

Ref.: DUQM/2016/T29/15-5

Date: February 28, 2016

**Circular No. (4)**

Reference: **TENDER 29/2015 – Consultancy Services for Construction Supervision of the Fishery Port at Duqm**

Tender Documents Collection date: 04<sup>th</sup>  
January 2016

Submission date: Tuesday/16<sup>th</sup> Feb 2016

**1<sup>st</sup> Revised Submission Date: Tue/08<sup>th</sup> March 2016**

**Dear Bidders;**

Reference to the bidder's clarification on the above subject, kindly see the attached reply to queries for your kind action and record.

**NOTES:**

- All Bidders are to endorse this Circular and attach it as part of their tender submission.
- Bidders are advised that SEZAD **shall not** accept any further queries as tender shall be submitted on **Tuesday/08<sup>th</sup> March 2016 at 12h00, Muscat Time.**

Kind regards

SEZAD, Tenders & Contracts





No.	Item in Tender	Queries by Bidders	Response by SEZAD
1	General	Our understanding is that the project is a green-field development and therefore there are no existing utilities within the project site (i.e. no demolition / diversion works). Please confirm.	While there is no confirmed presence of utilities, utilities providers shall be consulted on existing utilities within the project site
2	General	In order to increase ours competitiveness we would like to participate at the tender in Joint Venture with another international company already based in Oman. Please clarify if it is allowed.	Yes, it is allowed for a JV, albeit submission of the JV or a Letter of Commitment to be signed by both (all JV members). This Letter is to be submitted as part of the Technical Proposals package.
3	General	A statement stating that the Bidder is not currently involved in any arbitrations or litigations in any country. : Please confirm if this means any arbitrations or litigations including by us or arbitrations or litigations against us.	It is for both – by Bidder and against Bidder.
4	General	A statement stating that the Bidder is not suspended or debarred from participating in public projects in any country. Here, 'suspended ..... in public projects' normally means for a period. Pls confirm.	Period is of past 2 years' tenure.
5	General	Has earthquake factor considered in the design by CES? Oman is now considered earthquake prone area and hence we suggest to advise the EPC contractors to consider earthquake factor in the design, if not already considered by CES.	The Contractor has to consider this. The Consulting Engineer has to direct the Contractor during the review of design or as appropriate.



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6	General	<p>With reference to the tender in subject, we would like to know if a Consultant participating to this tender can participate as Design Consultant for a Contractor participating to the construction tender (tender n° 30/2015). Looking forward to your kind reply.</p>	<p>It is the prerogative of the Consultant participating in this Construction Supervision tender (Tender 29/2015) to participate as a Design Consultant for a contractor to the Construction Tender (Tender 30/2015). However, the successful Consultant (under Tender 29/2015) will not be eligible/permitted to provide design consulting services to the Contractor (of Tender 30/2015).</p>
7	Advance Payment	<p>Request to provide 20% advance payment considering a design team has to be mobilized for the project.</p>	<p>SEZAD can consider and all Advance Payment shall be furnished with a Bank Guarantee and recovery of the advance payment shall be made during the progress of the services.</p>
8	Performance bond	<p>We request SEZAD to agree for parent company guarantee in lieu of 5% performance bond since there is 5% retention money is kept by SEZAD and a high value PI Insurance of OMR 5 million also is to be provided by the consultant. Please confirm agreement.</p>	<p>SEZAD requires the 5% Performance Bond (in banker's guarantee); parent company's guarantee, regretted; not acceptable.</p>
9	<p>Insurances Pg. 19, Sl. 1.26</p>	<p>The successful Bidder shall be required to obtain the insurances stipulated in the Conditions of Contract and to lodge them with the Client, indemnifying and saving harmless the Client from losses which may be caused by his faulty and/or erroneous designs(s). The successful bidder will not be responsible for design but only review of it. Please clarify accounting of responsibility for erroneous design.</p>	<p>Design responsibility shall rest with the Contractor for erroneous design.</p>

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10	Modification and Withdrawal of Tender submission Pg. 14, Sl. 1.20, second para.	The Bidder's modification or notice of withdrawal shall be prepared, sealed, marked and dispatched in accordance with the provisions of Clause 18(a) of these instructions. Clause 18 (a) not found. Please clarify.	Clause 18(a) shall read as Clause 1.18.1
11	Section 1-Clause 1.19 Submission of Tenders	It is stated that "The sealed envelope comprising the Technical Proposal and Financial Proposal shall be delivered as specified". However we presume there shall be two envelopes one for technical and another for financial as described in the initial part of Clause 1.19. Please confirm.	Yes, there shall be two (2) envelopes (one Technical Proposal and the other Financial Proposal) to be submitted.
12	Preliminary Tender Documents for "Construction of the Fishery Port (Marine and Roads Related) at Dugm- Volume 1 to 5" viewed at SEZAD Office	It is noticed that the CES prepared drawings are dated June 2013 whereas Lanka Hydraulic Institute prepared Mathematical Model Study is dated March 2014. Has CES confirmed that their design holds good for worst case of cyclonic wind speeds and wave heights considered in the model study and the wind speeds reported on 27 July 2015? IF CES cannot confirm this, it is suggested to advise the EPC bidders on this and caution them to consider this while submitting bids. This is to avoid variation by EPC contractor on award.	The Contractor has to take care of these. The Consulting Engineer has to direct the Contractor accordingly.

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13	Section 1 – Instructions to bidder – in the clause 1.7.13	<p>It is mandatory for the Bidder to provide “A forecast of anticipated interim valuations related to the proposed service schedule, taking into account the annual Cash Flow inserted by the Client in the Appendix to the Form of Tender”.</p> <p>In item 6 of the Appendix to the Form of Tender is missing the annual Cash Flow that should have inserted by the Client. Kindly confirm it.</p>	<p>Submission of Cash Flow forecast is a submission of Consultants’ forecast of the anticipated interim valuations related to the Proposed Service Schedule; <u>without</u> (do delete off) the ‘Annual Cash Flow inserted by the Client in the Appendix to the Form of Tender’.</p> <p>(b): Upon award, SEZAD shall work with the Successful Bidder to further review and/or work on the Cash Flow as deemed necessary’.</p>
14	<p>Liability Cap and Consequential Loss</p> <p>Sl. 21 of Standard Form of Agreement, March 1987</p>	<p>The Consulting Engineer is liable for all the consequences of negligent acts, errors and omissions on his part or on the part of his employees, sub-consultants, agents or assignees.</p> <p>Consequential Loss: There is no waiver of consequential loss and hence we would be liable for damages relating to loss of profit, loss of revenue et al.</p> <p>As there is no liability cap, our liability for consequential loss would be unlimited.</p> <p>We request to cap our liability.</p>	<p>Agreeable to cap to <b>OMR 20m.</b></p>

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15	Supervision Defects Sl. 21 of Standard Form of Agreement, March 1987	<p>The Consulting Engineer is responsible for the Design Defects and all the consequences thereof of the works designed by him.</p> <p>The Consulting Engineer in supervising the works shall be responsible for all defects, damage, loss or omission so caused to the works which may be attributed to his negligent supervision or his failure to issue such necessary instructions, e.g. Engineers Instructions, certificates of Payment etc.</p> <p>Repair and replace liability: Liability for design defects, supervision defects and errors. We would be liable for repair and replacement liability.</p> <p>As stated above we request to cap our liability.</p>	<p>Agreeable to cap to <b>OMR 10m.</b></p>
16	Tender Evaluation Criteria – Technical Scoring Pg.17, T6, Proposed Study Methodology and sequence of work	<p>Provided clear and complete method statement and work plan covering all aspects of project (project phases, planning, communications, phases of deliverables etc. and including clear and complete preliminary design, detail design and execution.</p> <p>We understand that only Design Review is in our scope and not preliminary design, detailed design. Please clarify/confirm.</p>	<p>Consulting Engineer shall demonstrate competency in the various phases of design and execution.</p>
17	Section 2- Clause 2.1 Standard Conditions of Engagement- Clause 9.2 Payment of retention money	<p>Request to release 50% of the retention money for supervision services upon issue of the Certificate of Completion and the balance 50% of the retention money after period of maintenance as agreed in the case of EPC contractors.</p>	<p>Agreed. 50% of the retention money for supervision services to be released upon issue of the Certificate of Completion and the balance 50% of the retention money after period of maintenance</p>



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18	Section 2- Clause 2.1 Standard Conditions of Engagement Clause 9.4	<p>DELAYS IN PAYMENT. We notice that as per Std Conditions Clause 9.4, if, after a total of 60 days, the Client fails to pay such amounts and the Consulting Engineer has given notice then the Consulting Engineer is entitled to claim interest at the rate of 7% from the date of expiry of the said period of 60 days until the date of receipt of payment. Please confirm this is applicable for this tender.</p>	<p>Yes, it is applicable.</p>
19	Section 2- Clause 2.1 Standard Conditions of Engagement Clause 21.5	<p>The Supervision Consultant shall not be liable for (i) direct losses such as loss of profit, loss of revenue, loss of opportunity, loss of production, business interruption, cost of capital, cost of finance or any other economic loss and/ or (ii) indirect or consequential losses or damages (loss of profit/turnover) under the Contract, whether or not foreseeable at the effective date of the Contract. Please confirm</p>	<p>Confirmed.</p>
20	Section 2- Clause 2.1 Standard Conditions of Engagement- Clause 21.5- Insurance Cover	<p>We have seen the reply vide Circular 1 TQ 17. However last sentence of Clause 21.5 mentions "The provision of such certificate (PI Insurance) shall not lessen or reduce the liability of the Consulting Engineer as contained in Clauses 21.0 and 22.0 hereof. Our corporate Legal Dept has advised that liability is not limited by the PI Insurance value because of this sentence. Request to provide more clarity on the subject. Can we assume that PI Insurance value is the aggregate limit of liability under Clause 21.5 to meet</p>	<p>The Standard Conditions of Engagement is the current prescribed (Oman's) standard terms and conditions. SEZAD has some flexibility in accepting amendments to these standard terms and conditions, as the circumstances/project warrant. The proposed amendment is <u>acceptable</u>. (All Circulars do form part of the Contract Agreement and the responses/replies including</p>



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		<p>the liability if any as per contract obligation and Std Conditions of Contract applicable?</p> <p>Request to add an amendment that "If at any time before the expiry of the liability period of two years as specified in Clause 22 , the Works attributable to the Consulting Engineer shall prove inadequate, Consulting Engineer shall take remedial actions within a reasonable time as per notification issued by Client. Liability of Consulting Engineer for direct damages arising out of defective Works shall, however, not exceed the PI Insurance value under this Agreement. Consulting Engineer shall specifically not be liable for any indirect and consequential damages (including without limitation damages as a consequence of delays, loss of profit, loss of turnover or loss of product) sustained by Client. The foregoing limitation shall not apply to or be reduced by the violation of rights of third parties as specified in Clause 21.4 and in cases of fraud, gross negligence or wilful misconduct."</p>	<p>agreed amendments to the standard terms and conditions shall be effective/applied accordingly. Avoiding the time to issue 'Amendments as agreed/stated in the Circular(s)'; shall be deemed as 'Amendments').</p>
21	<p>Section 2- Clause 2.1 Standard Conditions of Engagement- Clause 9.4 Delays in Payment</p>	<p>TQ No.15 vide circular 1 confirms that Std Conditions will be applicable. However Appendix to Form of Tender (page 42) item 5 states Interest for Delay is not applicable. An addendum is required.</p>	<p>By this Circular, the interest for delay as per the Standard Conditions shall apply. Appendix to the Form of Tender (page 42) item 5 shall be amended to 'Interest for Delay is applicable'.</p>

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22	Section 2- Clause 2.1 Standard Conditions of Engagement- Clause 15.5 Force Majeure – Notice to Terminate	Request to add an amendment that the Consultant shall be entitled to compensation of demobilization and mobilization costs and idle time in case of termination due to Force Majeure	SEZAD regrets that for this aspect, the clause and its implication (of non-entitlement) applies. No amendment.
23	Section 2- Clause 2.1 Standard Conditions of Engagement- Clause 19.2 Confidentiality	Request to add an amendment that the period of confidentiality shall be limited in time of 5 years from effective date or termination whichever is earliest.	Acceptable/agreed.
24	Section 2- Clause 2.1 Standard Conditions of Engagement- Clause 19.5 – Variations	Request to add an amendment that any requested change by Client shall be mutually agreed in writing prior to implementation of the change. Also the Consultant shall have the right to request a variation order if it considers that an event has taken place for which it believes it is entitled to request a variation.	Reasonable and acceptable/agreed.
25	Section 2- Clause 2.1 Standard Conditions of Engagement- Clause 20.1- Information to Consultant Engineer	Request to add an amendment that the Consultant is entitled to rely on data and information furnished by client and shall bear no responsibility for to Client for any Work rendered based on faulty or erroneous, data and information provided by Client.	Not agreeable. Consultant(s) must verify from the issued/furnished information by Client.

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26	Construction (Execution) Period – Rates of Consultant Pg. 26, Sl. 4.1.5 & Pg. 35, Sl. 6.2.6	Sl. 4.1.5: For any extension of the project, the number of staff will be as approved by the Client and the rate will be as quoted. Sl. 6.2.6: The rates per month shall be binding for four (4) years from the date of submission of this Tender. Rates for supervision after the said period shall be subject to good-faith mutual negotiations, taking into consideration official inflation rate index, market conditions and other significant factors. Sl. 4.1.5 says rate of supervision staff during extended period will be as quoted. Sl. 6.2.6 says rates after 4 years to be mutually negotiated. Please clarify the contradiction	The rate as quoted will be binding for 4 years. After the 4 years, the rates for supervision shall be subject to good-faith mutual negotiations, taking into consideration official inflation rate index, market conditions and other significant factors.
27	Maintenance Period Pg. 31, Sl. 4.1.8	The Consulting Engineer shall arrange the staff who was involved in the execution of the project for inspection during maintenance period. Request to identify staff required to make visit. This will help to quantify our efforts.	The Consulting Engineer shall make his own judgement and identify the appropriate and competent staff to make the visit.
28	Reports Pg. 33, Sl. 4.1.10.3	Design Review Report as referred in Section 3 to be submitted within 3 days. The scope in Section 3 is quite extensive and time allotted need to be revised to 3 months (particularly considering 3.2.4 and 3.2.5)	The Consulting Engineer shall check, review and verify Contractor's submission within 2 weeks upon receipt. Thereafter a formal report shall be submitted to the Client within 3 days.

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29	Design Stage Pg. 21, Sl. 3.2	The Consulting Engineer is required to provide necessary design services to check on the submission by the Contractor of the Fishery Port Project, including any subsequent changes or modifications made to the original design of the Works or Drawings. The design services shall be provided until the successful completion of the project.  Request to clarify on the “original design” of the works or Drawings. Does it refer to the third party mentioned in next para. Please confirm.	It is not limited to third party design and includes all submissions by the Contractor.
30	Design Stage Pg. 21, Sl. 3.2	The Consulting Engineer shall complete all checking on submissions by the Contractor or third parties within 10 working days from the day the submissions are made available to him.  Request to increase the period to 21 days. Please confirm that this period will be the time allowed for checking of design submissions submitted progressively to the Consulting Engineer (Supervision Consultant).	The Consulting Engineer shall plan and schedule the submissions with the Contractor and respond to the Contractor’s submission within 10 working days from the day the submissions are made available to him.
31	Design services Pg. 21 & 22, Sl. 3.2.4 and 3.2.5	Check the details of the modifications/changes to ensure consistency with the original design and that they conform to the local Codes and Standards  Evaluate, analyse and review the impact of such modifications/changes on other key structural elements of civil and marine engineering structures and overall structural integrity	Vol V-“Reports and Design References” as provided in the preliminary construction Tender Documents “Construction of the Fishery Port (Marine and Road Related) at Duqam” will be available.

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32	Remuneration and Scope of Construction supervision services  Sl. 1.11, Pg. 11 and 12 and Pg. 27 Sl. 4.1.5.4, Pg. 35 Sl. 6.2.7	<p>Please confirm that the following data will be made available for this purpose:</p> <ul style="list-style-type: none"> <li>• Bathy and topo survey data</li> <li>• Geotechnical Reports</li> <li>• Hydraulic Model Study Reports</li> </ul> <p>Sl. 1.11 - The Consulting Engineer shall provide a replacement approved by the Client, when an existing staff is away on leave for more than one month period. Sl. 4.1.5.4 - The Consulting Engineer shall be aware that any leave/absence of staff shall be replaced with equivalent staff as approved by the client. Sl. 6.2.7 - The Bidder shall be aware that payment will not be paid if a staff of the Construction Supervision Team is away on leave, except for official national holidays. The Consulting Engineer shall provide a replacement approved by the Client, when an existing staff is away on leave for more than one-month period.</p> <p>Please confirm that replacement of staff will be needed only in case of leave of staff for more than a month. In case of leave period is less than or equal to one month, the responsibility will be shared among other supervision staff.</p>	<p>Confirmed.</p> <p>It is the Consulting Engineer's responsibility to ensure that the level of service and supervision is maintained when the responsibility is shared among other supervision staff.</p> <p>Confirmed.</p> <p>Any staff who is on leave and without a replacement will not be paid.</p>

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33	Section 4 Clause 4.1.5 & Section Clause 6.3 items 4 and 6	Circular 1 TQ 35 did not answer the query on day rates and mobilization/demobilization cost for underwater services involving underwater inspector and marine surveyor. We intend to engage specialized third party for underwater services with equipment and this will be a team work involving more than one person. Request SEZAD to agree for day rates for inspection/survey team and mobilization/demobilization cost in the tender schedule for underwater services for inspection and marine survey.	Price according to Schedule of Remuneration. Payment will be processed on number of man days for underwater inspector only, Equipment as listed in the construction contractor shall be provided by the Contractor for inspection.
34	Addendum 1	<b>In Addendum 1 – S/No A1.2</b> Replace “Section 3 “and “Section 2” Amended Clause 4.1.1.2: The services to be provided by the Consulting Engineer shall also include the scope of services detailed in the review of design and modification to the design etc. “Condition of Engagement” (Ref. in Section 2.0).	Amend (Addendum 1 states Replace “Section 3” and “Section 2” Should be Replace “Section 3 “ with “Section 2” in Clause 4.1.1.2 instead of Replace Section 3 and Section 2) Replace “Section 3 “ with “Section 2” in Clause 4.1.1.2
35	Office Support 4.1.9	It is mentioned that the consultant is required to provide full office support; does this include an office and furnishing? Or will these be provided by the contractor and the Consultant has to provide only office facilities (computer, printer, telephone, scanner and internet). Can you please provide us with the detailed maps and drawings?	Provided in the preliminary Tender Documents “Construction of the Fishery Port (Marine and Road Related) at Duqm” available for viewing.