



## Ministry of Ports and Shipping

17<sup>th</sup> July 2018

Cabinet Memorandum No.MP&S/2018/22

### CHARTER OF THREE HARBOUR TUGS FOR THE SRI LANKA PORTS AUTHORITY FOR OPERATIONS AT THE PORT OF COLOMBO

#### 1. Background

- 1.1. As per the approval of the Cabinet of Ministers (Cabinet approval No. 17/2189/737/009-1 dated 25/10/2017), a Cabinet Appointed Negotiating Committee (CANC) and a Project Committee (PC) were appointed to handle the above procurement.
- 1.2. Accordingly, the CANC and the PC appointed to handle this procurement followed the procurement process and quotations were invited for Charter of Three Harbour Tugs, as per the technical specifications prepared according to the Sri Lanka Ports Authority (SLPA) requirements, through paper advertisements and disseminating the same advertisement to all the Embassies through the Ministry of Foreign Affairs.
- 1.3. At the closing time of the bids, three offers were received from following prospective bidders.
  - a) M/s. Ocean Sparkle Ltd – Hyderabad, India
  - b) M/s. Sri Lanka Shipping Company Ltd., - Sri Lanka
  - c) M/s. Inventors' Research Group Co. (Pvt.) Ltd., Sri Lanka

#### 2. Description

- 2.1. In considering the PC evaluation report dated 03.05.2018, CANC had negotiations with the recommended bidder M/s. Sri Lanka Shipping Company Ltd., and decided to recommend to the Cabinet of Ministers to award the tender for Charter of Three Harbour Tugs for the Sri

Lanka Ports Authority for operations at the Port of Colombo as follows. (A Copy of Minutes of the CANC meeting held on 31.05.2018 is attached as Annex 1)

Item No.	Name of the Tug	Negotiated and agreed daily charter rates per day (USD)
01.	Harbour Tug Hercules	4,320.00
02.	Harbour Tug Posh Hardy	4,575.00
03.	Harbour Tug Posh Husky	4,575.00

2.2. The Ministry of Ports and Shipping has informed unsuccessful Bidders of the determination of the CANC enabling them to make any appeal against the CANC decision to the Procurement Appeal Board (PAB). Accordingly, bidder M/S Ocean Sparkle Ltd, India has submitted an appeal to the PAB.

### 3 Observations

My observations for the report submitted by the Procurement Appeal Board dated 09th July 2018, are as follows;

3.1 The appellant in his covering letter of the bid has stated that “upon award of the contract to Ocean Sparkle Limited (OSL), Ocean Sparkle Ceylon Private Limited (OSCPL) will enter in to an agreement with SLPA and execute the same.”

This is categorized as a major deviation as per the Clause 7.8.4 of Government Procurement Guidelines 2006, where it states that “bidder cannot sub contract major components of the work against the condition provided.”

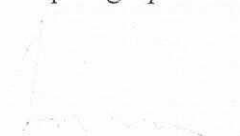
3.2 If the recommendation of the PAB to award the charter of two tugs to the appellant is accepted, SLPA will have to enter into a contract with an organization that was established on 17th April 2018 one day before the closing of tender which is in fact a “Shell” company (OSCPL) to serve Ultra Large Container Vessels ranging with a capacity of from between 14 000 TEU’s to 22 000 TEU’s.

Besides the aforesaid the company (OSCPL) does not possess the financial capability, experience and technical capacity called for under Section 19.1 of the Bidding Document.

- 3.3 In response to a clarification sought by the appellant at a pre-bid meeting the response of the Procurement Committee on 4th April 2018 was "No provisions are available in the Sri Lanka Government Procurement Guidelines to award a contract to a subsidiary company of any shareholding." PAB has not taken in to consideration the aforesaid.
- 3.4 Under Procurement Guidelines 2006, Section 7.8 the appellant was disqualified at Stage-I Hence without a proper technical and financial assessment PAB choosing to recommend the award of Charter of two Tugs to the appellant is incomprehensible.
- 3.5 PAB by recommending to award the Charter of two Tug boats to appellant at a rate of US \$ 4320/- per day and the balance tug to Sri Lanka Shipping Company (SLSC) at a rate of US \$ 4717/- per day, has not taken in to consideration the fact that CANC has negotiated with SLSC where their own tug hire rate was reduced to US \$ 4320/- per day. Therefore, by accepting the PAB recommended rate of US \$ 4717/- per day for a SLSC tug as against the CANC negotiated rate of US \$ 4320 per day the loss to SLPA would be Rs. 69,554,400/-
- 3.6 PAB by recommending the appellant, a party that has been disqualified under Clause 7.8.4 of the Sri Lanka Government Procurement Guideline 2006, for a net benefit of Rs. 19,797,600.00 for 3 years on a total expenditure of Rs. 2,359,944,000.00 which amounts to only 0.85% of the total cost as negotiated by CANC, has exposed the process for possible litigation, which can seriously affect the smooth functioning of the Port of Colombo.

#### **4 Recommendation**

- 4.1 Considering the above facts and recommendation of the CANC, approval of the Cabinet of Ministers is sought to award the tender for Charter of three Harbour Tugs for the Sri Lanka Ports Authority for operations at the Port of Colombo for a period of 03 years as indicated in the paragraph 2.1 above.

  
**Mahinda Samarasinghe (M.P.)**  
**Minister of Ports & Shipping**

## Minutes of the Cabinet Appointed Negotiating Committee

Nature of the Procurement Committee	CANC	Name of the Procurement Entity	Sri Lanka Ports Authority
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## Charter of Three Harbour Tugs for Sri Lanka Ports Authority for Operations at the Port of Colombo

Meeting No.	05	Date	31.05.2018
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CANC

R M D B Meegasmulla  
Chairman / CANC

Secretary,  
Ministry of Posts, Postal Services and  
Muslim Religious Affairs

Mrs. L D Senanayake  
Member / CANC

State Secretary,  
State Ministry of National Policies

Excused

Mr. L P Jayampathy  
Member / CANC

Secretary,  
Ministry of Ports and Shipping

CANC Discussions

At the outset of the meeting CANC noted that Mr. L P Jayampathy, Secretary, Ministry of Ports and Shipping Member of the CANC would not attend the meeting today (31.05.2018) as he is not well.

CANC discussed the negotiating items and other financial issues pertaining to the financial proposal of M/s. Sri Lanka Shipping Company Ltd., with the PC prior to commencement of the negotiations.

Accordingly, as per the decision taken at the last CANC meeting, the Financial negotiations between CANC and M/s. Sri Lanka Shipping Company Ltd., commenced in the conference room of the Ministry of Posts, Postal Services and Muslim Religious Affairs.

The CANC explained to the representative of M/s. Sri Lanka Shipping Company Ltd., that the Technical and Financial proposals submitted by them for the above procurement were discussed at length by the CANC and the PC. Accordingly, the CANC decided to accept their bid as fully complying with the specifications and requirements of the Sri Lanka Ports Authority (SLPA) and terms and conditions of the contract document. However, it was observed that the quoted daily charter rates for three Tugs are well above the expected price of the SLPA. The CANC further stated that the client (SLPA) expects a reasonable reduction at the final quoted daily charter rates of three Tugs.

Representatives of M/s. Sri Lanka Shipping Company Ltd., explained to the CANC that a huge price reduction was not possible as the prices quoted by them are very much competitive. However, M/s. Sri Lanka Shipping Company Ltd., agreed granting price reduction for the final daily charter rates of three Tugs as follows.

Item No.	Name of the Tug	Quoted daily charter rates per day (USD)	Negotiated and agreed daily charter rates per day (USD)
01.	Harbour Tug Hercules	4,650.00	4,320.00
02.	Harbour Tug Posh Hardy	4,750.00	4,575.00
03.	Harbour Tug Posh Husky	4,750.00	4,575.00

CANC explained to the representatives of M/s. Sri Lanka Shipping Company Ltd., that consequent to this negotiation, except the quoted daily charter rates of three Tugs, the other terms and conditions of the project are unchanged. Copy of the letter dated 31.05.2018 sent by M/s. Sri Lanka Shipping Company Ltd., confirming the negotiated daily charter rates of three Tugs is attached as Annex I)

The CANC and PC discussed the above negotiated daily charter rates and decided to accept the same.

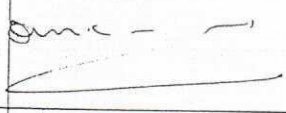
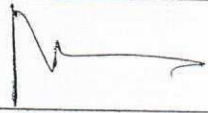
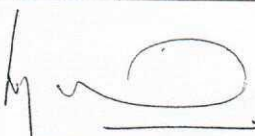
**CANC Decisions**

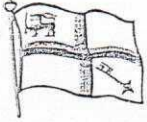
Having considered the above facts, CANC decided as follows:

To recommend awarding the project for the Charter of Three Harbour Tugs for Sri Lanka Ports Authority for Operations at the Port of Colombo to M/s. Sri Lanka Shipping Company Ltd., at the negotiated daily charter rates for three Tugs as follows.

Item No.	Name of the Tug	Negotiated and agreed daily charter rates per day (USD)
01.	Harbour Tug Hercules	4,320.00
02.	Harbour Tug Posh Hardy	4,575.00
03.	Harbour Tug Posh Husky	4,575.00

**Signatures**

Name	Capacity	Agree with the above decision/s (Yes / No)	Signature
R M D B Meegasmulla Secretary Ministry of Posts, Postal Services and Muslim Religious Affairs	Chairman	Yes	
L P Jayampathy Secretary Ministry of Ports and Shipping	Member	Yes	
L D Senanayake (Mrs.) State Secretary State Ministry of National Policies	Member	Yes	



# Sri Lanka Shipping Company Limited

Annex 1 201

31<sup>st</sup> May 2018

Chairman,  
Cabinet Appointed Negotiating Committee (CANC),  
Ministry of Ports and Shipping,  
No. 19, Chaitya Road,  
Colombo - 01.

Dear Sir,

## CHARTER OF THREE TUGS FOR SRI LANKA PORT AUTHORITY (SLPA) FOR OPERATION AT THE PORT OF COLOMBO

Further to your letter dated 25<sup>th</sup> May 2018 and our fruitful discussion on the above matter held on the 31<sup>st</sup> of May 2018 at the Ministry of Posts, Postal Services and Muslim Religious Affairs, we are pleased to confirm the following negotiated Daily Charter rate for the offered tugs (as indicated in the price schedule item D, E and F) as follows :

1. Harbour Tug Hercules – USD 4,320.00 per day
2. Harbour Tug Posh Hardy – USD 4,575.00 per day
3. Harbour Tug Posh Husky – USD 4,575.00 per day

All other terms and conditions remain as per the bid submitted on the 18<sup>th</sup> of April 2018.

Thank you for the confidence placed in Sri Lanka Shipping and looking forward to the official letter of award.

Yours faithfully,  
Sri Lanka Shipping Company Limited

Surindha de Abrew  
Director / Chief Executive Officer

