Project Summary Of

Tincan Island Terminal C

A Public Private Partnership

Between

The Nigerian Ports Authority

as the Lessor

Bureau Of Public Enterprises

as the Confirming Party

and

Ports and Cargo Handling Services Limited

as the Lessee

**May, 2006.**

|  |
| --- |
| **Disclaimer**  This summary should not be relied on as a complete description of the rights and obligations of the parties to the project and is not intended for use as a substitute for the contracts. |

**Abbreviations and Acronyms**

**BPE Bureau for Public Enterprises**

**FEC Federal Executive Council**

**IE Independent Engineer**

**ICRC Infrastructure Concession Regulatory Commission**

**LoA Letter of Award**

**NCP National Council on Privatisation**

**NPA Nigerian Ports Authority.**

**RfP Request for Proposal**

**Introduction**

The Tincan Island Lease Agreement is for the operation and maintenance of the port terminal and also to prepare a Dredging plan for the port terminal. This is part of the Federal Government’s plan to modernize major port terminals in the country in order to increase its efficiency and reduce cost to users.

This summary is in four parts; Part I contains basic project information, Part II contains specific contract information, Part III contains information on actual performance of the project, Part IV contains information on contract variation (if any).

**Project Summary:**

**Part 1 Project Overview**

* **Project Name: Tincan Island Terminal C**.
* **Status:** Status as at April, 2014 is under operation.
* **Name of Contracting Authority**: Nigerian Ports Authority
* **Name of Concessionaire**: Ports and Cargo Handling Services ltd.
* **Scope of the Project**: the handling and delivery services for general cargoes, containers, vehicles, including without limitation stevedoring( loading and unloading) of vessels, transporting, sorting, storage and the procurement, operation and maintenance of equipment for the foregoing; The repair and maintenance of the Fixed Assets. Other services include warehousing, stuffing and stripping, cleaning and fumigating, and consolidation and the procurement, operation and maintenance of equipment for the foregoing; ship shore handling of supplies for vessels, oversized cargo handling services, terminal handling, inland depot transfers and all other activities necessary to conduct operations; Preparation of a Real Property survey, a dredging survey of the berths and approach Chanel at the premises with a view of preparing a dredging plan for the Terminal, Operations and maintenance of the Port Facilities.
* **Project land area:** The whole Port area known as Terminal C and all the facilities and equipment attached as specified in Appendix A of the Agreement.
* **Completion period:** 10 years.
* **Mode of Financing:** The lessee shall be responsible for the planning of the financing of its performance of the operations.

**Project Benefits:** This is part of the Federal Governments plan to modernize major port terminals in the country in order to increase its efficiency and reduce cost to users.

* **Bidding brief:** The BPE invited bids for fully priced technical and financial proposals for the lease from the lessor of the Terminal forming part of the Tincan Island Port. As a result of such competitive process, the right to lease Terminal C at the Port from the Lessor was awarded by BPE to Sifax. Sifax then formed a special purpose vehicle, to enter into this Agreement.
* **Date of RfP:** 4th April, 2005.
* **Date of Issue of Letter of Award (LoA):** 22nd July, 2005.
* **Approval Structure:** NCP through its implementing Agency BPE on request from NPA.

**PART 2: CONTRACT INFORMATION**

**Contract Milestones**

**Date of Execution of the concession Agreement:** 11th May, 2006.

**Effective Date:** No less than 90 days after date of execution**.**

**Start Date of Concession:** Same as Effective Date.

**Date of Expiry of the Concession:** 10 years from the effective date. (2016).

|  |  |
| --- | --- |
| Public Authority:  Nigeraian Ports Authority  26/27 Marina, Lagos, Nigeria.  Attention: the Managing Director  Tel: +234 (01) 2631574  Bureau of Public Enterprises  11, Osun Crescent, Maitama District  PMB 442, Garki-Abuja, Nigeria  Attn: The Director General  Tel: +234 (09) 134670 | Private Entity:  Ports and Cargo Handling Services.  41, Calcutta Crescent, Apapa, Lagos  Attn: The Managing Director  Tel: 234 (01) 5452774 |

**Land and Asset Transfers to Concessionaire:** The Lessor shall transfer to the Lessee from the effective date the lease property free and clear of security interests for the term and shall be held by the lessee throughout the transition period in accordance with the transition plan.Article 3.2 of the Agreement.

**Rights to collection of user charges:** The Lessee collects user charges from users of the Port and pays lease fees to the Lessor.

**Rate setting:** The lessee shall ensure that the operations rates shall be in accordance with the applicable Laws and competitive within the port and with other competing ports of Nigera having facilities similar to the lease property.

**Risk Allocation**

|  |  |  |
| --- | --- | --- |
| **Risk Category** | **Concessionaire/Lessee** | **Grantor/Lessor** |
| Risks associated with project preparation | X |  |
| Permits/Approvals Risk | X |  |
| Provision of Utilities Risk | X |  |
| Construction Risk | N/A | N/A |
| Completion Risk | X |  |
| Cost Overrun Risk | X |  |
| Technical Risk | X |  |
| Force Majeure Risk | X | X |
| Operational Risk | X |  |
| Financing Risk | X |  |
| Demand Risk | X | X |
| Environmental Risk | X |  |
| Termination Risk | X | X |

**Expected levels of performance:**

|  |  |
| --- | --- |
| **Minimum Expected Performance Criteria** | **Agreed Correction Period for Failure** |
|  |  |

**Reporting and Performance Monitoring**

The Lessor shall monitor the performance of the Lease Agreement on an annual basis. The lessee shall submit a report to the Lessor annually on its performance for that year. Article 6.8(d) of the Agreement.

**Dispute Resolution:** Article 17 provides for Dispute Resolution in this order: Mutual consultation- Assistance of Expert- Arbitration in line with the Rules of Arbitration of the International Chamber of Commerce as in effect on the date of such notice.

#### Events of default and termination

[

|  |  |  |  |
| --- | --- | --- | --- |
| **Main events of default** | **Defaulting party** | **Procedure for termination.** | **Termination Payments.** |
| Insolvency. | lessee/ NPA | Immediate termination notice. |  |
| Fails to perform the Operations for 14 consecutive days in an operating year or 60 non consecutive days in a non operating year. | Lessee | 15 days written notice to correct. |  |
| Fails to pay any amounts due in accordance with the Agreement. | Lessee /NPA | Same a sabove |  |
| Commits a breach of a material provision this Agreement. | Lessee /NPA | Same as above |  |
| Lease property (in whole or in part) is expropriated compulsorily acquired or nationalized by a Government Agency. | NPA. | Immediate termination notice. |  |
| Change in Law | NPA. | Same as above |  |

**Termination payments:**

The termination payments for the events leading to default and termination either due to the Concessionaire or due to the Grantor or due to other reasons are described below:

|  |  |
| --- | --- |
| Party and Events of default | Termination payment |
| Lessee event of default | 1. Pay to lessor any and all actual costs, expenses charges, and/or penalties incurred or sustained by the lessor as a consequence of such termination. 2. An Aggregate amount equivalent to the lease fees payable by the lessee for 2 years following the lessee event of default if such default occurs within two years from the effective date. |
| Lessor event of default | 1. Any and all actual costs, expenses charges, and/or penalties incurred or sustained by the lessee as a consequence of such termination. 2. The Commencement fee, in the event that there is termination due to a lessor event of default in the first operating year. 3. Any and all Constructions and development costs incurred by the lessee in respect of the fixed assets pursuant to the conduct of the development plan or otherwise incurred pursuant to the development of the premises in accordance with this Agreement, in the event that there is termination within 2 years from the effective date due to a lessor event of default. |

#### Transfer clauses at expiry of contract: Not Stated.

**Responsibility for defects and liabilities**: Article 9.8 provides that the lessor shall remedy latent defects which materially impair the lease property and performance of its operations.

## Part 3: Implementation Information

### *Performance Failures*

The following instances of performance failure/breach of contract were noticed during the given year with penalty imposed and paid as shown:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Yr | Description of failure or breach | No. of events | Penalty (amount in Naira) | Penalty paid  Yes/No |
|  |  |  |  |  |
|  |  |  |  |  |

**Process followed for validation of disclosed information**

[State the process followed for checking data for accuracy before proactive disclosure]

|  |  |  |
| --- | --- | --- |
|  | **Yes/No** | **Date** |
| **Review and Sign-off by the ICRC** |  |  |