

MEMORANDUM OF UNDERSTANDING

For Pre-tender tie up with Design Consultant related to the Work for quoting & execution of "Construction of important Br.553 (18x45.7m OWG) at km 411/537 over Kathojodi River in EPC mode (design and execution of foundations, substructures & superstructures) between Nirgundi (NGR) and Baranga (BRAG) in connection with construction of 3rd line between Bhadrak (BHC) and Vizianagram (VZM) under Khurda Road Division of East Coast Railway in the State of Orisha, India"

This Pre-Tender Memorandum of Understanding is made at Kolkata on the _____ December'2023

BY AND BETWEEN

THE BRAITHWAITE BURN AND JESSOP CONSTRUCTION COMPANY LIMITED, an existing company under the provisions of Companies Act 2013, having its registered office at – 27, Rajendra Nath Mukherjee Road, Kolkata – 700 001, West Bengal, India (hereinafter referred to as "BBJ") which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns, of the **FIRST PART**.

AND

(Name of Design Consultant) , a Proprietorship Firm / Partnership Firm / Company having its office at _____a, Pin Code - _____, being represented by its Authorized Representative – MR. _____, aged about _____ years, Son of – _____, residing at _____, P.O. _____, P.S. _____, District – _____, Pin Code - _____, (Hereinafter referred to as the 'Design Consultant') which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns, of the **OTHER PART**.

The Expression 'BBJ' and 'Design Consultant' shall, wherever the context admits, mean and include their successors-in-interest and assigns and shall collectively be referred to as "the Parties" and individually as "the Party".

PREAMBLE

1. **WHEREAS** BBJ intends to participate by submitting the EPC tender of RVNL (hereinafter called "Employer") for "Construction of important Br.553 (18x45.7m OWG) at km 411/537 over Kathojodi River in EPC mode (design and execution of foundations, substructures & superstructures) between Nirgundi (NGR) and Baranga (BRAG) in connection with construction of 3rd line between Bhadrak (BHC) and Vizianagram (VZM) under Khurda Road Division of East Coast Railway in the State of Orisha, India", Tender No. RVNL-BBS-NRG-BRAG-Br-553- (hereinafter referred to as the "said Project")
2. In the event BBJ being the successful bidder in getting the contract for the said Project, BBJ intends to off-load the Design Part of substructure and foundation the said Project to the Design Consultant by issuing specific Work Order on such terms & conditions to be determined by BBJ. The Design Consultant upon formal acceptance of the said Work Order and after submission of required Performance Bank Guarantee / Earnest Money Deposit / Security Deposit to BBJ within the stipulated time frame, they will be engaged by BBJ for the entire Design part of the said Project of RVNL.
3. As BBJ will be the Bidder for the said Project of RVNL. For the said purpose of submission of the Bid by BBJ, the Design Consultant agrees to submit all the required Design, Drawing and Planning, other related documents, Methodology Statements, etc. for the said Project and subsequent clarifications, if any, to BBJ within the specified time frame fixed by BBJ.
4. **NOW THIS MEMORANDUM WITNESSETH** that it is hereby agreed by and between the parties hereto as follows:
 - A. The scope and responsibility and participation of the Design Consultant in this MOU shall generally be as follows:
 - i) The Design Consultant shall prepare and provide the required Design, Drawing and Planning, Engineering, Quantity Survey, Providing assistance during execution, etc, for the work during execution, maintenance, etc. as per fulfilment of the contract conditions in both pre-tender stage (limited to, engineering with drawing, planning, preparation of BOQ for the work, etc.

and all the works in post tender stage (including Finalisation of the work executed in pretender stage along with submission, obtaining approval including Proof Checking., etc. all the work related to the instant tender by RVNL.

- ii) The Design Consultant shall bear their own expenses to submit necessary documents for their Bid.
- iii) The Design Consultant agrees and undertakes to indemnify and hold harmless BBJ against any liability, loss, cost, damages or expenses sustained as a result of breach or default or negligence or improper performance or disturbance caused by itself or by any of its subcontractors or associates in connection with its part of Works as per Contract.
- iv) For the execution of the scope of work, the Design Consultant shall make own arrangements to bring in the required finance, plant and equipment, materials, manpower and other resources as per the Bid Condition or written direction given by BBJ.
- v) Also, the Design Consultant will work in coordination with a BBJ's appointed design director (the "Design Director") who will head the Contractor's design unit.
- vi) The Design Consultant shall appoint at its cost a proof check consultant (the "Proof Consultant") who should possess design competency and approved by BBJ/RVNL
- vii) The Design Consultant shall co-operate with BBJ throughout the entire period of this MOU on the basis of exclusivity and shall not make arrangement or enter into agreement either directly or indirectly with any other Party or Group of Parties on matters relating to the Project except with the prior written consent of BBJ. The Design Consultant shall not assign or transfer its interest specified in this MOU to any other party without the prior written consent of BBJ.

B. The scope and responsibility of BBJ in this MOU shall generally be as follows:

- i) BBJ will be responsible for participation and securing contract(s) for the said Project of RVNL
- ii) In the event BBJ being the successful bidder in getting the contract for the said Project, BBJ will off-load the specific portion of the said Project to the Design Consultant. In this regard the decision of BBJ shall be final.
- iii) BBJ will make payments to the Design Consultant after successful completion of the off-loaded portion of the said Project by the Design Consultant, at the agreed rates for the specific project / contract on back-to-back basis when BBJ will get corresponding payment from the concerned Authority of RVNL.

5. **Jurisdiction:**

This MOU shall be governed by the laws of India and both the parties shall obtain all necessary approval from appropriate authorities such as, Board / Ministry etc. as and when required for smooth execution of projects. The Courts in Kolkata will have exclusive jurisdiction in respect to any disputes arising out of this MOU or relation thereto.

6. **Validity:**

This MOU shall expire upon happening of the earliest occurrence of any of the following events:

- a) BBJ does not become eligible to bid for the project or
- b) Having become eligible to bid BBJ submits a tender which is unsuccessful or
- c) Having been awarded the contract, on completion of the defect liability period and maintenance period of the contract or
- d) On the signing of a detailed Agreement by the Parties, setting out therein detailed terms of the said agreement.

7. **Confidentiality:**

All information acquired/obtained from one party by the other shall be treated as confidential by the recipient and shall not be used other than for the purpose meant for without the consent in writing of the party providing the information.

8. Settlement of Disputes/ Arbitration:

In case a dispute or difference of any kind whatsoever, arises out of or relates to the present MOU or ancillary / incidental as to the terms and conditions of it or relates to any matter for execution and/or performance, it is a term of the agreement by and between the parties herein that before invoking arbitration, the aggrieved party shall first & foremost refer the matter to the Competent Authority of BBJ and the decision / recommendation / interpretation made by the said Competent Authority of BBJ shall be final & binding upon both the parties.

If a party is dissatisfied with the decisions / recommendations aforesaid, and notwithstanding anything else contained elsewhere, the aggrieved party may by a notice in writing to the Competent Authority of BBJ clearly evince the intention to refer the disputes and differences that have arisen between the parties to Arbitration by constitution of an Arbitral Tribunal. The Arbitral Tribunal shall consist of three Arbitrators, one each to be nominated by the respective parties and the third to be appointed by the nominated arbitrators.

Pending submission of and/or decision on a dispute or difference as aforesaid or until the Arbitral Award is published, the parties (if the Contract is not terminated / cancelled) shall continue to perform all of their obligations under this present MOU, without prejudice to a final adjustment in accordance with such award.

The decision of the Arbitral Tribunal arrived at after hearing the parties shall be final and binding upon the parties. The Arbitration Proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modifications or re-enactments thereof.

It is also agreed by the parties that the Arbitration Proceedings shall be conducted in English language. The venue of Arbitration shall be Kolkata only and any proceedings arising out of this Agreement / Contract shall be subject to the jurisdiction of Courts at Kolkata.”

9. General:

- a.** All notices which are required to be given hereunder shall be in writing and shall be sent to the address of Registered Office of the Company or to the addresses as set out in this MOU or such other address in India as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by Speed Post or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by Speed Post, after five working days from the date of posting and if by facsimile transmission when dispatched.
- b.** ‘Project Specific Agreement’, prepared in line with the present MOU, shall be signed between the parties for construction of Projects over each land after reaching consensus of the parties herein.
- c.** Neither party shall be entitled to have any claim for damages against the other party in respect of non-performance or delay in performance of this MOU caused by reason of any event beyond the reasonable control of other party, including but not limited to government action, war, hostilities act of the public enemy, civil commotion, any imminent threat of the proceeding, sabotage, fire, flood explosion, epidemics, acts of God, quarantine restrictions, strike or lockout, orders/directions of any statutory/judicial authority etc.
- d.** By this MOU It is not the intention of the Parties hereto, through this MoU, to create a co-operation or partnership or trust or any other form of legal entity, not to be an act of incorporation, nor to constitute any party to be a partner, agent, representative or trustee of the other Party vis-a-vis third parties. The relationship between the Parties hereto shall be on exclusive basis and limited to the terms and conditions of the Bid specific.
- e.** Further, by virtue of this MoU none of the Parties herein shall be authorized, nor entitled to use the Trade Mark / Name / Logo, etc. of the other Party.

f. Other matters not stipulated in this MOU shall be discussed and decided later between the Parties.

g. This MOU is being executed in duplicate.

10. By signing this MOU, the Parties acknowledge that it correctly records the understanding the parties have reached with regard to the mutual co-operation in their common interest.

THIS MOU IS MADE BETWEEN BBJ AND *DESIGN CONSULTANT* WITH THE APPROVAL OF THEIR RESPECTIVE BOARD OF DIRECTORS OF THE COMPANY AND IS SIGNED BY THE DULY AUTHORIZED REPRESENTATIVE OF BOTH THE PARTIES, IN PRESENCE OF THE FOLLOWING WITNESSES:-

FOR AND ON BEHALF OF
DESIGN CONSULTANT

FOR AND ON BEHALF OF
**The Braithwaite Burn And Jessop Construction
Company Limited. (BBJ)**
(A Government of India Enterprise)

Witnesses

1.

2.

Witnesses

1.

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