



**WHEREAS.**

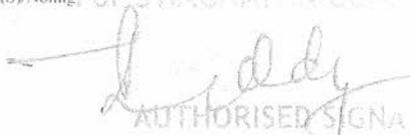
- A. The Agra Municipal Corporation (AMC) is responsible for providing municipal and civic services in areas falling under AMC area.
- B. AMC is desirous for Operation and Maintenance of 6Nos. Portable Compactor Transfer Station (PCTS) along with 09Nos. Hook Loader and 23Nos. Portable Compactor for the period of 5 Years within Agra Municipal Limits.
- C. AMC floated tender and invited proposals, through a competitive bid process from eligible parties for implementing the Project. In response thereto, AMC received proposals from parties including the Successful Bidder for implementing the Project.
- D. Successful Bidder acknowledges that Bid was made in accordance with RFP, and has gone through Draft Concession Agreement and further agrees to abide by the terms and conditions of Tender Documents.
- E. Pursuant thereto, after evaluating the aforesaid proposals and negotiations, AMC accepted the proposal submitted by the Successful Bidder and issued Letter of Intent No. 311/21/2021 dated 21/12/2021 to the Successful Bidder requesting the Successful Bidder to execute the Agreement, which the Successful Bidder has acknowledged.

**1. Scope of work**

Operation and Maintenance of 06Nos. Portable Compactor Transfer Station (PCTS) along with 09Nos. Hook Loader and 23Nos. Portable Compactor for the period of 05 Years within Agra Municipal Limits.

- a) All the man, material and maintenance machinery required for carrying out comprehensive operation and maintenance for 5 years including daily out shedding from the PCTS location shall be done by the bidder as per the agreement.
- b) Operation of PCTS will be monitored by concerned sanitary inspectors/ ZSO/ NSA and Nodal officer Swachh Bharat Mission. Successful Bidder will follow their instructions in a day to day working.
- c) All repairs and replacement i.e. lubricants, consumables as Radiator coolants and other daily check will be in the scope of bidder/agency which also includes repairing for tyre puncture, all spares, accessories. The repair and maintenance if any on chassis will be in the scope of bidder which also included replacement of tyre/tubes, battery etc.
- d) All the repairs and maintenance will be done by the bidder as per the general specifications and standards of machinery and bidder will follow the instruction of Executive engineer (E&M) and chief Engineer (E&M).
- e) The electricity charges and all other fuel charges shall be borne by bidder.
- f) All provisions of skilled/un-skilled and other supervisory staff required for the scope of work shall be the responsibility of the agency. During use of machine, all the technical staff, operators, drivers and un-skilled staff of different equipment shall be under the scope of firm. Sanitation staff would be also in the scope of successful bidder.
- g) The bidder shall be responsible to keep the PCTS, Hook Loader and Portable Compactor neat, tidy and fit in all respects.
- h) All Minor and major repairs of the equipment required due to any accident, natural calamities, riots and theft etc. shall be under the scope of work of the firm. M&T Department Nagar Nigam would provide support for Police &/ Legal Case.
- i) All court matters impounding and other implications due to accident, negligence of operator and other reason shall be dealt by the Bidder at his risk and cost at all levels and for all matters.
- j) The bidder may carry out major works in their authorized work-shop. No expenses on account of Transportation/Cartage of equipment/parts etc. shall be paid by the department.
- k) All labour and other staff deployed for comprehensive operation and maintenance shall be at the roll of the bidder and not on the rolls of the AMC as such their staff cannot claim for any service benefit from AMC or represent in any court of law. All labour laws and other applicable laws for carrying out the work shall be followed by the bidder and the Department will not be responsible for any lapse/consequences on these accounts.
- l) Any misshapen at site during comprehensive operation and maintenance of machines for any reason whatsoever shall be responsibility of the Bidder. Bidder should ensure that the staff deployed should not have bad antecedent. The Bidder will also be responsible for any damage to any equipment/property of AMC and shall also restore the same to the satisfaction of the Executive Engineer (E&M)
- m) The equipment should comply with pollution norms throughout the period of contract and any penalty etc. in this regard shall be in the scope of work of the bidder.
- n) Bidder will ensure timely disposal of filled compactor and will arrange the staff for minimum 3 trips of each hook loader from transfer station to kuberpur site.
- o) Work will be carried out all the days, there will not be any holiday during work.
- p) Successful bidder will maintain logbook at each transfer station in which proper record of incoming vehicles and compactor movement will be maintained.

EE(S)/Noting For SWACHH AGRA CORPORATION

  
AUTHORISED SIGNATORY

  
DATE: 21/12/2021

- q) Every hook loader will be GPS-enabled and its tracking will be done from Integrated control and command center of Agra Municipal Corporation.
- r) Successful bidder has to appoint a project manager who will supervise all the activities and coordinate with AMC officials.

2. **Other Conditions**

- a) The comprehensive Operation and Maintenance charges will be obtained on per month basis.
- b) The agency should offer the rates for comprehensive Operation and Maintenance of 06Nos Portable Compact Transfer Station (PCTS) along with 09Nos Hook Loader and 23Nos. Portable Compactor for 5 Years on keeping view of the warranty concession.
- c) The equipment after the end of the contract i.e. after 05 years will be handed over to AMC in good and tid condition.
- d) RTO & Comprehensive Insurance, Fitness, Pollution of Machine would be obtained by Nagar Nigam Agra (M&T) department.
- e) Service Center Space, Water, Parking Space for Hook Loader with CCTV, Security Guard for PCTS would be provided by Agra Nagar Nigam.
- f) GST is Exempted as per Notification No 02/2018 dated: 25.01.2018, Chapter 09 in 3A, Article 234G & 243W for sanitation & Conservancy Service. In case of any GST liability in future, it shall be born by Agra Nagar Nigam.
- g) All the documents related to regular repair and maintenance will be submitted to office of Chief Engineer (Electrical & Mechanical) as an evidence of regular repair and maintenance and the same will be verified by the office of Chief Engineer (Electrical & Mechanical) Agra Nagar Nigam.

3. **Obligation of AMC**

- a) Agra Municipal Corporation shall supervise the Successful bidder's work and services at all times and notify the Successful bidder of any defects found/ identified in operation. The Successful bidder shall have to correct a defect and improve service level within the time specified in the notices.
- b) Authority shall handover the Transfer Stations to the successful bidder after joint inspection and documentation.
- c) The Authority will ensure that the payments of the successful bidders' service invoice is cleared at earliest.
- d) The Authority will also ensure to provide all possible and justified cooperation to the successful bidder as requested by the bidder time to time, for ensuring effective operation of the services.
- e) The Authority will also ensure that no public nuisance, strike or protest should crop up because of the services rendered under the contract obligations.

4. **Performance Security**

- a) The Performance Security shall be kept valid for throughout the Concession Period from the Appointed Date. Provided that if the Agreement is terminated due to any event other than a bidder Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to AMC's right to receive amounts, if any, due from the Concessionaire under this Agreement be duly discharged and released to the Concessionaire.
- b) Performance security and other securities submitted/collected from concessionaire shall be released upon expiry of the contract period and after handing over of immovable assets.

5. **Financial Closure**

The Concessionaire shall at their own cost; expenses and risk make such financing arrangements as would be necessary to implement the project and to meet all of their obligations under this Agreement in a timely manner.

5.1 **Maintenance and Certification of Records**

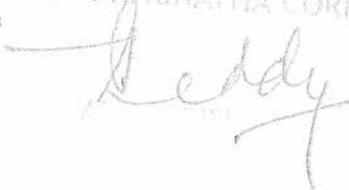
The Concessionaire shall maintain records of the operation and Maintenance of Transfer Station on monthly basis and submit monthly reports of the same to AMC.

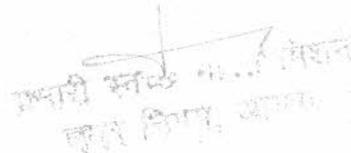
5.2 **Indemnity by Concessionaire**

The bidder shall indemnify and hold harmless AMC, and their employees from and against all claims, damages, losses and expenses arising out of or resulting from bidder negligence or breach in execution of the Construction Works and any activity incidental thereto.

EE(S)/Noting

For SWACHATHA CORPORATION





## 6. Performance Penalties

Following Penalties shall be imposed against non-compliances:

- a) If the waste is found at the facility on the ground at any time penalty of Rs.5000/-per incident/ day will be imposed.
- b) If the facility is not hygienically maintained: @Rs.1000/- per incident/ facility/ day.
- c) If the facility is found closed/ non-operative : @Rs.10,000/- per incident/ facility/ day.
- d) If wastes at facility is not transported immediately after the compaction unit gets filled: @Rs.1000/-per incident/ facility/ day.
- e) If the fixed and movable machinery is not kept in good and tide condition in repeated inspection after the instructions the machinery will get repaired by Nagar Nigam and penalty of Rs. 25% excess along with repairing cost will be imposed and both the cost will be recovered from the next month bill.
- f) During the operation and maintenance work, if any damage is identified in civil work and machinery due to the negligence while working, the equivalent cost will be recovered from the successful bidder

## 7. Payment

- a) The Payment will be done on monthly basis. The Operation & Maintenance charges will be paid at the earliest after the invoice submission by the bidder.
- b) Monthly invoice will be submitted by the successful bidder at the end of month which will be processed and forwarded by area sanitary inspector / ZSO/ concerned zonal officerto Executive Engineer (SBM Nodal Officer) as per the monthly record maintained in log book. Deductions will be made as any discrepancy mentioned in logbook as per penalty clauses of RFP.
- c) On satisfactory repair and maintenance of machinery endorsed by Executive Engineer(E&M)/ Chief Engineer (E&M) payment will be processed.

## 8. Termination Of Contract

- a)Contract will be terminated if it is found that waste is not transported timely and transfer stations are found in unhygienic condition.
- b)Contract will be terminated if it is found that repair and maintenance of fixed and movable machinery is not performed as per standards of machinery manufacturers.

## 9. Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event:

- (a) earthquake, flood, inundation and landslide
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labor disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- (f) action of a Government Agency having Material Adverse Effect including but not limited to
  - i. Acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facilities or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Agreements.
  - ii. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non- collusive and duly prosecuted by the Concessionaire, and
  - iii. any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, and Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
- (g) Early determination of this Agreement by AMC for reasons of national emergency, national security or the national interest.

EE(S)/Noting

For SWACHATHA CORPORATION

  
AUTHORISED SIGNATORY

- (h) Any failure or delay of a Contractor caused by any of the events mentioned in (f) and (g) above, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
- (i) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionizing radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-Article for which no offsetting compensation is payable to the Concessionaire by or on behalf of the AMC.

#### 10. Obligations of the Parties in case of Force Majeure

- (a) As soon as practicable and in any case within 10 (Ten) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Authority setting out, inter alia, the following in reasonable detail:
- the nature and extent of the Force Majeure Event;
  - the estimated duration of the Force Majeure Event;
  - the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
  - Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Article, the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order to:
- Assess the impact of the underlying Force Majeure Event,
  - To determine the likely duration of Force Majeure Event and,
  - To formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding Article as also any information, details or document, which the Parties may reasonably require.

#### 11. Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- due notice of the Force Majeure Event has been given
- the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event
- the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility(ies) as a result of the Force Majeure Event and to restore the Project Facility(ies), in accordance with the Good Industry Practice and its relative obligations under this Agreement
- when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance
- the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement
- Any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

For SWACHATHA CORPORATION

EE(S)/Noting

*[Signature]*  
AUTHORISED SIGNATORY

*[Signature]*  
प्रमारी स्वच्छ भारत मिशन  
नगर निगम, आगरा

**12. Arbitration**

**a) Procedure**

Subject to the provisions of Article , any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of the arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

**b) Place of Arbitration**

The place of arbitration shall be AMC

**c) English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

**d) Enforcement of Award**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

**e) Performance during Arbitration**

Pending the submission of and/or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

For and on behalf of AMC by:

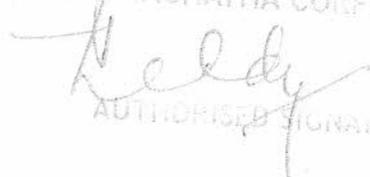
  
.....  
Executive Engineer & Nodal Officer - SBM  
Agra Municipal Corporation (AMC),  
MG Road, Agra, UP

For and on behalf of Concessionaire by

In the presence of:

1)

2)

FOR SWACHATHA CORPORATION  
  
AUTHORISED SIGNATORY