

INDIAN PORTS ASSOCIATION

IPA/GAD/MCA/2022

Date: 22.03.2022

CLARIFICATION ON PRE-BID QUERIES RAISED DURING PRE-BID MEETING HELD ON 15.03.2022 AT 1630 Hrs

RFP: Request for Proposal (RFP) For Engagement of Consultant for processing revision of Model Concession Agreement at Major Ports

RFP No.: IPA/GAD/MCA/2022

S. No	Reference to RFP Clause/Section	Existing clause	Query	Prospective Bidder's Remarks	Clarifications
1.	Bid Submission: (iv) Technical proposal	Scanned copies of Technical Bid shall be submitted on eProcurement Portal (CPPP) https://eprocure.gov.in/e-procure/app . First Cover (Superscribed as Technical Bid) consisting of two hard copies (One Original + One copy of Technical bid) along with 2 soft copies of Technical proposal in word format in Pen drive to be submitted in physical form.	Request for clarification	We request the Authority to kindly clarify if for the Technical bid, both online submission at the CPPP portal and physical submission in hard copy needs to be done.	Technical Bid: to be submitted online as well as a hard copy (Original) along with a soft copy of Technical proposal in word format in Pen drive. Financial Bid: To be submitted online only.

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2.	Eligibility Criteria: 7. C. b) MCA expert	MCA expert: An expert with at least 15 years of experience in the Government, specializing in formulating concession agreements particularly for PPP projects (equivalent to team head)	<p>Request for modification of the Clause</p> <p>MCA Expert: <i>"An expert with</i></p> <ol style="list-style-type: none"> 1. <i>At least 10 years of experience in working with both government and private sector entities in the transport sector</i> 2. <i>Additional experience in formulating Concession agreements particularly for PPP projects in transport sector"</i> 	<p>We request the Authority to consider-</p> <ol style="list-style-type: none"> 1. The minimum experience criteria to 10 years with higher scores for more experience in technical evaluation 2. We understand that it is important that the consultant understands both government and private sector risks pertaining to the MCA. Hence, experience with both the entities should be required and marked. 3. Additionally, specific experience in formulating concession agreements should be included in the marking scheme 	RFP conditions to remain unchanged.
3.	Technical evaluation B. Manpower C. – MCA Expert	<p>a) >15 years and <20 years – 10 marks</p> <p>>= 20 years – 15 marks</p>	<p>Request for modification of the clause -</p> <p><i>We request to consider the following criteria:</i></p> <ol style="list-style-type: none"> 1) <i>Years of experience with both government and private entities -</i> <ol style="list-style-type: none"> a) <i>>10 years and <15 years = 5 marks</i> b) <i>>= 15 years = 10 marks</i> 2) <i>Number of projects involving</i> 	<p>As stated in the above request, we request to provide separate</p> <ol style="list-style-type: none"> 1. Weightage to the years of experience 2. Number of relevant projects executed for PPP projects in transport sector 	RFP conditions to remain unchanged.

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			<i>formulating concession agreements for PPP in Transport sector:</i> <i>a) >5 = 5 Marks</i> <i>b) 3-5 = 3 Marks</i> <i>c) <3 = 2 Marks</i>		
4.	Technical evaluation B. Manpower A. - Legal	a) >15 years and <20 years = 5 marks b) >= 20 years = 10 marks	Request for modification of the clause - <i>We request to consider the following criteria:</i> 1) <i>Years of experience with both government and private entities -</i> <i>a) >10 years and <15 years = 3 marks</i> <i>b) >= 15 years = 5 marks</i> 2) <i>Number of projects involving formulating concession agreements for PPP in Transport sector:</i> <i>a) >5 agreements = 5 Marks</i> <i>b) 3-5 agreements = 3 Marks</i> <i>c) <3 agreement = 2 Marks</i>	We request to provide weightage also to the quality of experience in terms of number of relevant projects executed for PPP in transport sector, in addition, to the total years of experience	RFP conditions to remain unchanged.

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5.	Technical evaluation B. Manpower B. – Project/Contract	Project/Contract Team head with experience in formulating, executing contracts for projects, preferably in corporate and PSU. MBA having experience in legal matters:	Request for clarification and modification of the clause – <i>“Project/Contract Team head with experience in formulating, executing contracts for projects, preferably in corporate and PSU. MBA having experience in project management, policy, regulatory and PPP advisory”</i>	We request the Authority to kindly clarify the experience in legal matters for the Project/Contract expert - as generally the legal inputs are provided by a legal expert and the Project/Contract expert would be required to have adequate experience in project management, policy, regulatory and PPP advisory related work.	RFP conditions to remain unchanged.
6.	Page 10, Cl 9 C	Consortium bids will be allowed	Request for clarification	Many of the shortlisted firms as per the RFP are management consulting firms. To deliver the proposed scope of work, consortium may need to be formed by the bidders with legal firms. We understand that such consortium is allowed and the experts would-be full-time employees of either of the consortium firms. Please clarify if our understanding is correct	RFP conditions to remain unchanged.
7.	Page 7, Eligibility criteria Point D.	Completion Certificate has to be attached	Request for clarification	In many engagements, especially with Multilateral and Government clients, completion certificates are not issued to the consultants. We request to consider self-declarations of completion from the authorized signatory of the bidder, along with other project documents (e.g. work order) in such cases.	RFP conditions to remain unchanged.
8.	Page 16, Completion	This is a time bound job and in the event of any	Request for clarification and	LD should be imposed only for delays solely attributable to the	RFP conditions to

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	period	delay in completion of work due to reasons attributable to consultant, the consultant shall be liable for Liquidated Damages at the rate of 0.5% per week of such delays subject to a maximum amount of 10% of the total contract value.	modification to the LD clause	bidder and should be tightly aligned to a well laid consultative process and ascertaining the cause of the delay in question. We should not be held responsible if the work is delayed due to external factors/dependencies/reasons beyond our control.	remain unchanged.
9.	Page Timelines 5,	<p>1. Draft MCA-EOT and MCA- O&M – 1.5 months from date of award</p> <p>2. Final MCA-EOT and MCA- O&M – Within 2 months from date of award, after incorporating suggestion/inputs from Ports/IPA/Stakeholders.</p>	<p>Request for extending the timelines</p> <p>1. Draft MCA-EOT and MCA-O&M – 05 months from date of award</p> <p>2. Final MCA-EOT and MCA-O&M – Within 06 months from date of award, after incorporating suggestion/inputs from Ports/IPA/Stakeholders.</p>	<p>Given previous experience of executing similar assignments with multiple government entities, we understand the process would involve detailed discussion and deliberations with the key stakeholders and multiple stages of approvals from the different government authorities. Considering the same, we request for extending the timelines to 6 months</p>	RFP conditions to remain unchanged.

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10.	Page 20, Clause 7 and Page 22, Clause 2 (iv)	<p>Page 20, Clause 7</p> <p>We ourselves and/or for/with or in association with or on behalf of or through any other Entity, shall not take up any Consultancy or consulting assignment or render any services on a similar transaction or any other transaction which could have a direct Conflict of Interest, in any manner or capacity <u>to a Competitor of the Company</u> during the term of our engagement in respect of the Proposed Transaction without prior written approval of IPA/MoPSW Government and granting of such approval shall be the sole discretion of Government/Company and shall be binding onus.</p> <p>Page 22, Clause 2 (iv) - In relation to a strategic sale/restructuring by IPA/MoPSW/Governme</p>	Request for clarification	<p>We request the Authority to kindly clarify-</p> <ol style="list-style-type: none"> 1. Specific areas of conflict of interest – identified projects or specific work related which may come under the conflict-of-interest clause 2. Understanding of the phrase “<i>direct conflict of interest, in any manner or capacity to a competitor of the company</i>” <p>Further, we understand that this engagement shall not hinder us from participating in the private side PPP bid advisory work involving the MCAs being formulated under this study</p>	RFP conditions to remain unchanged.

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		nt, the Consultants have taken up engagement with buyer/potential buyer of such strategic sale or their Sister Concerns.			
11.	Additional clause	Additional clause	Request for additional clause- <i>"If there are any circumstances that reasonably restrict travel or physical presence of our personnel at your office / location, then without prejudice to your payment obligations, you shall allow such personnel to work from home or other remote location till the time such reasonable restrictions exist. Any delay / default in performing our obligations arising from such restrictions, shall not be attributable to us and shall not be considered a breach of contract on our part and no consequent</i>	We request the Authority to kindly add the suggested clause to the agreement	RFP conditions to remain unchanged.

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			<i>damages / penalties etc. arising therefrom would be imposed on us under the Contract”</i>		
12.	Pt. 15(x), pg. 14 and Annexure II	Confidentiality Obligations	<p>We request inclusion of following clause:</p> <p><i>“Confidential information does not include any information which (i) is rightfully known to the recipient prior to its disclosure; (ii) is independently developed by the recipient without use of or reliance on confidential information; or (iii) is or later becomes publicly available without violation of this agreement or may be lawfully obtained from a third party; or (iv) which would be required to be disclosed under the (Indian) Right to Information Act, or (v) which may be required to be disclosed as per applicable laws/regulations or orders/requests of competent authorities.”</i></p>	<p>Authority is requested to allow standard exceptions to confidential information, which is industry standard and reasonable. Not all information can be regarded as confidential. For e.g., if the information is in public domain, we cannot be expected to keep it confidential at our end. Similarly, if any information is liable to be disclosed under the RTI, giving it a confidential status, and obliging us to keep such information confidential is not correct.</p>	RFP conditions to remain unchanged.

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13.	Pt. 15(x), pg. 14 and Annexure II	Confidentiality Obligations	<p>Authority is therefore requested to kindly include the following clause:</p> <p><i>“Consultant may disclose confidential information: (a) to its employees, directors, officers, and subcontractors, on a need-to-know basis, as required for performance of services, provided such employees, directors, officers, and subcontractors are bound by confidentiality obligations; (b) where required by applicable law or regulation or for regulatory and compliance (both internal and external) purposes.”</i></p>	<p>Authority is requested to consider that we may have to disclose information for successful accomplishment of work and for regulatory and internal compliance purposes. However, to the extent legally permissible, we will ensure that even if the information is disclosed to any third party, such parties maintain confidentiality of such information.</p>	RFP conditions to remain unchanged.
14.	No clause in RFP.	Confidentiality Obligations	Request for clarification	<p>Please appreciate that this is a prestigious project for us, and we would like to showcase this project in our future proposals. We request Authority to allow us to refer to you and the services we have performed for you for citation / reference purposes if we do not disclose your confidential information.</p>	RFP conditions to remain unchanged.
15.	Additional clause	No right to terminate	Right to terminate in case of breach by the Authority	<p>To uphold the principles of natural justice and to bring parity in the contract, we request Authority to give us the right to terminate the contract in case Authority breaches any of its material obligations under the contract, provided a notice for such breach is given to Authority along with a rectification period of</p>	RFP conditions to remain unchanged.

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				30 days.	
16.	Pt. 12(xii), pg. 14 and pt. 5, 6, 7, 8,9, 10, Annexure IV and pt. 2, pg. 22	Conflict of interest	Request for clarification	<p>We wish to highlight that we are a large organization providing various services to various state and central government departments, PSUs, international organizations and private clients. We wish you to note that while we have a mechanism in place to identify patent and direct conflict of interests, it may not always be possible to identify any or all indirect or remote conflict of interests. Kindly appreciate that our no conflict confirmations will be subject to the foregoing. Further, we wish the Authority to consider that in case of conflicts of interest, PwC has appropriate mechanisms, such a Chinese wall to ensure that the conflict is managed. We request the Authority to allow PwC to operate in other transactions, on a case-to-case basis, by relying on such mechanisms that address conflicts of interest.</p>	RFP conditions to remain unchanged.

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17.	Page 16, Point 16	This is a time bound job and in the event of any delay in completion of work due to reasons attributable to consultant, the consultant shall be liable for Liquidated Damages at the rate of 0.5% per week of such delays subject to a maximum amount of 10% of the total contract value.	Request for modification	We request Authority to cap the liquidated damages/penalties cumulatively to 5% of the total contract value.	RFP conditions to remain unchanged.
18.	Page 16, Point 16	This is a time bound job and in the event of any delay in completion of work due to reasons attributable to consultant, the consultant shall be liable for Liquidated Damages at the rate of 0.5% per week of such delays subject to a maximum amount of 10% of the total contract value.	Request for clarification	We understand that as per Contract Act, where LDs are stipulated, generally any other damages cannot be claimed. Therefore, we request you to kindly make imposition of liquidated damages as sole and exclusive remedy for corresponding breaches.	RFP conditions to remain unchanged.
19.	Page 16, Point 16	This is a time bound job and in the event of any delay in completion of work due to reasons attributable to consultant, the consultant shall be liable for Liquidated Damages at the rate of 0.5% per week of such delays	Request for clarification	We understand that we would be liable to pay liquidated damages to the extent corresponding breach is solely attributable to us. Kindly confirm	RFP conditions to remain unchanged.

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		subject to a maximum amount of 10% of the total contract value.			
20.	Page 13, Point 14	Arbitration	Request for clarification	In order to uphold the principles of natural justice (Nemo judex in causa sua- no one should be judge in one's own case) and the provisions of the Arbitration and Conciliation Act, we request that the arbitrator(s) be appointed with mutual consent of both the parties. Alternatively, a panel of three arbitrators may be set up in which one arbitrator is appointed by Consultant, one by the Authority and the two arbitrators appoint third arbitrator. Please confirm.	RFP conditions to remain unchanged.
21.	Additional request for clarification	No disclaimer third-party	Request for clarification	We will be providing services and deliverables to you under the contract. We accept no liability to anyone, other than you, in connection with our services, unless otherwise agreed by us in writing. You agree to reimburse us for any liability (including legal costs) that we incur in connection with any claim by anyone else in relation to the services. Please confirm our understanding is correct.	RFP conditions to remain unchanged.

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22.	Additional request for clarification	Acceptance	<p>Request for addition of the following clause –</p> <p><i>“Within 10 days (or any other agreed period) from Client's receipt of a draft deliverable, Client will notify Consultant if it is accepted. If it is not accepted, Client will let Consultant know the reasonable grounds for such non acceptance, and Consultant will take reasonable remedial measures so that the draft deliverable materially meets the agreed specifications. If Client does not notify Consultant within the agreed time period or if Client uses the draft deliverable, it will be deemed to be accepted.”</i></p>	<p>If the project is to be completed on time, it would require binding both parties with timelines to fulfill their respective part of obligations. We request you that you incorporate a deliverable acceptance procedure, perhaps the one provided by Meity in their guidelines, or the one suggested below, to ensure that acceptance of deliverables is not denied or delayed and comments, if any, are received by us well in time.</p>	RFP conditions to remain unchanged.
23.	Page 9 Eligibility criteria point 7 (E)	The Bidder shall not be in Blacklist by any CPSU/ State PSU/ Central or State Government Undertaking.	Request for modification	The Authority is requested to revise the pre-qualification regarding blacklisting/ debarment. Entities that are not blacklisted / debarred at the time of the submission of bid should be allowed to participate in the tender process. Further, entities whose blacklisting was subsequently revoked / set aside should also be allowed to participate in the tender process.	RFP conditions to remain unchanged.

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24.	Page 9 Eligibility criteria point 7 (E)	The Bidder shall not be in Blacklist by any CPSU/ State PSU/ Central or State Government Undertaking.	Request for modification	The Authority is requested to allow us to submit the blacklisting declaration based on the present status of our backlisting / debarment for engaging in corrupt/fraudulent practices as on date of submission of the bid.	RFP conditions to remain unchanged.
25.	Annexure IV	Affidavit cum undertaking	Request for clarification	<p>We request to clarify the following to the client:</p> <p>a) We request the Authority to modify the definition of term "Indian Sister Concern(s)" specified in the Affidavit cum Undertaking to mean -[Indian]Associate Companies as defined in the Companies Act, 2013.</p> <p>b) We understand that the declaration required in Point 2, Annexure IV refers to our current promoters and board of directors or that of our Indian Associate Companies.</p> <p>c) We request you to limit the declaration required in Point 3 and 4, Annexure IV, to enquiries/investigations against the bidder that have resulted in the filing of a charge sheet before competent courts.</p>	RFP conditions to remain unchanged.

S. No	Reference to RFP Clause/Section	Existing clause	Query	Prospective Bidder's Remarks	Clarifications
26.	Additional clause on staffing	Deployment of Resources	Request for clarification on staffing travel due to the ongoing Covid pandemic	If there are any circumstances that reasonably restricts travel or physical presence of our personnel at your office / location, then without prejudice to your payment obligations, you shall allow such personnel to work from home or other remote location till the time such reasonable restrictions exist. Any delay / default in performing our obligations arising from such restrictions, shall not be attributable to us and shall not be considered a breach of contract on our part and no consequent damages / penalties etc. arising therefrom would be imposed on us under the Contract.	RFP conditions to remain unchanged.
27.	Page 15 point 15(xvi)(b)	Disqualification criteria - record of poor performance	Request for modification	We request the Authority to modify the criteria to the effect that there should not be any records of poor performance such as abandoning work, not properly completing contract, financial failures or delayed completion which is attributable solely to the bidder, either at Port(s)/MoPSW/Central PSU/State PSU, as may be evidenced by any adverse final decision of a competent court/arbitral tribunal or a termination of contract by such Port(s)/MoPSW/Central PSU/State PSU for any determined non-performance of contract, which should have been approved/upheld by any final court decree or final	RFP conditions to remain unchanged.

S. No	Reference to RFP Clause/Section	Existing clause	Query	Prospective Bidder's Remarks	Clarifications
				arbitral award against the bidder to such effect.	