of the entire payment as quoted under the Part I of the financial proposal.

- 2.2. The Authority will consider:

- 2.2.1. Requests by lenders or lien holders for copies of any cure or show-cause notice issued to Successful Tenderer;

- 2.2.2. Requests by lenders or lien holders for extension of response time to cure or show cause notices;

3. Responsibility for Successful Tenderer-Installed Equipment:

The **Successful Tenderer** should not modify, replace, or change the systems and equipment during the Contract from that originally approved. However, some change may be allowed as per the site conditions and reason beyond control of all the parties, but after the prior approval of Commissioner, Berhampur Municipal Corporation. Any proposed modification, replacement, or change should require notification and coordination with and approval of the Tender Inviting Authority. Any such modification, replacement, or change of systems or equipment shall be performed by the Successful Tenderer at **NO COST** to the Authority and shall not interfere with Authority operations. However, the costs incurred for implementing any modification or improvement as required by the Authority shall be claimed along with the subsequent bill submitted to the Authority.

4. Project site access

The Authority shall provide access to the premises for Successful Tenderer and its sub-contractors during regular business hours, or such other hours as may be requested by Successful Tenderer and acceptable to the Authority, to install, maintain or operate the assets.

5. **Protection of Property:**

The Successful Tenderer shall take all necessary precautions during the progress of the work to protect the installed waste bins and notify the .

6. **Changed or Unusual Conditions:**

If an unexpected condition at the work site is encountered, the Tender Inviting Authority may, in its discretion, issue a Modification and modify the scope of existing contract with the Successful Tenderer, including such equitable adjustment as may be agreed upon between the parties.

7. **Operation and Maintenance of Installed Modern Collection Systems and Emptying Services.**

The Successful Tenderer shall train Authority personnel's as required to operate, maintain, and repair Modern Collection Systems as required for daily operation and in the event of emergencies.

8. **Extension of Time**

In case the work is delayed by:

- A. Force Majeure, or
- B. Abnormally bad weather
- C. Serious loss or damage by fire, or
- D. Civil commotion, local commotion of workmen, strike or lockout, affecting any of the trades employed on the work, or
- E. Any other cause, which, in the absolute discretion of the Tender Inviting Authority is beyond the Successful Tenderer's control

Then upon the happening of any such above mentioned event causing delay, the Successful Tenderer shall immediately give notice in writing to the contracting officer and may request for the extension of time on that account. The Successful Tenderer may also, if predictable, indicate the period for which extension is desired.

The Tender Inviting Authority may give a fair and reasonable extension of Construction Completion Date of the work, and the decision of the Tender Inviting Authority in this regard shall be final and binding upon the Successful Tenderer.

9. **Compliance with Labour Regulations**

The Successful Tenderer and consortium partners (if any) shall abide by all existing and future labour enactments and rules made there under, regulations, notifications and by-laws of the State or Central Government or local authority and any other labour law.