

JAIPUR DEVELOPMENT AUTHORITY, JAIPUR

No. JDA/EE ROB/RUB/2017/UID: 1134291 /D-२३२

Date: 06-10-2017

Corrigendum-I

In respect of the decisions taken in the Pre Bid Meeting held on 25.09.2017, for the work of **"Operation and Maintenance of Tourist Facility Center, Choura Rasta, Jaipur, on Commercial License basis for 10 years."** published vide NIB No. NIB No. : JDA/EE-ROB,RUB-IV/05/2017-18 dated 05.09.2017, following modifications and additions are made in the bid documents.

1. Modification :-

S.No.	Bid Doc. Clause	As published	Modification proposed.
1	Clause 4 (xiv) of ITB.	License period will start form the date of handing over of the physical possession.	License period will start form the date of handing over of the physical possession. Licensee shall pay to licensor as License fee as follows. A. For First Year: • After six months from award of work @32.50%. • After nine months from award of work @32.50%. • After twelve months from award of work @35.00%. B. From second year onwards (from date of award) Licensee shall pay License fee as per clause 4.1 of Article 4 of License Agreement, remaining terms and conditions of clause4 shall remain same.

2. Additions :- For allowing Joint Venture (JV), following addition as "Clause 10" of ITB is proposed.

"10. Joint Venture (JV) and Other Conditions.

- 10.1 The bidder can be a single firm or a joint venture/ consortium of firms. Single bidder should submit a Power of Attorney as per the format at Annex V, authorizing the signatory of the Bid to commit the Bidder. In case the Bidder is a Joint Venture/Consortium, Members of the JV/Consortium shall furnish a Power of Attorney in favour of the Lead Member in the format provided in Annex VI.

10.2 In the case of a JV, the following conditions shall apply: -

- (a) Not more than 2 entities shall be allowed as part of the consortium/joint venture.
- (b) all parties to the JV shall be jointly and severally liable; and
- (c) a JV shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the O&M License agreement , during O&M License agreement execution.
- (d) All parties of the JV adhere to conditions applicable to consortium/joint venture as per clause 10.

10.3 Further, in case the bidder is a Consortium/Joint Venture, the Members of such JV/Consortium shall enter into a Joint Bidding Agreement as prescribed in Annexure VII, of ITB. The members of the joint venture /consortium shall fulfill the conditions prescribed for Consortium/Joint Venture bidder as per Annexure VII of ITB and all relevant provisions prescribed in the Rajasthan Transparency in Public Procurement Rules 2013 and Rajasthan Transparency in Public Procurement Act 2012.

10.4 Further, in case the bidder is a Consortium/Joint Venture, the Members of such JV/Consortium shall enter into a Joint Bidding Agreement as prescribed in Clause 10.3 of ITB. The members of the joint venture /consortium shall fulfill the conditions prescribed for Consortium/Joint Venture bidder as per Clause 10 of ITB and all relevant provisions prescribed in the Rajasthan Transparency in Public Procurement Rules 2013 and Rajasthan Transparency in Public Procurement Act 2012.

10.5 Change in Ownership

10.5.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 3rd(third) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Licensee; and (ii) 5% (five per cent) of the Total Project Cost specified in the O&M License agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the O&M License agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the O&M License agreement, be deemed to be a breach of the O&M License agreement and dealt with as such there under. For the avoidance of doubt, the provisions of this Clause 10 shall apply only when the Bidder is a Consortium/Joint Venture. All relevant conditions prescribed in clause 10.6 and Rajasthan Transparency in Public Procurement Rules 2013 and Rajasthan Transparency in Public Procurement Act 2012 shall also be applicable in case of change of ownership in the consortium/joint venture bidder.

10.5.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of evaluation, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LoA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the O&M License agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the O&M License agreement, be deemed to be a breach of the O&M License agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Licensee. In such an event, notwithstanding anything to the contrary contained in the O&M License agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the O&M License agreement or otherwise.

10.6 JOINT VENTURE LIMIT & CONDITIONS *(Reference Jaipur Development Authority Office Order No. JDA/Ex.En. (TA to Director Engg-I)/2015-2016D-374 dated 3/6/15)*

In case the bidder comprises a joint venture or consortium, the following requirements shall be complied with:

- a. The total number of JV partners shall not exceed 2 (Two). They must designate lead partner duly authorized by all the members who will represent the JV. Any of the two partners can be the lead partner. The lead partner shall be nominated as being partner-in-charge and this authorization shall be evidenced by submitting power of attorney signed by the legally authorized signatories of all the partners.
- b. The partner-in-charge (or the lead partner) shall be authorized to incur liabilities and to receive instructions on the behalf of the partners of the Joint Venture, whether jointly or separately, and entire execution of the O&M License agreement (including payment) shall be carried out exclusively through the partner-in-charge.
- c. The share of one of the two partners shall not be less than 26 % and rest of the share shall be held by other partner (For example if share of one partner is 26 % then for other partner it will be 74%). The JDA will only send communication to the lead partner, which will be deemed to have been sent to all the JV partners. Similarly, any negotiation and / or agreement with the lead partner shall be deemed to have been concluded with all the JV partners. All the members of JV shall be bound by the said communication and all acts/ deeds of the lead member.
- d. Any one of the two partners, alone, should fulfill the technical capacity. Similarly, any one of the two partners, alone, should fulfill the Financial capacity. For any other eligibility criteria, qualifications of the two partners may be clubbed together.
- e. The individual partner of JV alone or with other partners cannot participate in the same bid.

- f. Bid capacity is to be calculated by clubbing turnover and work in hand of all the joint venture firms.
- g. Attested copy of the MoU/ Agreement/ Power of attorney entered into by the joint venture/consortium members duly notarized, shall be uploaded along with the Technical Bid with intended percentage participation nomination of lead member and division of responsibility to clearly define the work of each member etc.
- h. All the members or the joint venture/consortium shall be jointly and severally liable for the execution of the O&M Contract License agreement.
- i. In the event of default by any member of the joint venture/ consortium in the execution of his part of the O&M Contract License agreement, the partner- in-charge will have the authority to assign the work to any other party acceptable to the employer to ensure the execution of the part of O&M License agreement.
- j. If initially the bid is purchased and submitted by the any partner or by the JV firm, in case of JV bid is accepted, the work order will be issued in favour of name of JV and the bidder will submit details of the JV bank account to which payment is to be deposited by JDA. It is clarified that once the SPV is formed as laid down in clause 10.3 of ITB, all correspondence etc will be in the name of SPV only and bank account details etc of SPV shall have to be communicated by the bidder to JDA.
- k. The experience certificate will be issued as per the percentage of the shareholders defined in JV agreement of the two partners."

Annex V

Power of Attorney for Submission of Bid Proposal

(Refer Clause 10.1. of ITB)

Know all men by these presents, We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the *(insert project name here)* Project proposed or being developed by the (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all O&M License agreement s including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For.....

(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

Notarised

(Signature, name, designation and address of the Attorney)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants (s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.

Annex VI :

Power of Attorney for Lead Member of Consortium/JV

(Refer Clause 10.1 of ITB)

Whereas the (the "Authority") has invited bids from pre-qualified and short-listed parties for the Project(the "Project").

Whereas,, and (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposals and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s., having our registered office at, and M/s., having our registered office at, (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s., having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney") and hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ O&M License agreement , during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders' and other conferences, respond to queries, submit information/ documents, sign and execute O&M License agreement s and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said

Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20....

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

(Executants) (To be executed by all the Members of the Consortium)

Witnesses:

1.

2.

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants (s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

3. Extension of Bidding Dates:-- The due dates of bidding are hereby modified as under.

S.No.	Particulars	Date as published	Date Modified.
1.	Bid submission end date	23.10.2017	13.11.2017
2.	Technical Bid opening date	26.10.2017; 11.00 AM	15.11.2017; 11.00 AM

This bears approval of the competent authority of JDA.

Executive Engineer ROB-RUB-IV,
JDA, Jaipur.

Annex VII

Joint Bidding Agreement

(Refer Clause 10.4 of ITB)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20...

AMONGST

1. Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the **"First Part/Lead Member"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST&SECONDPART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party"**

WHEREAS,

(A) Jaipur Development Authority, established under the Jaipur Development Authority Act 1982 (Act. 25), represented by its Chairman and having its principal offices at Ram Kishor Vyas Bhawan, Indra Circle, Jawaharlal Nehru Marg, Jaipur-302004 (hereinafter referred to as the **"Authority"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the **"BID"**) by its Request for NIB No. dated (the **"NIB"**) for Selection of Licensee

for **"Operation and Maintenance of Tourist Facility Center, Choura Rasta, Jaipur, on Commercial License basis for 10 years."** (the **"Project"**) through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium/Joint Venture and in accordance with the terms and conditions of the NIB document and other bid documents in respect of the Project, and

(C) It is a necessary condition under the NIB document that the members of the Consortium/Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy of the MoU/Joint Venture Agreement with the Application.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”)/Joint Venture (“the **Joint Venture**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium/Joint Venture and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall compulsorily incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into an O&M License agreement with the Authority and for performing all its obligations as the Licensee in terms of the O&M License agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the ‘Lead member’ of the Consortium/JV and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium/JV during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

(b) Party of the Second Part shall be _____ Member of the Consortium;

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the O&M License agreement, till such time as the Completion of the Project is achieved under and in accordance with the O&M License agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party :

Second Party :

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the 3rd (third) anniversary of the date of commercial operation of the Project, be held by the Parties of the First and Second Part whose technical experience and financial capacity have been reckoned for the purposes of qualification and short listing of Applicants for the Project in terms of the RFP.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the 3rd (third) anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the 3rd (third) anniversary of the commercial operation date of the Project.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the O&M License agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

(iv) violate any clearance, permit, concession, grant, license

or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not prequalified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case maybe.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

9.3 The Parties acknowledge and accept that this Agreement adheres to the provisions prescribed for Consortium/JV under the Rajasthan Transparency in Public Procurement Rules 2013 and Rajasthan Transparency in Public Procurement Act 2012.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by

(Signature)

(Name)

(Designation)

(Address)

For and on behalf of SECOND PART by

(Signature)

(Name)

(Designation)

(Address)

In the presence of witnesses:

Witness 1.

Witness 2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executants (s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

3. For a Joint Bidding Agreement executed and issued, overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

4. Copies of any other supporting relevant document/MoU/Agreement entered into by parties to this Joint Bidding Agreement shall also be attached herewith.

5. An original self declaration shall be furnished; on company letterheads by each members of consortium/JV; stating compliance with & acceptance to the conditions in Annexure 7A of the RFP. Such declarations shall be duly submitted along with the Joint Bidding Agreement, signed by authorized signatories of the Lead Member& Consortium/JV partner.

3. Extension of Bidding Dates:-- The due dates of bidding are hereby modified as under.

S.No.	Particulars	Date as published	Date Modified.
1.	Bid submission end date	23.10.2017	13.11.2017
2.	Technical Bid opening date	26.10.2017; 11.00 AM	15.11.2017; 11.00 AM

This bears approval of the competent authority of JDA.


Executive Engineer ROB-RUB-IV,
JDA, Jaipur.