

## ई-मेल

फोन : 011-25686846

मुख्यालय  
सीमा सड़क महानिदेशालय  
सीमा सड़क भवन  
रिंग रोड दिल्ली कैंट  
नई दिल्ली - 110010

24006 / डीजीबीआर / पॉलिसी / 30 / ईपीसी सेल

20 दिसम्बर 2021

मुख्यालय  
अपर महानिदेशालय (उ.प.)  
मार्फत 56 सेना डाकघर

मुख्यालय  
अपर महानिदेशालय (पूर्व)  
मार्फत 99 सेना डाकघर

मुख्यालय मुख्य अभियंता  
परियोजना \_\_\_\_\_  
मार्फत 56 / 99 सेना डाकघर

### CHANGE IN STANDARD RFP & MODEL CA OF EPC PROJECTS

1. Copy of MoRT&H letter No. NH-35014/35/2020-H-Part(II) (E-196662) dated 16 Dec 2021 regarding amendment in Standard Request for Proposal (RFP) and Standard EPC Agreement is forwarded for necessary action please.
2. Amendments mentioned vide above letter shall be made in Standard Request for Proposal (RFP) and Standard EPC Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on EPC mode of contracts.

पंकज

(पंकज गोयल)

अधीक्षक अभियंता (सिविल)

निदेशक (ई.पी.सी)

कृते सीमा सड़क महानिदेशक

Encl : 11 Sheets

UIC - 05

PPC

No. NH-35014/35/2020-H-Part(II) (E-196662)  
Government of India  
Ministry of Road Transport & Highways  
(Highways Section)  
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated: 16 December, 2021

Office Memorandum

**Subject:** (i) Changes in standard RFP & MCA of EPC, BOT(Toll) and HAM project in order to ensure compliance of PPP-MII Order, 2017 and Rule 144 (xi) of GFR, 2017

(ii) Change in the clause no. 2.2.2.1 of the standard RFP of EPC to include all awarded works for determination of available BID Capacity.

Consequent upon the decision taken in the meeting of the Inter Ministerial Committee (IMC) held under the chairmanship of Secretary(RT&H) on 15.11.2021 on the above subject, NHAI has issued following 3 policy circulars (copies enclosed) incorporating the corresponding changes in standard RFP & MCA of EPC, BOT (Toll) and HAM project :

(i) **Policy Circular no. 11.32/2021 dated 07<sup>th</sup> December, 2021:** Amendment in the Standard Request for Proposal (RFP) and Standard EPC Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on EPC mode of contract to make procurement compliant of Public Procurement (Preference to Make in India ) Order, 2017 , Rule 144 (xi) of GFR and Changes in determination of Bid Capacity .

(ii) **Policy Circular no. 11.33/2021 dated 07<sup>th</sup> December, 2021 :** Amendment in the Combined Single Stage Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on BOT(Toll) mode of contract to make procurement compliant of Public Procurement (Preference to Make in India ) Order, 2017 , Rule 144 (xi) of GFR.

(iii) **Policy Circular no. 11.34/2021 dated 07<sup>th</sup> December, 2021 :** Amendment in the Standard Request for Proposal (RFP) and Model Concession Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on Hybrid Annuity Model (HAM) mode of contract to make procurement compliant of Public Procurement (Preference to Make in India ) Order, 2017 , Rule 144 (xi) of GFR.

2. It is conveyed that the above changes are applicable for projects implemented on the aforesaid modes of contract by all the executing agencies of MoRTH.

3. This issues with the approval of the competent authority.

Encl : As above



(Rajesh Gupta)  
Director (LA)

Telephone No. 011-23718527

To

1. DG(RD) & SS, MoRTH
2. MD, NHIDCL

Copy to:

The Chairperson, NHA

Copy also to:

1. Sr. PPS to Secretary (RT&H)
2. Sr. PPS to Additional Secretary (Highways)
3. Director (Technical), NIC, MoRTH to upload this OM on the website of MoRTH



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

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**NHAI/Policy Guidelines/ Standard Document/2021**  
**Policy Circular no. 11.32/2021 dated 07<sup>th</sup> December, 2021**  
 (Decision taken on e-office file No. NHAI/CMD/Misc/2021Comp. No.85726)

**Sub.: Amendment in the Standard Request for Proposal (RFP) and Standard EPC Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on EPC mode of contract to make procurement compliant of Public Procurement (Preference to Make in India) Order 2017, Rule 144 (xi) of GFR and Changes in determination of Bid Capacity- reg.**

It may be mentioned that an Inter - Ministerial Committee meeting was held under the chairmanship of Secretary (RT&H) on 15.11.2021 to discuss the changes in Model RFP of EPC, BOT(Toll) and HAM project in order to ensure compliance of Public Procurement (Preference to Make in India) Order 2017 (amended on 16.09.2020), Rule 144(xi) of GFR, 2017 and changes in clause 2.2.2.1 of Model RFP of EPC document regarding determination of Bid Capacity. Based on the decision taken during the meeting, following amendments shall be made in the Standard Request for Proposal (RFP) and Standard EPC Agreement for National Highways and other centrally sponsored road projects proposed to be implemented on EPC mode of contract:

**A. Amendment in the Standard Request for Proposal (RFP) issued by MoRTH vide letter no. RW/NH-37010/4/2010-EAP (Printing) Vol.-IV dated 05.03.2019**

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	1.2.7	Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in Clause 2.1.12 (b) (4), the Authority shall annul the Bidding Process and invite fresh BIDs.	Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in Clause 2.1.12 (b) (4) & Clause 3.3.1, the Authority shall annul the Bidding Process and invite fresh BIDs.
2	1.2.10	New clause	A Bidder is required to submit, along with its technical BID, a self- certification that the item offered meets the local content requirement for 'Class - I local Supplier' / 'Class - II local Supplier', as the case may be. The self-certification shall also have details of the location(s) at which the local value addition is made. In case, bidder has not submitted the aforesaid certification the bidder will be treated as 'Non- Local Supplier'.  In the above pretext, the Class - I Local Supplier, Class - II Local Supplier and the Non- Local Supplier are defined as under:

12

## 1604658/2021/O/o JS (Highways)

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>(i) 'Class - I local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class - I local Supplier' under this RFP. The 'local content' requirement to categorize a supplier as 'Class - I local Supplier' is minimum 50%.</p> <p>(ii) 'Class - II local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class - II local Supplier' under this RFP. The 'local content' requirement to categorize a supplier as 'Class - II local Supplier' is minimum 20%.</p> <p>(iii) 'Non - local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class - II local supplier' under this RFP.</p> <p>(iv) 'Local content' means the amount of value added in India which shall be the total value of item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent</p> <p>In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I local supplier' / 'Class - II local supplier' shall provide a certificate from the statutory auditor or cost auditor of the company (in case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.</p>
3	2.1.15	New Clause	All Orders of Ministry of Finance/DPIIT/any other Government agencies, as applicable and prevalent on the date of LOA, shall be applicable.
4	2.1.16	New Clause	Entities of countries which have been identified by Ministry of Road Transport & Highways as not allowing Indian companies to participate in their Government procurement for any item related to

Sl. No.	Clause no.	Existing Provision	Proposed Provision
5	2.2.1 (d)	New Clause	<p>Ministry of Road Transport &amp; Highways shall not be allowed to participate in Government procurement in India for all items related to Ministry of Road Transport &amp; Highways, except for the list of items published by the Ministry of Road Transport &amp; Highways permitting their participation.</p> <p>For determining the eligibility of Bidder from a country which shares a land border with India the following shall apply:</p> <p>(i) Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23<sup>rd</sup> July 2020, which shall form an integral part of RFP and DCA (Copy enclosed).</p> <p>(ii) "Bidder from a country which shares a land border with India" means:</p> <ol style="list-style-type: none"> <li>a) An entity incorporated, established or registered in such a country, or</li> <li>b) A subsidiary of an entity incorporated, established or registered in such a country; or</li> <li>c) An entity substantially controlled through entities incorporated, established or registered in such a country; or</li> <li>d) An entity whose beneficial owner is situated in such a country; or</li> <li>e) An Indian (or other) agent of such an entity; or</li> <li>f) A natural person who is a citizen of such a country; or</li> <li>g) A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.</li> </ol> <p>(iii). Beneficial owner for the purpose of (ii) above means:</p> <ol style="list-style-type: none"> <li>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 judicial person, has a controlling ownership interest or who exercises control through other means.</li> </ol>

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p><b>Explanation:</b></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 shareholding 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 of the property or capital or profits of such association or body of individual;</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 exercising ultimate effective control over the trust through a chain of control or ownership.</p> <p>(iv). An Agent is a person employed to do any act for another, or to represent another in dealings with third person.</p>

Sl. No.	Clause no.	Existing Provision	Proposed Provision
			<p>(v) The Selected 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. The definition of "contractor from a country which shares a land border with India" shall be as in Clause 2.2.1(d)(ii) above.</p> <p><b><u>Certificate regarding Compliance:</u></b></p> <p>A certificate on the letterhead of the Bidder shall be required to be submitted by the bidders certifying the following:</p> <p style="padding-left: 40px;">"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from a country or, if from such a country, has been registered with the Competent Authority as defined in Public Procurement Order no. F.no.6/18/2019- PPD dated 23rd July 2020. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered."</p> <p>It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.</p> <p><b><u>Validity of Registration:</u></b></p> <p>In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.</p>

182



Sl. No.	Clause no.	Existing Provision	Proposed Provision
6	2.2.2.1	<p>Bidders who <i>inter alia</i> meet the minimum qualification criteria will be qualified only if their available BID capacity is more than the total BID value (value as per Clause 1.1.1). The available BID capacity will be calculated as per following, based on information mentioned at Annexure-VI of Appendix-IA:</p> <p>Assessed Available BID capacity = <math>(A*N*2.5 - B + C)</math>, Where</p> <p>N= Number of years prescribed for completion of work for which Bid is invited.</p> <p>A = Maximum value of civil engineering works excluding the amount of bonus received, if any, in respect of EPC Projects executed in any one year during the last five years (updated to the price level of the year indicated in table at Note- 3 below) taking into account the completed as well as works in progress. The EPC projects include turnkey project/ Item rate contract/ Construction works.</p> <p>B = Value (updated to the price level of the year indicated in table at Note-3 below) of existing commitments, works for which Appointed Date/ Commencement Date has been declared or on-going works to be completed during the period of completion of the works for which BID is invited. For the sake of clarification, it is mentioned that works for which LOA has been issued but Appointed Date/ Commencement Date not declared as on Bid Due Date shall not be considered while calculating value of B.</p> <p>C = The amount of bonus received, if any, in EPC Projects during the last 5 years (updated to the price level of the year indicated in table at Note-3 below).</p> <p>Note: 1. The Statement showing the value of all existing commitments, works for which Appointed Date/ Commencement Date has been declared and ongoing works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect</p>	<p>Bidders who <i>inter alia</i> meet the minimum qualification criteria will be qualified only if their available BID capacity is more than the total BID value (value as per Clause 1.1.1). The available BID capacity will be calculated as per following, based on information mentioned at Annexure-VI of Appendix-IA:</p> <p>Assessed Available BID capacity = <math>(A*N*2.5 - B + C)</math>, Where</p> <p>N= Number of years prescribed for completion of work for which Bid is invited.</p> <p>A = Maximum value of civil engineering works excluding the amount of bonus received, if any, in respect of EPC Projects executed in any one year during the last five years (updated to the price level of the year indicated in table at Note- 3 below) taking into account the completed as well as works in progress. The EPC projects include turnkey project/ Item rate contract/ Construction works.</p> <p>B = Value (updated to the price level of the year indicated in table at Note-3 below) of existing commitments, works for which the bidder has emerged as the winner of the bids or on-going works to be completed during the period of completion of the works for which BID is invited. For the sake of clarification, it is mentioned that works for which bidder has emerged as the winner of the bids but LOA has not been issued as on the day before opening the financial bids shall also be considered while calculating value of B.</p> <p>C = The amount of bonus received, if any, in EPC Projects during the last 5 years (updated to the price level of the year indicated in table at Note-3 below).</p> <p>Note: 1. The Statement showing the value of all existing commitments, works for which the contractor has emerged as the winner of the bid as given by bidder and ongoing works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Client or its Engineer-in-charge not below</p>

Sl. No.	Clause no.	Existing Provision	Proposed Provision																								
		<p>of EPC Projects or Concessionaire / Authorised Signatory of SPV in respect of BOT Projects and verified by Statutory Auditor.</p> <p>2. The amount of bonus received, if any, in EPC Projects should be countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect of EPC Projects.</p> <p>3. The factor for the year for updation to the price level is indicated as under:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Year-1</th> <th>Year-2</th> <th>Year-3</th> <th>Year-4</th> <th>Year-5</th> </tr> </thead> <tbody> <tr> <td>Up-dation factor</td> <td>1.00</td> <td>1.05</td> <td>1.10</td> <td>1.15</td> <td>1.20</td> </tr> </tbody> </table>	Year	Year-1	Year-2	Year-3	Year-4	Year-5	Up-dation factor	1.00	1.05	1.10	1.15	1.20	<p>the rank of Executive Engineer or equivalent in respect of EPC Projects or Concessionaire / Authorised Signatory of SPV in respect of BOT Projects and verified by Statutory Auditor.</p> <p>2. The amount of bonus received, if any, in EPC Projects should be countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect of EPC Projects.</p> <p>3. The factor for the year for updation to the price level is indicated as under:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Year-1</th> <th>Year-2</th> <th>Year-3</th> <th>Year-4</th> <th>Year-5</th> </tr> </thead> <tbody> <tr> <td>Up-dation factor</td> <td>1.00</td> <td>1.05</td> <td>1.10</td> <td>1.15</td> <td>1.20</td> </tr> </tbody> </table> <p>4. The Bid capacity status of the bidder to be updated as on the day before opening the financial bids.</p>	Year	Year-1	Year-2	Year-3	Year-4	Year-5	Up-dation factor	1.00	1.05	1.10	1.15	1.20
Year	Year-1	Year-2	Year-3	Year-4	Year-5																						
Up-dation factor	1.00	1.05	1.10	1.15	1.20																						
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Up-dation factor	1.00	1.05	1.10	1.15	1.20																						
7	3.3.1	<p>Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.1.6 and who quotes lowest price shall be declared as the selected Bidder (the "Selected Bidder").</p>	<p>Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.1.6. The bidder shall be declared as the selected Bidder (the "Selected Bidder") in pursuance to the procedure defined hereunder:</p> <p>(i) Among all the responsive bidder, the lowest bidder will be termed as L1. If L1 is 'Class - I Local Supplier', the contract will be awarded to L1.</p> <p>(ii) If L1 is not 'Class - I local supplier', the lowest bidder among the 'Class - I local supplier', will be invited to match L1 price subject to Class - I local supplier's quoted price falling within the margin of purchase preference, and the contract will be awarded to such 'Class - I local supplier' subject to matching the L1 price.</p> <p>(iii) In case such lowest eligible 'Class - I local supplier' fails to match the L1 price, the 'Class - I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class - I local</p>																								

Sl. No.	Clause no.	Existing Provision	Proposed Provision
8	2.11.1:	New Clause  <b>Self-Certification</b>  (to be inserted below the heading Financial Bid)	supplier' within the margin of purchase preference matches the L1 price, the contract shall be awarded to the L1 bidder.  'Margin of purchase preference' means the maximum extent to which the price quoted by a 'Class - I local supplier' may be above the L1 for the purpose of purchase preference. The margin of purchase preference shall be 20%.  Self- certification by the Bidder that its Bid meets the Local Content requirement for 'Class - I Local supplier' / 'Class - II Local supplier', as the case may be. The Self-certification shall also have details of the location(s) at which the local value addition is made. In case, bidder do not submit the aforesaid Certification, the bidder will be summarily treated as 'Non Local Supplier'.  In case of procurement for a value in excess of Rs. 10 crores, the 'Class - I Local supplier' / 'Class - II Local supplier' shall have to provide a Certificate from the Statutory Auditor or Cost Auditor of the Company (in case of Companies) or from a practicing Cost Accountant or practicing Chartered Accountant (in respect of Suppliers other than Companies) giving the percentage of Local Content upon Construction of the Project.

B. Amendment in the Standard EPC Agreement issued by MoRTH vide letter no. RW/NH-37010/4/2010-EAP(Printing) Vol.-IV dated 05.03.2019

Sl. No.	Clause no.	Existing Provision	Proposed Provision
1	4.14	New Clause  4.14 Obligations relating to Local Content	The Contractor [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project Highway of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.

1604658/2021/O/o JS (Highways)


2. This issues with the approval of Competent Authority.

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

Copy to:

1. Hindi Officer for translation in Hindi.
2. Library for hosting the circular on library site.
3. Web Admin for circulation.

  
07/12/2021  
(Sanjay Kumar Patel)  
General Manager (Coord.)

