

### Bidding documents for Highway Projects

1306. SHRI S.S.AHLUWALIA: Will the Minister of ROAD TRANSPORT AND HIGHWAYS be pleased to state:

(a) whether it is a fact that bidding document formulated by Planning Commission for award of roads and highway projects by National Highway Authority of India (NHAI) comprises of a Model Concession Agreement (MCA) to be executed by bidders;

(b) if so, the salient features incorporated in the MCA indicating period of its origin;

(c) whether the bidding documents underwent revision during 2004-09;

(d) if so, the salient details thereof;

(e) whether Government is contemplating further revision of the bidding documents; and

(f) if so, the details thereof indicating the rationale, if any, of the same?

THE MINISTER OF STATE IN THE MINISTRY OF ROAD TRANSPORT AND HIGHWAYS (SHRI R.P.N. SINGH): (a) Yes, Sir.

(b) The salient features of the MCA are given in the Statement-I (*See below*).

(c) and (d) The bidding documents for implementation of the infrastructure project in Public-Private-Partnership (PPP) include the Model Concession Agreement, Model Request for Qualification (RFQ) and Request for Proposal (RFP) documents. RFQ and RFP were finalized by the Department of Economic Affairs, Ministry of Finance in May, 2007 and November, 2007 respectively. The Model RFQ has since been further revised by the Ministry of Finance in May, 2009. The salient details of changes in Model RFQ document are given in the Statement-II (*See below*).

(e) and (f) Changes in the bidding documents are carried out on the basis of actual experience during implementation, or due to changes in the legal frame work etc., as considered necessary.

#### **Statement-I**

##### *Salient features/contents of model concession agreement on PPP basis*

Preliminary Article	Recitals Subject
1	2
1.	Definitions and Interpretation
2.	Scope of the Project
3.	Grant of Concession
4.	Conditions Precedent
5.	Obligations of the Concessionaire

1	2
6.	Obligations of the Authority
7.	Representations and Warranties
8.	Disclaimer
	<i>Development and Operations</i>
9.	Performance Security
10.	Right of Way
11.	Utilities, Associated Roads and Trees
12.	Construction of the Project Highway
13.	Monitoring of Construction
14.	Completion Certificate
15.	Entry into Commercial Service
16.	Change of Scope
17.	Operation and Maintenance
18.	Safety Requirements
19.	Monitoring of Operation and Maintenance
20.	Traffic Regulation
21.	Emergency Medical Aid
22.	Traffic Census and Sampling
23.	Independent Engineer
24.	Financial close
25.	Grant
26.	Concession Fee
27.	User Fee
28.	Revenue Shortfall Loan
29.	Effect of variation on traffic growth
30.	Construction of additional tollway
31.	Escrow Account
32.	Insurance
33.	Accounts and Audit
34.	Force Majeure
35.	Compensation for Breach of Agreement
36.	Suspension of Concessionaire's Rights
37.	Termination
38.	Divestment of Rights and Interest

1	2
39.	Defects Liability after Termination
40.	Assignment and Charges
41.	Change in Law
42.	Liability and Indemnity
43.	Rights and Title over the Site
44.	Dispute Resolution
45.	Disclosure
46.	Redressal of Public Grievances
47.	Miscellaneous
48.	Definitions
	<i>Schedules</i>
A	Site of the Project
B	Development of the Project Highway
C	Project Facilities
D	Specifications and Standards
E	Applicable Permits
F	Performance Security
G	Project Completion Schedule
H	Drawings
I	Tests
J	Completion Certificate
K	Maintenance Requirements
L	Safety Requirements
M	Monthly Fee Statement
N	Weekly Traffic Census
O	Traffic Sampling
P	Selection of Independent Engineer
Q	Terms of Reference for Independent Engineer
R	Fee Notification
S	Escrow Agreement
T	Panel of Chartered Accountants
U	Vesting Certificate
V	Substitution Agreement

***Statement-II***

*The main changes in the RFQ*

- a. Provision relating to short - listing of bidders for more than one Project in Clause 1.2.2 has been deleted.
- b. The present limit of 1% of cross holding in clause 2.2.1 (c) (i) relating to Conflict of Interest has been increased to 5%, and the term "indirect shareholding" has been clarified.
- c. The clause 2.2.1 (d) relating to disqualification of consultants has been amended to allow the Consultants of the Authority to work for private entities in relation to the same project during any period six months prior to the issue of the RFQ or three years after the COD of the same project.
- d. While prescribing sector specific eligibility conditions in Clause 2.2.1 (e), provision has been made to enable Project Authority to specify suitable restrictions to prevent concentration of projects in the hands of a few entities.
- e. The Threshold Technical Capacity in Clause 2.2.2 (A) have been enhanced to twice the Estimated Project Cost of the proposed project.
- f. Each of the Consortium Members, in addition to holding 26% equity in the SPY, would now be required to also hold equity equal to at least 5% of the Total Project Cost for a period of two years after commissioning of the Project.
- g. The commitment of the O&M partner specified in Clause 2.2.3 has now been reduced from 26% to 10%.
- h. A new Clause 2.3.5 has been added to allow withdrawal of a Consortium member, who has Conflict of Interest, within 10 days of the date of Application Due Date.
- i. In order to dis-incentivise submission of incomplete or incorrect information, Clause 2.17.7 and 2.17.8 have been added to enable Project Authorities to exclude erroneous claims for determining the Experience Score and also impose a penalty equal to the score so rejected, and to disqualify applicant where patently false claims are made.
- j. The Project Authority has been required to extend the Application Due Date by a minimum of 15 days and 7 days for submission of RFQ in case of substantive and minor amendments respectively.
- k. An enabling provision has been made in Clause 3.2 for making suitable amendments to meet the requirements of social sectors and other projects.
- l. Definition of PPP and Core sectors has been modified in Clause 3.2.1 to exclude Petroleum and Natural Gas and include logistics park and metro rail. In the case of real estate development, standalone housing would not be included while townships and residential complexes would continue to qualify.
- m. Project Authorities are now being permitted variation in Factors for Experience by 15% instead of 33%. (Clause 3.2.6)

- n. A Clause 3.2.7 has been added to the effect that Projects in OECD countries will get a weightage of 50% as compared to projects in developing countries.
- o. The number of short-listed bidders has been increased to 6, and further increased to 7 in case of projects costing less than Rs.500 cr. or for repetitive projects (clause 3.5.2). Further, a provision for preparation of reserve list of bidders has been made for substitution of bidders in the event of their withdrawal or rejection (Clause 3.5.3). In so far as road projects are concerned, the existing exemption from short - listing of bidders would continue.

Subject to the above changes, the other provisions of OM dated 5.12.2007 shall continue to apply.

#### **Strike by truck operators**

1307. SHRI RAJKUMAR DHOOOT: Will the Minister of ROAD TRANSPORT AND HIGHWAYS be pleased to state:

- (a) whether it is a fact that Truck Operators again went on strike from first week of January, 2009 after a span of about six months;
- (b) if so, the details of their demands and why the issue could not be settled before commencement of strike; and
- (c) the steps taken by Government to ensure that such strikes are prevented?

THE MINISTER OF STATE IN THE MINISTRY OF ROAD TRANSPORT AND HIGHWAYS (SHRI MAHADEO S. KHANDELA): (a) Yes, Sir.

(b) The transporters had raised demands on economic bailout package in the form of reduction in diesel prices, reduction in tyre prices, moratorium on instalments and waiver of interest on truck finance for six months, moratorium on toll for six months etc. Their other demands include seamless movement of all the vehicles without state/national permit and related taxes, abolition of service tax etc. In order to resolve the issues raised by the transporters prior to their strike from 5.1.09, meetings were held in the Ministry involving all the concerned Ministries such as M/o Petroleum & Natural Gas, M/o Commerce, M/o Finance (Deptt. of Revenue, Central Board of Direct Taxes, D/o Financial Services) on 2nd and 4th January 2009. The transporters were apprised of the action taken by the Government on each issue. Moreover some of the demands of the transporters required consultation with the States also. Despite this, the transporters were adamant to continue with their strike unless their demands were resolved immediately. The strike was withdrawn unconditionally by the transporters after persistent efforts by the Ministry and consequent upon the signing of an agreement between this Ministry & AIMTC on 12.1.09.

(c) It has been decided to constitute separate committees both at the State and Central level to provide a permanent mechanism to look into the grievances of the transporters on a fast track basis.