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Tariff Authority for Major Ports

G No. 335

New Delhi,

26 December 2013

ADDENDUM

(Passed on 5th day of December 2013)

This Authority had passed an Order on 10 September 2013 in case no.TAMP/39/2013-KOPT relating to proposal received from the Kolkata Port Trust (KOPT) for notification of reference tariff for Container Terminal project of Kolkata Port Trust, under the Guidelines for Determination of Tariff for Port Projects at Major Ports, 2013. This order was notified in the Gazette of India Extraordinary (Part III, Section 4) on 30 September 2013 vide G.No.255.

2. It is noticed that some relevant clauses stipulated in the Guidelines of 2013 were inadvertently not prescribed while notifying the said Order. Though the Guidelines of 2013 are in the public domain, it is considered appropriate to prescribe the relevant clauses in the said order. Accordingly, the following clauses provided in the guidelines of 2013 are added in the tariff Order dated 10 September 2013:

- “1. From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 of the guidelines of 2013 which will be applicable for the entire concession period.

However, the PPP operator would be free to propose a tariff along with Performance Standards (the “**Performance Linked Tariff**”) from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such **Performance Linked Tariff** shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (and this will be the **Tariff Cap**). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

2. The proposal shall be submitted to TAMP along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the Concession Agreement or for the actual number of months of operation in the first year of operation as the case may be.
3. On receipt of the proposal, TAMP will seek the views of the Major Port Trust on the achievement of Performance Standards as outlined in para 5 of the Tariff Guidelines of 2013, within 7 days of receipt.
4. In the event of Operator not achieving the Performance Standards as incorporated in the Concession Agreement in previous 12 months, TAMP will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the Operator shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.
5. After considering the views of the Major Port Trust, if TAMP is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.

6. While considering the proposal for Performance Linked Tariff, TAMP will look into the Performance Standards and its adherence by the Operator. TAMP will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the operator. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the Tariff Guidelines of 2013.
 7. From the third year of operation, the Performance Linked Tariff proposal from the PPP operator shall be automatically notified by TAMP subject to the achievement of Performance Standards in the previous 12 months period as certified by the Independent Engineer. The PPP operator, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the independent engineer by 1st March and TAMP shall notify by 20th March, the Performance Linked Tariff to be effective from the ensuing financial year.
 8. In the event any user has any grievance regarding non-achievement by the PPP operator of the Performance Standards as notified by the TAMP, he may prefer a representation to TAMP which, thereafter, shall conduct an inquiry into the representation and give its finding to the concerned Major Port Trust. The Major Port Trust will be bound to take necessary action on the findings as per the provisions of the respective Concession Agreement.
 9. Within 15 (fifteen) days of the signing of the Concession Agreement, the concerned operator will forward the Concession Agreement to TAMP which will host it on its website.
 10. The PPP operator shall furnish to TAMP quarterly reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each berth. In addition, for the container berths, quarterly reports shall also be provided on average moves per crane hour and average dwell time for containers. The quarterly reports shall be submitted by the PPP operator within a month following the end of each quarter. Any other information which may be required by TAMP shall also be furnished to them from time to time.
 11. TAMP shall publish on its website all such information received from PPP operator. However, TAMP shall consider a request from PPP operator about not publishing certain data/information furnished which may be commercially sensitive. Such requests should be accompanied by detailed justification regarding the commercial sensitiveness of the data/information in question and the likely adverse impact on their revenue/operation of upon publication. TAMP's decision in this regard would be final."
3. The Order dated 10 September 2013 passed by this Authority has to be read in conjunction with the addendum. The KOPT is also advised to include the above-said clauses in the bid document for the relevant PPP project.

(T.S. Balasubramanian)
Member (Finance)