

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

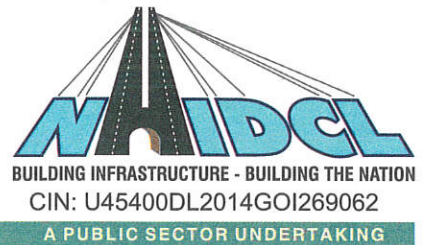
सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार

तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110 001

National Highways & Infrastructure Development Corporation Limited

Ministry of Road Transport & Highways, Govt. of India

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सार्वजनिक क्षेत्र का उपक्रम

No. NHIDCL/Civil works/Hayuling-Hawai(0-17)/Ar.Pr/2016.

Dated: 15.09.2016.

To

All prospective Bidders,

Subject: Pre Bid reply for the following project.

(i) Two-Laning of Existing Khupa - Hayuliang - Hawaii Road on EPC basis from design Km. 0.000 (Khupa) to Km. 17.000 [Existing Km 95.800 of (Khupa - Hayuliang Road) to Km 8.970 (Hayuliang - Hawaii Road)] in the state of Arunachal Pradesh under SARDP-NE, Project Highway

(ii) Two-Laning of Existing Hayuliang - Hawaii Road on EPC basis from design Km. 17.000 (Khupa) to Km. 34.000 [Existing Km 16.950 to Km 34.310 (Hayuliang - Hawaii Road)] in the state of Arunachal Pradesh under SARDP-NE, Project Highway.

(iii) Two-Laning of Existing Hayuliang - Hawaii Road on EPC basis from Design Km. 34.000 to Km. 51.825 [Existing Km 26.625 to Km 45.050 (Hayuliang - Hawaii Road)] in the state of Arunachal Pradesh under SARDP-NE

(iv) Two-Laning of Hayuliang- Hawaii by pass Road on EPC basis from design Km. 51.825 to Km. 63.131 Existing Km 45.050 of Hayuliang - Hawaii road to Hawaii Town in the state of Arunachal Pradesh under SARDP-NE

Sir/Madam,

The Clarification/Reply to the queries raised by certain bidders is attached herewith as Annexure-A.

(Y.C. Srivastava)
General Manager (Tech)

Clarification/Reply to queries.

[illegible]

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
4	Draft Contract Agreement & Schedules Clause 3.8	Except as otherwise stated in the Agreement: (a) the Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works; (b) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and (c) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.	The bidder requests the Authority to delete such unilateral provision as it is impossible for any bidder to ascertain unforeseen difficulties at the time of bidding. It is requested to make suitable provisions to cater such unforeseen difficulties duly considering the time and cost implications. Please confirm.	As per RFP.
5	Draft Contract Agreement & Schedules Clause 4.1.5	..... the aggregate Damages payable under Clauses 4.1.4, 8.3 and 9.2 shall not exceed 1% (one per cent) of the Contract Price.....	The bidder requests the Authority to increase the limit of aggregate of Damages payable by Authority to contractor under Clauses 4.1.4, 8.3 and 9.2 from one (1)% to ten (10)% of the Contract Price, in parity with the Contractor's liability due to delay under Cl. 10.3.3 of the Contract.	As per RFP
6	Draft Contract Agreement & Schedules Clause 4.1.6	The Authority agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following: (a)..... (b)..... (c)..... (d)..... (e).....;and (f)	The bidder requests to add the following provision under this sub clause: “(g) bear the responsibility and costs relating to all Rehabilitation and Resettlement required for the construction of Project Highway”	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
7	Draft Contract Agreement & Schedules Clause 4.1.6	(a), provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project; (b), provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity	Bidder understands that the Authority shall allow Time Extension and adjustment to the Contract Price for additional costs incurred by the Contractor for delay in procurement of Applicable Permits and also for delay in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity beyond 28 days of Contractor's request in this regard and if such delays are not attributable to the Contractor. Please confirm.	As per RFP.
8	Draft Contract Agreement & Schedules Clause 6.1.3	The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.	The bidder requests the Authority to delete such unilateral provision as it is impossible for any bidder to ascertain inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above at the time of bidding. It is requested to make suitable provisions to cater such risks duly considering the time and cost implications. Please confirm.	As per RFP.
9	Draft Contract Agreement & Schedules Clause 7.1.1	The Contractor shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority, within 10 (ten) days of the date of this Agreement, an irrevocable and unconditional guarantee.....	Bidder requests to modify the clause as follows: "The Contractor shall, provide to the Authority, <u>within 30 (thirty) days</u> of the date of Agreement, an irrevocable and unconditional guarantee.....	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
10	Draft Contract Agreement & Schedules Clause 7.1.3	In the event the Contractor fails to provide the Performance Security within 10 (ten) days of this Agreement, it may seek extension of time for a period not exceeding 30 (Thirty) days on payment of Damages for such extended period in a sum calculated at the rate of 0.01% (zero point zero one per cent) of the Contract Price for each day until the Performance Security is provided. For the avoidance of doubt the agreement shall be deemed to be terminated on expiry of additional 30 days time period and Bid security shall be encashed by the Authority.	The Bid Security provided along the Bid shall remain in force and effect till the submission of Performance Security. Hence, the bidder requests the Authority to abolish delay damages provision for delay in providing the same. Please confirm.	As per RFP.
11	Draft Contract Agreement & Schedules Clause 7.4	The Authority shall return the Performance Security to the Contractor within 60 (sixty) days of the later of the expiry of the Maintenance Period or the Defects Liability Period under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified.	Bidder requests the Authority to modify the Clause as follows: "The Authority shall return the one half of the Performance Security to the Contractor upon issuance of the Completion Certificate and balance shall be released within 7 (seven) days of the expiry of the Defects Liability Period under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified.	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
12	Draft Contract Agreement & Schedules Clause 8.3.1	<p>Damages for delay in handing over the site:-</p> <p>"In the event the Right of Way to any part of the Site is not provided by the Authority on or before the date(s) specified in Clause 8.2 for any reason other than Force Majeure or breach of this Agreement by the Contractor, the Authority shall pay Damages to the Contractor in a sum calculated in accordance with the following formula for and in respect of those parts of the Site to which the Right of Way has not been provided: Amount of Damages in Rs. per day per metre = $0.05 \times C \times 1/L \times 1/N$ Where, C = the Contract Price; L = length of the Project Highway in metres; and N = Completion period in days (Appointed Date to Scheduled Completion Date)"</p>	Considering the expenses born by the concessionaire to procure equipment, material and manpower is high, It is requested to consider the actual expenses incurred by the Contractor, since the stipulated formula is not covering the same.	As per RFP.
13	Draft Contract Agreement & Schedules Clause 8.4	Subject to the provisions of Clause 8.2, the Site shall be made available by the Authority to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the	<p>Bidder requests to modify the clause as follows:</p> <p>"Subject to the provisions of Clause 8.2, the Site shall be made available by the Authority to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project</p>	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
		avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.	Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances <u>as long as it does not adversely affect Construction of the Project Highway and its Maintenance.</u> "	
14	Draft Contract Agreement & Schedules Clause 8.5	.....In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expenses.	The bidder understands that the responsibility of the Contractor in the removal of encroachments is limited only to those which have come up after the signing of the memorandum. The bidder further understands that the Authority will extend all reasonable support in handling and removal of any such encroachment or occupation at site. Please confirm.	As per RFP.
15	Draft Contract Agreement & Schedules Clause 8.6	The Contractor shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Contractor shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project Highway and the performance of its obligations under this Agreement.	Bidder understands that the clause shall be dealt under Clause 13 [Change of Scope], if the ROW is provided on piece-meal basis than that envisaged under the relevant terms of the contract.	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
16	Draft Contract Agreement & Schedules Clause 10.3.2	Stipulates that in the event that the Contractor fails to achieve any Completion Schedule set forth in Schedule-J, he shall pay Damages to the Authority of a sum calculated at the rate of 0.05% of the Contract Price for delay of each day. On the other hand if the delay is solely attributable to Authority there is no provision for payment of compensation to the Contractor. In principle similar amount should be payable to the Contractor by the Authority for each day delay due to delay solely attributable to the Authority.	The same may please be reconciled.	As per RFP.
17	Draft Contract Agreement & Schedules Clause 10.4	<p>Stipulates that During the Construction Period, the Contractor shall maintain, at its cost, the existing lane(s) of the Project so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 10 days prior to the date of this Agreement.</p> <p>Whereas Article 4.2 on page 23 states that the Authority shall, prior to the Appointed Date, maintain the Project Highway, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 10 days prior to the last date for</p>	<p>Thus both the provisions differ to such extent that nobody will take care of worsening of road condition in between a date 10 days prior to bid submission and a date 10 days prior to signing of the Agreement.</p> <p>Both the provisions may be reviewed and necessary corrections incorporated. Also the condition of road to be recorded prior to 10 days before Appointed date & 10 days before signing of Agreement.</p>	As per RFP.

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		submission of the Bid.		
18	Draft Contract Agreement & Schedules Clause 10.5.5(b)	the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and	The Bidder request the Authority to modify the sub clause as follows: "(b) the Contractor shall, no later than 10 (ten) days after the close of each <u>quarter</u> , send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and"	As per RFP.
19	Draft Contract Agreement & Schedules Clause 12.2.1	.....The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Project Highway for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof.....	1- Bidder requests to modify the Clause 12.2.1 as follows: "..... The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Project Highway for which the Provisional Certificate has been issued, within a period of 180 (one hundred and eighty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof." 2- The works for which extension of time has been granted, the 180 days period shall be considered from the actual date of completion of such	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
			works. Please confirm. 3-The bidder requests that the damages leviable pursuant to Sub-clause 10.3.2 of this Agreement shall be calculated as percentage of value of such remaining work and not the Contract Price. Please confirm.	
20	Draft Contract Agreement & Schedules Clause 13.1.1	The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications/alterations to the Works ("Change of Scope") before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 13.	Bidder requests the Authority to modify the Clause as follows: "The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications/alterations to the Works ("Change of Scope") before <u>six months</u> of the Scheduled Completion Date either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 13"	As per RFP.
21	Draft Contract Agreement & Schedules Clause 13.1.2	Change of Scope shall mean: (a) change in specifications of any item of Works; (b) omission of any work from the Scope of the Project except under Clause 8.3.3; and / or (c) any additional work, Plant,	Bidder requests the Authority to add the following categories after 'c' under Clause 13.1.2: (d) changes to the levels, positions and/or dimensions of any part of the Works; and/ or (e) changes to the sequence or timing of the execution of the	As per RFP.



S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
		Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.	Works.	
22	Draft Contract Agreement & Schedules Clause 13.3	Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.	<p>1. The payment of such Change of Scope works shall be released progressively and shall be settled completely within 30 days of completion of such works. Any delay in payment shall carry interest at the rate Base Rate plus 2%. Please confirm.</p> <p>2. The bidder understands that the Change of Scope works shall be adjusted for price escalation of various components as per clause 19.10 and the Base date for this purpose shall be the date of preparation of estimate for Change of Scope Order or any other suitable date as fairly determined by the Authority's Engineer. Please confirm.</p>	As per RFP.
23	Draft Contract Agreement & Schedules Clause 13.4	<p>13.4.1 No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order</p> <p>13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 10 (ten) per cent of the Contract Price.</p> <p>13.4.3 Notwithstanding anything to the contrary in this Article 13, no change made necessary because of any</p>	<p>Bidder requests for addition of the following:</p> <p>13.4.4 No Change of Scope Order shall be issued after the date 180 days prior to Scheduled Completion Date.</p>	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
		default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope,		
24	Draft Contract Agreement & Schedules Clause 17.1.1	The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project Highway or any Section thereof, till the expiry of a period of 4 (four) years commencing from the date of Provisional Certificate (the "Defects Liability Period").....	Bidder requests the Authority to reduce the Defects Liability Period to 2 (two) years as per prevalent industry practice. Please confirm.	As per RFP.
25	Draft Contract Agreement & Schedules Clause 19.2.1	The Authority shall make an interest-bearing advance payment (the "Advance Payment") equal in amount to 10 (ten) percent of the contract price, for mobilisation expenses and for acquisition of equipment. The Advance payment shall be made in two installments each equal to 5% (five percent) of the Contract Price. The advance payment would be deemed as interest bearing advance at an interest rate of 10% (ten) per annum, to be compounded quarterly. The interest would be recovered along with the recovery of advance payment.	The bidder requests the Authority to change the sub-clauses as follows: "The Authority shall make an interest-free advance payment (the "Advance Payment") equal in amount to 10 (ten) percent of the contract price, for mobilisation expenses and for acquisition of equipment. The Advance payment shall be made in two installments each equal to 5% (five percent) of the Contract Price."	As per RFP.
26	Draft Contract Agreement &	.....an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of	The bidder requests the Authority to change the sub-clauses as follows: ".....an irrevocable and	As per RFP.

S. N.	Document/ Clause	Existing Bid Provision	Suggested Modification/ Comments of bidder	Proposed reply
	Schedules Clause 19.2.2 & 19.2.4	such instalment,.....	unconditional guarantee from a Bank for an amount equivalent to 100% (one hundred per cent) of such instalment,"	
27	Draft Contract Agreement & Schedules Clause 19.7.4	The Authority shall pay to the Contractor every quarter any amount due under any IPC under this Clause 19.7. The payment shall be made no later than 30 (thirty) days from the date of submission of the last IPC for the relevant quarter.	The bidder requests to modify the clause as follows to maintain the steady cash flow for carrying out the Maintenance works: "The Authority shall pay to the Contractor every <u>month</u> any amount due under IPC under this Clause 19.7. The payment shall be made no later than 30 (thirty) days from the date of submission of the IPC."	As per RFP.
28	Draft Contract Agreement & Schedules Schedule-F- Applicable Permits	The Contractor shall obtain, as required under the Applicable Laws, the following Applicable Permits: (a) Permission of the State Government for extraction of boulders from quarry; (h) Permission of Village Panchayats and State Government for borrow earth; and	Bidder requests the Authority to procure the permits required to be obtained before commencing extraction of minor minerals as it is in the better position to do so or else bidder shall be compensated in terms of both time and costs in case of delay in obtaining the same beyond reasonable time. Please confirm.	As per RFP.
29	Draft Contract Agreement & Schedules Schedule-N- Terms of Reference for Authority's	The Authority's Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-K and issue a Completion Certificate or Provisional Certificate, as the case may be.	1. The bidder understands that Authority's Engineer shall be the authorized person to issue Provisional/Completion Certificate and shall issue the same as per the terms of this Agreement. Please confirm. 2. Further, bidder understands that any determination of time extension and/or additional costs shall be carried out within reasonable time and shall not be	1. Clause 12.2.1 of the DCA may be referred. 2. As per the time

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	Engineer		<p>delayed beyond 60 days from the date of Contractor's notice in this regard. Please confirm.</p> <p>3. The Bidder understands that the Authority's Engineer shall forward all the correspondences exchanged between Authority's Engineer & Authority related to Project Highway to the Contractor. Please confirm.</p>	<p>specified in the TOR of the Authority Engineer.</p> <p>3. Not acceptable.</p>

