



## West Central Railway

Ministry of Railways, Government of India

Request for Qualification for Annuity Project-Construction of 3<sup>rd</sup> railway between Lidhaura Khurd and Golapatti stations of Bina - Katni Section

### Reply to Queries

14.03.2018

S. No	Reference/Page No	Provision	Query	Clarification
1.	Clause 1.1.1 Page 1	Estimated Cost of Project.	As per RFQ the estimated cost of this project is Rs. 664 Cr., kindly confirm that this cost is inclusive of GST or not.	The Estimated Project Cost is the likely construction cost of civil, electrical and S&T works with all materials (including Rails and PSC sleepers), cost of survey, investigation and design. The GST has been factored in the cost of Rails and PSC sleepers only.
2.	Clause 2.2.2 page 6	To be eligible for pre-qualification and short-listing, an Applicant or the Lead Member in case of a Consortium, shall fulfil the following conditions of eligibility:  (A) Technical Capacity: For demonstrating technical capacity and experience (the "Technical Capacity"), the Applicant shall over the past 5 (five) financial years preceding the Application Due Date, have	<ul style="list-style-type: none"><li>Initially the clause states that In case of a Consortium, the Lead Member shall fulfil the Technical and Financial capacities, but at the end of the clause, it states that the Combined Technical capacity and Net Worth of eligible members in a Consortium shall satisfy the above capacities.</li></ul>	Please refer Corrigendum No.1.



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		<p>(i) received payments for construction of Eligible Project(s) in Category 3 and/or Category 4 specified in Clause 3.2.1; and or</p> <p>(ii) paid for development of Eligible Projects(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; or</p> <p>(iii) collected and appropriated revenues from Eligible Projects(s) in Category 1 and/or Category 2 specified in Clause 3.2.</p> <p>such that the sum total thereof is more than 2.5 (two and a half) times the Estimated Project Cost (the “Threshold Technical Capacity”). Provided that at least half of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.2.1.</p> <p>(B) <b>Financial Capacity:</b> The Applicant shall have a Net Worth (the “<b>Financial Capacity</b>”) of at least 25% of the Estimated Project Cost at the close of the preceding financial year.</p>	<p>Please Clarify which statement is correct.</p> <ul style="list-style-type: none"> <li>We would like to point out certain avoidable restriction in pre-qualification requirement that can be removed, so that we can qualify independently.</li> </ul> <p>Request for deletion of phrase</p> <p>“Provided that at least half of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.2.1.”</p>	



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		<p>In case of a Consortium, the Combined Technical Capacity and Net Worth of those members, who have and shall continue to have an equity share of atleast 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such member shall, upto the date of Commercial Operation of the Project (COD), continue to hold their initial equity share capital in the SPV. However, any transfer of ownership of equity share capital after COD will be as specified in Concession Agreement.</p>		
3.	<p>Clause 3.2.1 Page 20</p>	<p>(ii) Core sector would be deemed to include hydro-electric dams, barrage, ports, airports, thermal / steel / cement plants, oil and gas pipelines, irrigation canals, water supply (pipelines/ treatment plants), sewerage (pipelines/ treatment plants), power transmission lines and real estate development. §</p> <p>§ Real estate development shall not include residential flats unless they form part of a real estate complex or township, which has been built by the Applicant.</p>	<p>We understand except flats which form the part of Real Estate complex or township all other forms of Building work forms the part of Real estate development.</p> <p>Hence development of Commercial Complexes, Government Buildings, Court buildings, College building, Hospitals, Medical Research Centers, Factory buildings, Refinery works etc. all form part of Real Estate development.</p> <p>Please Clarify.</p>	<p>The clause is clear and self-explanatory.</p> <p>No change, RFQ conditions shall prevail</p>



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4.	Clause 3.2.6 Page 21	In case the Applicant is a Consortium, Aggregate Experience Score of each of its Members, who have an equity share of at least 26% (twenty six per cent) in such Consortium, shall be summed up for arriving the combined Aggregate Experience Score of the Consortium.	From the clause it is inferred that the total Score of each member having at least 26% share in consortium will be summed up to arrive at Total Score of consortium but not in proportions of percentage of share of each member in the consortium. Please Clarify.	The clause is clear and self-explanatory.  Please refer to Annex-II of Appendix I "Technical Capacity of the Applicant"  No change, RFQ conditions shall prevail										
5.	Clause 3.2.6 Page 22	Table 3.2.6 Factors for Experience across categories  <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Category</th> <th>Factor</th> </tr> </thead> <tbody> <tr> <td>Category 1</td> <td>1.25</td> </tr> <tr> <td>Category 2</td> <td>1.00</td> </tr> <tr> <td>Category 3</td> <td>0.75</td> </tr> <tr> <td>Category 4</td> <td>0.50</td> </tr> </tbody> </table>	Category	Factor	Category 1	1.25	Category 2	1.00	Category 3	0.75	Category 4	0.50	Query-1 We request you to change the Factor for Category 3 to "1.00" and Category 2 to "0.75" as it boosts Technical expertise in the similar projects.  Query-2 Factor for scoring, considered for category 1 (PPP project) is 1.25 and factor for Category 3 (general construction projects) is 0.75 only. There is a huge gap in scores between these two categories though involvements of the activities are almost same except finance in these type of projects. So kindly consider scoring point atleast 1 (one)	No change, RFQ conditions shall prevail
Category	Factor													
Category 1	1.25													
Category 2	1.00													
Category 3	0.75													
Category 4	0.50													



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			instead of 0.75 for projects under category 3.	
6.	Clause 3.5.2 Page 23	“The Applicants shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed for submission of Bids. The Authority expects to short-list up to 6 (six) pre-qualified Applicants for participation in the Bid Stage.	Query-1 We request you to increase the short-list applicant numbers to 10 or so to increase the competition by having included bidders with Financial strength vis-à-vis Technical experience.  Query-2 This condition of RFQ will give a chance of participation to the few parties only as no. of short list upto 6 Nos. only. Kindly re-examine this condition and increase the number of participants upto 15 numbers OR fix some minimum score for pre-qualification on reasonable basis / as per latest norms of NHAI and other Govt. Organizations for PPP / HAM mode.	No change, RFQ conditions shall prevail
7.		General Technical Score	As 3 <sup>rd</sup> Line composite Railway projects are bit complex, we request you to add “Technical score” too in form of Technical requirements to select a better Concessionaire having Technical exposure to similar projects.	No change, RFQ conditions shall prevail



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8.		General Time Extension	Kindly provide an extension of at least 2 weeks for submission of tender.	No change, RFQ conditions shall prevail
9.		General BOQ at Bidding stage	What will be the procedure of quoting our rates during bidding stage, Railway will provided BOQ for quoting our rates or not.	Query is related to RFP documents and the details shall be shared at RFP stage.
10.		General Land acquisition	Does the proposed project cause, displacement of project affected people / families? If yes, kindly confirm the status of land acquisition.	Right of way for the Project is available with the Authority and shall be provided as per the provisions of the Concession Agreement.
11.		General Environmental Clearance	What is the status of Environmental Clearance?	
12.		General Forest Land & Clearance	Kindly clarify whether any part pf project or any project facilities comes under the Forest Department / Wildlife Century / Reserved forest / protected forest and status of the clearance for the same. Request to Authority to kindly provide status of Forest land diversion from Ministry of Environment & status of Forest clearance.	



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13.		General Encroachment Details	Kindly provide the encroachment detail in proposed Railway 3 <sup>rd</sup> line if any.	
14.		General Concession Agreement	Kindly provide a copy of proposed Concession Agreement for this Project.	Draft Concession Agreement for the Project shall be made available at the RFP stage.  However, Draft Model Concession agreement is available on the website of Ministry of Railways and can be accessed at the following website: <a href="http://www.indianrailways.gov.in">www.indianrailways.gov.in</a>
15.		General Utility Shifting	Kindly provide details of all the utilities required to be shifted. Kindly inform about the modality of the payment to the contractor for shifting of utilities. Also please update the status of approvals of shiftings from various concern departments.	Query is related to RFP documents and the details shall be shared at RFP stage.
16.		General Plan & Profile Drawing	Please provide Plan & Profile drawings of the project. Please also provide us the status of GAD approvals from the concerned authorities.	Query is related to RFP documents and the details shall be shared at RFP stage.



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17.		General Feasibility Report (DPR)	Kindly provide us the Feasibility Report of the project.	Query is related to RFP documents and the details shall be shared at RFP stage.
18.		General Structure Design	Since the scope of works includes Design part, we presume that the Concessionaire shall be allowed to submit their own designs for all the proposed project structure based on individual assessment by any suitable method within codal provisions and specifications. Kindly confirm.	Query is related to RFP documents and the details shall be shared at RFP stage.
19.		General Conditions precedent for Authority - From our understanding presently the annuity payments is not backed up from the Authority side.	CPs of the Authority to include giving out the revolving letter of credit and the Government Order for annuity payments in support of the project without which Appointed Date is not been declared. These are crucial for the project commencement and for the bankability of the project.	Query is related to RFP documents and the details shall be shared at RFP stage.
20.		General Representations & Warranties of the Authority	The following points to be added: i. "all information provided by it in response to the Request for Qualification and Request for Proposals, including	Query is related to RFP documents and the details shall be shared at RFP stage.





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			<p>amendments thereto or disclosures thereunder, in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects”</p> <p>ii. upon the Concessionaire performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligation by the Concessionaire, in accordance with this Agreement</p> <p>(iii) there are no actions, suits or proceedings pending or to its knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or aggregate may result in any material impairment of its ability to perform its obligations under this agreement.</p>	



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21.		General Deemed Performance Security	<p>Request deletion.</p> <p>A deemed Performance Security subsequent to release of performance security during the entire Concession Period will add to the project risk and hence the cost. There are adequate safeguards in the agreement to ensure performance of the concessionaire and hence the deemed performance security may be deleted. Moreover the Concessionaire does not have any maintenance obligation during the Operations period.</p> <p>Clarification required if the amount is 5% or 2% of the Contract Price since there is a mention that “a substitute performance security for a like amount”.</p>	Query is related to RFP documents and the details shall be shared at RFP stage.
22.		General Right of Way	Kindly furnish the details of Land Availability currently and also list essential/critical elements of the Project without which Completion Certificate cannot be granted and their respective/co-	Query is related to RFP documents and the details shall be shared at RFP stage.



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			ordinate/location and the availability of status of land.	
23.		General Withholding of Provisional or Completion Certificate	Request deletion since it runs against the spirit of Punch List item. Any correction of work required can be added in the Punch List item as there is no ceiling given for the time period till which such extension can be granted.	Query is related to RFP documents and the details shall be shared at RFP stage.
24.		General Rescheduling of Tests	Time limit to be given for reschedulement of tests. Damages to be paid to Concessionaire in case of delay in conducting of tests beyond 30 days.	Query is related to RFP documents and the details shall be shared at RFP stage.
25.		General Change of Scope	The completion of COS work shall not be considered during ascertainment of Scheduled Project Completion Date.  Change of Scope payments to be adjusted for Price Index variation/WPI escalation.	Query is related to RFP documents and the details shall be shared at RFP stage.
26.		General Financial Closure	There is no ceiling for cumulative damages payable in case there is a delay to achieve FC. Kindly fix	Query is related to RFP documents and the details shall be shared at RFP stage.



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			the ceiling as in NHAI BOT Toll projects	
27.		General Contract Price	We propose that the definition of Contract Price/Completion Cost and Total Project Cost to be separated out. Total Project Cost of the Concessionaire shall include EPC, IDC, Contingencies etc.	Query is related to RFP documents and the details shall be shared at RFP stage.
28.		General Quarterly Payments	The Concessionaire has no backup / guarantee on the Annuity Payments due. For the purpose of bankability of the project, we propose Authority to provide revolving Letter of Credit or Government Order for the Annuity Payments.	Query is related to RFP documents and the details shall be shared at RFP stage.
29.		General Annuity Payments	To make the Annuity to be a better representative, we propose the interest payable by the Authority which is bank rate + 2% to be changed to MCLR + 3%. Annuity to be paid along with interest at <b>MCLR + 3%</b> vis a vis Bank rate + 2%.	Query is related to RFP documents and the details shall be shared at RFP stage.



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30.		General Withdrawals during the concession period	<p>Escrow Waterfall to be modified as below. After payment of taxes dues, construction related payments is to be made. Only after debt service, damages if any can be recovered by the Authority. This is similar to structure of NHAI waterfall in the MCA. Similar change to be carried out in withdrawals upon termination</p> <ol style="list-style-type: none"><li>1. All taxes due and payable by the Concessionaire for and in respect of the Project</li><li>2. All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements</li><li>3. Monthly proportionate provision of Debt Service due</li><li>4. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire in an Accounting Year</li></ol>	Query is related to RFP documents and the details shall be shared at RFP stage.



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			<p>5. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt</p> <p>6. Any reserve requirements set forth in the Financing Agreements</p> <p>Balance, if any, in accordance with the instructions of the Concessionaire</p>	
31.		General Termination Payment for Force Majeure	<p>For Termination Payment, from a vague statement of "Payment of reasonable work done " to be specified as follows:</p> <ol style="list-style-type: none"><li>1. If termination is on account of non-political event, Authority shall make termination payment to the concessionaire in an amount equal to 90% of the debt due less insurance cover.</li><li>2. If termination is on account of an indirect</li></ol>	Query is related to RFP documents and the details shall be shared at RFP stage.



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			<p>political event, Authority shall make termination payment to the concessionaire in an amount equal to a. debt due less insurance cover provided that if any insurance claims forming part of the insurance cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due; and</p> <p>b. 110% of the adjusted equity.</p> <p>Provided that in the event such terminations occurs after COD, such termination payment shall in no case be less than the sum of annuity payments remaining unpaid for and in respect of the concession period, including interest there on upto the transfer date.</p>	



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32.		General Termination Payment	<p>Termination Payment on account of concessionaire default during defect liability period, during construction period and termination on account of Authority default. Following to be considered :</p> <ol style="list-style-type: none"><li>1. Upon termination on account of a Concessionaire default during the Defect Liability Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due.</li></ol>	Query is related to RFP documents and the details shall be shared at RFP stage.





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			<p>2. Upon Termination on account of Concessionaire Default during Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% of the Contract Price and in the event of expenditure exceeding such 40% and forming part of Debt due, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40%. For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is minimum 90% of the Contract Price, the expenditure eligible for computation of Termination Payment hereunder shall be 50% of</p>	



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			<p>the Contract Price and the Termination Payment due and payable in such event shall not exceed 45% of the Contract Price, The Parties further agree that for the purposes of this Clause Contract Price shall mean the amount specified in the definition of Contract Price. The Parties also agree that for determining the Termination Payment under this Clause, the expenditure comprising the latest Project Milestone shall also be reckoned.</p> <p>Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to Debt Due and 150% of the Adjusted Equity, provided that such Termination Payment shall in no case be less than the sum of Annuity Payment</p>	



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			remaining unpaid for and in respect of the Concession Period including interest thereon upto the Transfer date.	
33.		General State Support Agreement	State Support Agreement to be included as a part of Conditions Precedent of the Authority wherever required.	Query is related to RFP documents and the details shall be shared at RFP stage.
34.		General Annuity Payments	Request for escrow mechanism for Annuity and Interest on Annuity along with revolving LCs for unpaid annuity and interest on annuity. Format attached.	Query is related to RFP documents and the details shall be shared at RFP stage.
35.		General Selected Bidder	Instead of incorporation of a SPV, we suggest the holding company to be the direct beneficiary of the annuity and undertake to execute all contractual obligation.	Query is related to RFP documents and the details shall be shared at RFP stage.
36.		General Approvals required and its related expenses	Please mention list of all approvals required. We are also seeking clarification about to whose account the related cost of the same. This is apart from environmental and forest approvals.	Query is related to RFP documents and the details shall be shared at RFP stage.



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37.		General Appointed Date	We seek clarification on the definition of Appointed Date with respect to all approvals. Appointment Date should commence only after all approvals in place.	Query is related to RFP documents and the details shall be shared at RFP stage.
38.		General Railway Safety Certification	We propose a definitive time period on the part of Authority to insist upon the Railway Safety Agency in case if rework / correction is recommended by them. If there is a time over run beyond such a period from the agency to conduct re-inspection and response there upon then Concessionaire should be appropriately compensated.	Query is related to RFP documents and the details shall be shared at RFP stage.

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