

National Highways & Infrastructure Development Corporation Ltd.

21.12.2020

Sub: Construction of Uni-Directional Khellani Tunnel of length 1.574 Km & its approach Road from Km 29.030 to Km 31.449 of total length of 2.419 Km on NH-244 in Union Territory of Jammu & Kashmir on EPC Mode.

Ref: Tender Id: 2020_NHIDC_596082_1

Amendment No-VI

S. N.	Clause and Description	As Per RFP	Amendments/Modifications
1	2.1.2 RFP	For work having Estimated Project Cost up to ₹ 500 Crore, no International Bidder is eligible as individually or as a member of a Joint Venture. For work more than ₹ 500Crore an International Bidder bidding individually or as a member of a Joint Venture shall ensure that Power of Attorney and other translated document are apostille by appropriate authority and requirement of Indian Stamp Act is duly fulfilled.	For this work no International Bidder is eligible as individually or as a member of a Joint Venture.
2	2.1.12 RFP	While The bidding is open to persons from India only country, the following provisions shall apply: (i) Where, on the date of the Application, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in the L-1 Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India, then the eligibility and award of the project to such L-1 Bidder shall be subject to approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such time. The decision of the authority in this behalf shall be final and conclusive and binding on the Bidder. (ii) Also for a project costing less than ₹ 500 Crore, a firm/company having not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital is held by persons resident outside India or is controlled by persons resident outside India, is not eligible for the project/Bid. (iii) For work having Estimated Project Cost up to ₹ 500 Crore, no International Bidder is eligible as individually or as a member of a Joint Venture. b. Further, where the LoA of a project has been issued to an agency, not covered under the category mentioned above, and it subsequently	The bidding is open to persons from India only.




		<p>wishes to transfer its share capital in favour of another entity who is a resident outside India or where a Bidder or its Member is controlled by persons resident outside India and thereby the equity capital of the transferee entity exceeds 50% or above, any such transfer of equity capital shall be with the prior approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such point in time.</p> <p>2. The holding or acquisition of equity control, as above shall include direct or indirect holding, acquisition, including by transfer of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.</p> <p>3. The Bidder shall promptly inform the authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding process.</p> <p>4. In case the L-1 Applicant under (a) above is denied the security clearance, for whatsoever reasons, then the applicants emerging as L-2, L-3 eligible Bidders (in that order) may be given a counter-offer (one by one sequentially) to match the bid of L-1 applicant/preferred Bidder. In the event of acceptance of the counter-offer by another eligible Bidder, the project may be awarded to such Bidder. In case no applicant matches the bid of the L-1 applicant, the bid process shall be annulled and fresh bids invited.</p>	
3	2.2.1 (d) RFP	<p>i. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.</p> <p>ii. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.</p> <p>iii. Bidder from a country which shares a land border with India for the purpose of this order means:-</p> <p>a) An entity incorporated, established or registered in such a country;</p>	Deleted

	<p>or</p> <p>b) A subsidiary of an entity incorporated, established or registered in such country; or</p> <p>c) An entity substantially controlled through entities incorporated, established or registered in such a country; or</p> <p>d) An entity whose beneficial owner is situated in such a country; or</p> <p>e) An India (or other) agent of such an entity; or</p> <p>f) A natural person who is a citizen of such a country; or</p> <p>g) A consortium or Joint Venture where any member of the consortium or joint venture falls under any of the above</p> <p>iv. The beneficial owner for the purpose of (iii) above will be as under:</p> <p>1. In case of a company or limited liability partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.</p> <p>Explanation</p> <p>a. "Controlling ownership interest" means ownership of or entitlement to more than twenty – five per cent of shares or capital or profits of the company</p> <p>b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;</p> <p>2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;</p> <p>3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s) who whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent or capital or profits of such association or body of individuals;</p> <p>4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official</p> <p>5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person</p>
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		<p>exercising ultimate effective control over the trust through a chain of control or ownership.</p> <p>v. An agent is a person employed to do any act for another, or to represent another in dealings with third person.</p> <p>vi. The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.</p> <p>Note: 1. For this clause the meaning of the Competent Authority shall be as defined in Annexure- I of Order (Public Procurement No. 1) F. No. 6/18/2019-PPD dated 23.07.2020 of Public Procurement Division, Department of Expenditure, Ministry of Finance.</p>	
4	New Clause 2.14 (xiv)RFP		Stands debarred from the Authority as a natural consequence of termination of any project / contract of the Authority.
5	New Clause 2.1.14 (xv) RFP		Has been placed in the Negative List of firms by the Authority for any reason including failure to deliver contract in time bound manner, abandoning the project without permission of the Authority, poor performance, penalties, missing targets or milestones, missing interim targets, clumsy execution of works, unethical practices, failure to abide by Integrity Pact or failure to follow any lawful directions given by the Authority.
6	New Clause 2.1.15 RFP		<p>The bidder including individual or any of its a JV members or its Related Parties, who are already having two on-going EPC projects in NHIDCL or on-going projects worth Rs. 500 cr. (awarded cost) or more in NHIDCL, as on the date of financial bid opening, shall not be eligible to bid for this project.</p> <p>Explanation :</p> <p>(i) An LOA issued for any project shall be counted as an on-going project.</p> <p>(ii) Project having EPC cost of Rs. 25 Crores or less shall not be counted for this purpose.</p> <p>(iii) In case of a company, the Related Parties means Related Parties as defined in the Companies Act' 2013, and in case of a bidder other than a company, the Related Parties means bodies in which the bidder or its partners are partner, trustees or directors in other bodies</p>

			<p>whether incorporated or not.</p> <p>To substantiate this, the bidder shall provide an undertaking giving list of all such related parties and projects being executed by the Related Parties in NHIDCL.</p> <p>A certificate in this regard from the Statutory Auditor (with UDIN) shall also be provided by the bidder.</p>
7	Article 23 New clause 23.1 (v)DCA		<p>As a natural consequence of the termination, due to the contractor's failure, the contractor shall be deemed to have been debarred for a period of 2 years and shall not be able to bid any contract of the Authority either singularly or in a JV or its Related Parties.</p> <p>(Explanation:- Such debarment shall be a natural consequence of termination. No separate Show Cause /proceeding shall be initiated for placing such contractor under debarment).</p>
8	Article 23 New clause 23.1 (vi)DCA		<p>The Authority may, at its discretion, without terminating the contract and allowing the contractor to continue with the existing contract(s), place the contractor(s) in the 'Negative List' for any of the following reasons :</p> <p>a) Failure to achieve milestones proportionate to the encumbrance free ROW handed over.</p> <p>(b) Failure to achieve targets / interim targets duly communicated by the Authority or its officers;</p> <p>(c) Failure to mobilize machinery / manpower as per the discretion of the Authority or its officers;</p> <p>(d) Inefficient and unsafe execution of work showing total disregard to public safety in construction zone and public convenience.</p> <p>(e) Showing total disregard to environmental laws, local laws and State / local administration concerns;</p> <p>(f) Showing total lack of ability (whether managerial / technical) to execute projects of such size;</p> <p>(g) Failure to abide by any lawful direction of the Authority or its officers.</p> <p>(h) Failure of contractor to extend/ replenish the Performance Security as per Contract Agreement.</p>

		<p>(i) Failure of contractor to maintain the project highway during construction and/or after completion of work, during the maintenance period.</p> <p>(j) Failure of contractor to rectify defects/ unsafe work within the time period as directed by Authority Engineer.</p> <p>(k) Subcontracting part or whole of the work without approval of the Authority.</p> <p>(l) Failure of contractor to fulfill its obligations as per Article 3 of contract of agreement.</p> <p>Provided that, the Authority shall issue a notice giving 15 days time to the contractor before placing him in the 'Negative List' and upon evaluation of reply, if any, shall take a final decision. Such a notice shall not be issued without the approval of an officer below the rank of Executive Director.</p> <p>Provided, upon satisfactory action on the matter for which the contractor has been placed in the list, the Competent Authority may allow the contractor to be deleted from the 'Negative List'.</p>
9	Article 23 New clause 23.1 (vii) DCA	<p>Consequence of placement in the Negative List :-</p> <p><i>"The contractor to include all the JV partners and their related parties shall not be eligible to bid in any of the Authority's contracts / projects for a period of 2 years from the date of being placed in the negative list or till the completion of the ongoing contract or removal of the Contractor from the negative list, whichever is earlier."</i></p>


(B. Shivprasad)
General Manager(T)