

Government of India
Ministry of Road Transport & Highways
(EAP Zone)

130.114

Transport Bhawan
1, Parliament Street
New Delhi-110 001

No.RW/NH-37010/4/2010/PIC-EAP(Printing)

Dated the 14th September, 2015

To

1. The Principal Secretaries/Secretaries of all States/UTs Public Works Department dealing with National Highways, other Centrally Sponsored Schemes & State Schemes.
2. The Engineers-in-Chief and Chief Engineers of all States/UTs Public Works Department dealing with National Highways, other Centrally Sponsored Schemes & State Schemes.
3. Director General (Border Roads), Seema Sadak Bhawan, Ring Road, New Delhi-110010
4. The Chairman, National Highways Authority of India (NHAI), G-5&6, Sector-10, Dwarka, New Delhi-110 075.
5. The Managing Director, National Highway Infrastructure Development Corporation Ltd., 3rd floor, PTI Building, Parliament Street, New Delhi-110 001

Subject: Amendment to Model documents for 'Request for Qualification' (RFQ) and 'Request for Proposal' (RFP-Single stage two part bidding) for Road & Bridge Works to be implemented on Engineering, Procurement & Construction (EPC) mode

Sir,

With reference to 'Request for Qualification' (RFQ) and 'Request for Proposal (RFP), issued with the circular dated 10.07.2014 and 'Request for Proposal' (RFP-Single stage two part bidding) issued vide circular 27.5.14 for Road & Bridge works to be implemented on Engineering, Procurement & Construction (EPC) mode, following are further amendments:

(I) Amendment to EPC (Engineering Procurement Construction) Agreement for Construction of Two-Lane National Highway Works

Sl. No	Ref Clause No.	Existing formulation	Proposed formulation
1	Overview of the framework-Contract Price (pg-3)	The Contract Price is a fixed lump sum amount for construction of the project highway. For maintenance, the contractor will get 1.5% of the Contract Price for the first year and 2% of the Contract Price for the second year. The Contract Price is subject to adjustment on account of changes in the cost of inputs, changes in law, or changes in scope of the project.	The Contract Price is a fixed lump sum amount for construction of the project highway. For maintenance, the contractor will get 0.5% of the Contract Price for the first year and 1%, 1.5%, 2% of the Contract Price respectively for the second, third and fourth year in case of road projects. But in case of standalone Bridge

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			/ structure work, the contractor will get 0.25%, 0.5%, 0.5% and 0.5% of the Contract Price for the first, second, third and fourth year respectively. The Contract Price is subject to adjustment on account of changes in the cost of inputs, changes in law, or changes in scope of the project.
2	Overview of the framework-Contract Period(pg-3)	The contract period is normally determined on a project-specific basis depending on the volume of construction work involved. However, the Agreement provides the flexibility of including the maintenance of the project highway in the scope of the project. A maximum of two-year maintenance period is considered appropriate. The Contractor shall ensure safe, smooth and uninterrupted flow of traffic, and carry out routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices during the maintenance period. The Agreement lays down quantifiable maintenance requirements and performance standards. A mechanism for dealing with the non-performance of maintenance obligations by the Contractor has been provided in the Agreement.	The contract period is normally determined on a project-specific basis depending on the volume of construction work involved. However, the Agreement provides the flexibility of including the maintenance of the project highway in the scope of the project. A maximum of four-year maintenance period is considered appropriate. The Contractor shall ensure safe, smooth and uninterrupted flow of traffic, and carry out routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices during the maintenance period. The Agreement lays down quantifiable maintenance requirements and performance standards. A mechanism for dealing with the non-performance of maintenance obligations by the Contractor has been provided in the Agreement.
3	Overview of the framework-Maintenance (pg-5)	The Agreement provides performance based standards for the maintenance of the project highway. The Contractor shall be paid 1.5% of the contract price for the first year of maintenance and 2% for the second year of maintenance. Maintenance work is to be inspected by the Government's engineer once every month, and deductions made for failure or defects in maintenance.	The Agreement provides performance based standards for the maintenance of the project highway. The contractor will get 0.5% of the Contract Price for the first year and 1%, 1.5%, 2% of the Contract Price respectively for the second, third and fourth year in case of road projects. But in case of standalone Bridge / structure work, the contractor will get 0.25%, 0.5%, 0.5% and 0.5% of the Contract Price for the first, second, third and fourth year respectively. Maintenance work is to be inspected by the Government's engineer once every month, and deductions made for failure or defects in maintenance.
4	Overview of the frame work- Defect Liability Period(pg-6)	Though normally a defects liability period of one year is specified in most contracts, a defects liability period of two years has been specified in the Agreement in order to provide additional comfort to the Government.	Though normally a defects liability period of one year is specified in most contracts, a defects liability period of four years has been specified in the Agreement in order to provide additional comfort to the Government.
5	Opening para of recital	[THE NATIONAL HIGHWAYS AUTHORITY OF INDIA] , established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075] (hereinafter referred to as the " Authority ") which expression shall, unless repugnant to the context or	The President of India through the Ministry of Road Transport & Highways, Government of India represented by [Director General (Road Development) and Special Secretary, Transport Bhawan, 1 parliament Street New Delhi 110001/Chairman, National

		meaning thereof, include its administrators, successors and assigns) of One Part;	Highways Authority of India G-5 & 6, Sector 10, Dwarka, New Delhi-110075 / CE (NH) PWD State,.....address / DGBR,address] (hereinafter referred to as the “ Authority ” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;
6	End of Recitals	NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Authority hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:	<p>NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Authority hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:</p> <p>The following documents attached hereto shall be deemed to form an integral part of this Contract:</p> <p>(a) Volume-I :</p> <ul style="list-style-type: none"> The Agreement; Corrigendum to the Agreement; Addendum, if any, to RFP; Reply to Pre Bid Queries, if any; Letter of Bid; Letter of Acceptance; Power of Attorney; Joint Venture Agreement, if any; Legal opinion; Any other document to be specified <p>(b) Volume-II: Alignment Plans and Drawings; Annex-III of Schedule-A (Alignment Plan); Typical Cross Sections; Lay out of Major Junctions; GAD of the bridges; Any other drawings to be specified</p> <p>(c) Volume-III: Technical Bid</p>

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7	Cl. 7.1.1- Performance Security (pg-35)	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 from a Bank in the form set forth in Schedule-G (the “ Performance Security ”) for an amount equal to 7.5% (seven and half percent) of the Contract Price. The Performance Security shall be valid until 60 (sixty) days after the Defects Liability Period. Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Authority shall release the Bid Security to the Contractor. For the avoidance of doubt, the parties expressly agree that the Contractor shall provide, no later than 30 (thirty) days prior to the expiry of the Performance Security for the defects Liability Period specified in Clause 17.1.1, a Performance Security in respect of the extended Defects Liability Period specified in Clause 17.1.2 for an amount equal to 5% (five per cent) of the estimated cost of Structures and Major Bridges specified therein.	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 from a Bank in the form set forth in Schedule-G (the “ Performance Security ”) for an amount equal to 5% (five percent) of the Contract Price. The Performance Security shall be valid until 60 (sixty) days after the Defects Liability Period. Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Authority shall release the Bid Security to the Contractor.
8	Cl. 7.1.3 (pg-35)	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 20 (twenty) days on payment of Damages for such extended period in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for each day until the Performance Security is provided	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.
9	Cl. 14.1.1- Maintenance obligation of the contractor (pg-67)	The Contractor shall maintain the Project Highway for a period of [2 (two) years] commencing from the date of the Provisional Certificate (the “ Maintenance Period ”). For the performance of its Maintenance obligations, the Contractor shall be paid a total amount equal to 1.5% (one and one-half per cent) of the Contract Price for the first year of maintenance, and 2% (two per cent) of the Contract Price for the second year of maintenance, inclusive of all taxes. The amount payable for maintenance shall be adjusted to reflect any increase or decrease arising out of variation in WPI to be determined in accordance with the provisions of Clause 19.12. For the avoidance of doubt, it is agreed that in the event no Provisional Certificate is issued, the Maintenance Period shall commence from the date of the Completion Certificate. It is further agreed that the Contract Price hereunder shall be reckoned with reference to the amount specified in Clause	The Contractor shall maintain the Project Highway for a period of 4 (four) years commencing from the date of the Provisional Certificate (the “ Maintenance Period ”). For the performance of its Maintenance obligations, the contractor will get 0.5% of the Contract Price for the first year and 1%, 1.5%, 2% of the Contract Price respectively for the second, third and fourth year in case of road projects. But in case of standalone Bridge / structure work, the contractor will get 0.25%, 0.5%, 0.5% and 0.5% of the Contract Price for the first, second, third and fourth year respectively. Amount shall be, inclusive of all taxes. The amount payable for maintenance shall be adjusted to reflect any increase or

		19.1.1, which shall be adjusted to the extent of Change of Scope and the works withdrawn under the provisions of Clause 8.3.3, but shall not include any price adjustments in pursuance of Clause 19.10.	decrease arising out of variation in WPI to be determined in accordance with the provisions of Clause 19.12. For the avoidance of doubt, it is agreed that in the event no Provisional Certificate is issued, the Maintenance Period shall commence from the date of the Completion Certificate. It is further agreed that the Contract Price hereunder shall be reckoned with reference to the amount specified in Clause 19.1.1, which shall be adjusted to the extent of Change of Scope and the works withdrawn under the provisions of Clause 8.3.3, but shall not include any price adjustments in pursuance of Clause 19.10.
10	Cl. 17.1.1- Defect Liability Period (DLP) (pg-75)	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 2 (two) years commencing from the date of Provisional Certificate (the “ Defects Liability Period ”). Provided that the Defects Liability Period shall in no case be less than 18 (eighteen) months from the date of Completion Certificate for and in respect of works for which Time Extension was granted. Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate. For the avoidance of doubt, any repairs or restoration on account of usual wear or tear in the Project Highway or any Section thereof shall form a part of the Maintenance obligations of the Contractor as specified in Article 14	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 ”). Provided that the Defects Liability Period shall in no case be less than 42 (forty two) months from the date of Completion Certificate for and in respect of works for which Time Extension was granted. Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate. For the avoidance of doubt, any repairs or restoration on account of usual wear or tear in the Project Highway or any Section thereof shall form a part of the Maintenance obligations of the Contractor as specified in Article 14
11	Cl. 17.1.2- Defect Liability Period (pg-75)	Without prejudice to the provisions of Clause 17.1.1, the Defects Liability Period for and in respect of any Structures or Major Bridges as specified in Annexure-1 of Schedule-B shall deemed to be extended by a further period of 3 (three) years after the expiry of the Defects Liability Period specified in Clause 17.1.1.	Deleted.
12	Cl. 19.2.1 (pg-83)	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 three instalments. The first instalment shall be an amount equal to 2% (two percent) of the Contract Price, the second instalment shall be equal to 3% (three percent) of the Contract Price, and the third instalment shall be equal to 5% (five percent) of the Contract Price.	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 instalments. Both the first instalment shall be an amount equal to 5% (five percent) of the Contract Price.

13	Cl. 19.2.3 (pg-84)	At any time after 30 (thirty) days from the Appointed Date, the Contractor may apply for the second instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.	Deleted.
14	Cl. 19.2.4 (pg-84)	At any time, after 60 (sixty) days from the Appointed Date, the Contractor may apply to the Authority for the third instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.	At any time, after 60 (sixty) days from the Appointed Date, the Contractor may apply to the Authority for the second instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.
15	Cl. 19.2.5 (pg-84)	The first, second and the third instalments shall be paid by the Authority to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Clause 19.2.	The first and the second instalments shall be paid by the Authority to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Clause 19.2.
16	Cl. 19.2.6 (pg-84)	Each instalment of Advance Payment shall be repaid by the Contractor to the Authority no later than 365 (three hundred and sixty five) days from the respective date of Advance Payment.	Deleted.
17	Cl. 19.2.7 (pg-84)	The Contractor shall repay each instalment of the Advance Payment on or before the due date of repayment. In the event of the Contractor's failure to make the repayment on time, the Authority shall be entitled to encash the Bank guarantee for Advance Payment. The Parties expressly agree that for any delay in repayment of the Advance Payment, the Contractor shall pay interest to the Authority for each day of delay, such interest to be calculated at the rate of 18% (eighteen per cent) per annum.	<p>The advance payment shall be repaid through percentage deductions from the stage payments determined by the Authority's Engineer in accordance with Sub-Clause 19.5, as follows:</p> <p>(a) deductions shall commence in the next Stage Payment Statement following that in which the total of all certified stage payments (excluding the advance payment and deductions and repayments of retention) exceeds 20% (twenty percent) of the Contract Price; and</p> <p>(b) deductions shall be made at the rate of 15% (fifteen percent) of each Stage Payment Statement until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 80% (80 percent) of the Contract Price has been certified for payment.</p>

18	Cl. 19.10.4 (d)-Definition of 'CO' (pg-90)	The WPI for cement for the month of the Base Date.	The WPI for grey cement for the month of the Base Date.
19	Cl. 19.10.4 (d)-Definition of 'CI' (pg-90)	The WPI for cement for the month three months prior to the month to which the IPC relates.	The WPI for grey cement for the month three months prior to the month to which the IPC relates.
20	Cl. 19.10.4 (d)-definition of 'SO' (pg-90)	The WPI for steel (rods) for the month of the Base Date.	The WPI for steel (re-bars) for the month of the Base Date.
21	Cl. 19.10.4 (d)-definition of 'SI' (pg-90)	The WPI for steel (rods) for the month three months prior to the month to which the IPC relates.	The WPI for steel (re-bars) for the month three months prior to the month to which the IPC relates.
22	Article 28-Definitions (Change in Law) (pg-135)	<p>Change in Law" means the occurrence of any of the following after the Base Date:</p> <p>(a) the enactment of any new Indian law;</p> <p>(b) record prior to the Base Date; or</p> <p>(e) any change in the rates of any of the Taxes or royalties that have a direct effect on the Project;</p>	<p>Change in Law" means the occurrence of any of the following after the Base Date:</p> <p>(a) the enactment of any new Indian law;</p> <p>(b) the repeal, modification or re-enactment of any existing Indian law;</p> <p>(c) the commencement of any Indian law which has not entered into effect until the Base Date;</p> <p>(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date;</p>
23	Article 28 Definitions	<p>Lead Member" shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement; }^s</p>	<p>Lead Member" shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement; the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the Project Highway, and Lead Member shall hold at least 51% of equity share among the members/partners of Joint Venture;</p>
24	Para 1.4 of Schedule A (pg-148)	The alignment plans of the Project Highway are specified in Annex-III. In the case of sections where no modification in the existing alignment of the Project Highway is contemplated, the alignment	The proposed alignment plans of the Project Highway are specified in Annex-III which has to be followed by the Contractor as a minimum. The

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		plan has not been provided. Alignment plans have only been given for sections where the existing alignment is proposed to be modified.	Contractor may, however, improve upon the alignment plans and profile and raise the finished roadway level (FRL) with approval from the Authority's Engineer within the available Right of Way.																						
25	Note in the beginning of Annex-I to Schedule-A (pg-149)	Note: Through suitable drawings and description in words, the land, buildings, structures and road works comprising the Site shall be specified briefly but precisely in this Annex-I.	Note: Through suitable drawings and description in words, the land, buildings, structures and road works comprising the Site shall be specified briefly but precisely in this Annex-I. All the chainages/location referred to in Annex-I to Schedule-A shall be existing chainages.																						
26	Para 2 of Annex-I to Schedule-A (pg-149)	Land The Site of the Project Highway comprises the land described below:	Land The Site of the Project Highway comprises the land (sum total of land already in possession and land to be possessed) as described below:																						
27	Para 16 of Annex-I to Schedule-A (pg-153)	Bypasses The details of the bypasses are as follows: <table><tr><th rowspan="2">S. No.</th><th rowspan="2">Name of bypass (town)</th><th rowspan="2">Chainage (km) From --to</th><th rowspan="2">Length (in Km)</th><th colspan="2">Carriageway</th></tr><tr><th>Width (m)</th><th>Type</th></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>	S. No.	Name of bypass (town)	Chainage (km) From --to	Length (in Km)	Carriageway		Width (m)	Type							Bypasses The details of the existing road sections proposed to be bypassed are as follows: <table><tr><th>S. No.</th><th>Name of bypass to town</th><th>Chainage (km) From km to km</th><th>Length (in km)</th></tr><tr><td></td><td></td><td></td><td></td></tr></table>	S. No.	Name of bypass to town	Chainage (km) From km to km	Length (in km)				
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(II) Amendment to RFQ, RFP and RFP(Single stage) for EPC works and General Guidelines

Sl. No.	Clause no	Existing Clause	Proposed Modified formulation
1	Cl. 2.2.7 of RFQ and Cl. 2.1.18 of RFP (Single stage)	Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Application, would not be eligible to submit the BID, either individually or as member of a Joint Venture.	Any entity which has been barred by the Ministry of Road Transport & Highways or its implementing agencies for the works of Expressways, National Highways, ISC and EI works, and the bar subsists as on the date of Application, would not be eligible to submit the BID, either individually or as member of a Joint Venture."
2	2.19 of RFP (Single stage) Correspondence with the Bidder	Save and express as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any BID.	Save and express as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any BID. However, the Authority would display the result of technical evaluation on the web portal for 7 days including reasons for non-responsiveness, if any, and the financial bid will be opened thereafter.

3	2.1.19 of RFP (Single stage)	The Bidder including individual or any of its Joint Venture Member should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder including individual or any of its Joint Venture Member, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder including individual or any of its Joint Venture Member.	The Bidder including individual or any of its Joint Venture Member should, in the last 2 (two) years, have neither failed to perform for the works of Expressways, National Highways, ISC &EI works, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder including individual or any of its Joint Venture Member, as the case may be, nor has been expelled or terminated by Ministry of Road Transport & Highways or its implementing agencies for breach by such Bidder including individual or any of its Joint Venture Member.																									
4	<u>Appendix I A</u> Annex-I, Details of Bidder para 5(d) of RFP (Single stage)	<p>The following information shall also be provided w.r.t para 2.1.18 for each Member of the Joint Venture:</p> <p>Name of Applicant/ member of Joint Venture:</p> <table><tr><th>SI N.</th><th>Criteria</th><th>yes</th><th>No</th></tr><tr><td>1</td><td>Has the Bidder/ constituent of the Joint Venture been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT, EPC or otherwise).</td><td></td><td></td></tr><tr><td>2</td><td>If the answer to 1 is yes, does the bar subsist as on BID due date.</td><td></td><td></td></tr><tr><td>3</td><td>Has the Bidder/ constituent of the Joint Venture paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?</td><td></td><td></td></tr></table>	SI N.	Criteria	yes	No	1	Has the Bidder/ constituent of the Joint Venture been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT, EPC or otherwise).			2	If the answer to 1 is yes, does the bar subsist as on BID due date.			3	Has the Bidder/ constituent of the Joint Venture paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?			<p>The following information shall also be provided w.r.t para 2.1.18 for each Member of the Joint Venture:</p> <p>Name of Applicant/ member of Joint Venture:</p> <table><tr><th>SI N.</th><th>Criteria</th><th>Yes / No</th></tr><tr><td>1</td><td>Has the Bidder/ constituent of the Joint Venture been barred by the Ministry of Road Transport & Highways or its implementing agencies for the works of Expressways, National Highways, ISC and EI works, from participating in bidding.</td><td></td></tr><tr><td>2</td><td>If the answer to 1 is yes, does the bar subsist as on BID due date.</td><td></td></tr></table>	SI N.	Criteria	Yes / No	1	Has the Bidder/ constituent of the Joint Venture been barred by the Ministry of Road Transport & Highways or its implementing agencies for the works of Expressways, National Highways, ISC and EI works, from participating in bidding.		2	If the answer to 1 is yes, does the bar subsist as on BID due date.	
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5	<u>Appendix I A</u> Annex-I, Details of Bidder para 6 of RFP (Single stage)	<p>A statement by the Bidder and each of the Members of its Joint Venture (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary) w.r.t para 2.1.19:</p> <p>Name of Bidder/ Member of Joint Venture:</p>	<p>A statement by the Bidder and each of the Members of its Joint Venture (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the last 2 years is given below (Attach extra sheets, if necessary) w.r.t para 2.1.19:</p> <p>Name of Bidder/ member of Joint Venture:</p>																									

		No.	Criteria	1 st	2 nd	3 rd									
				last year	last year	last year									
		1.	If bidder have either failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or any of its Joint Venture Member, as the case may be, or has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or any of its Joint Venture Member.				<table><tr><th>No.</th><th>Criteria</th><th>1st last year</th><th>2nd last year</th></tr><tr><td>1.</td><td>If bidder have either failed to perform for works of Expressways, National Highways, ISC & EI works, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or any of its Joint Venture Member, as the case may be, or has been expelled / terminated by Ministry of Road Transport & Highways or its implementing agencies, for breach by such Bidder or any of its Joint Venture Member, along-with updated details of ongoing process of litigation / blacklisting..</td><td></td><td></td></tr></table>	No.	Criteria	1 st last year	2 nd last year	1.	If bidder have either failed to perform for works of Expressways, National Highways, ISC & EI works, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or any of its Joint Venture Member, as the case may be, or has been expelled / terminated by Ministry of Road Transport & Highways or its implementing agencies, for breach by such Bidder or any of its Joint Venture Member, along-with updated details of ongoing process of litigation / blacklisting..		
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2.	Updated details of stage of litigation, if so, against the Authority / Governments on all the on-going projects of the bidder or any of its Joint Venture Member.														
		3.	Updated details of on-going process of blacklisting if so, under any contract with Authority / Government on the Bidder including any of its Joint Venture member.												
6	Clause 2.20.5 (a) of RFP (Single stage)	The BID Security shall be forfeited and appropriated by the Authority as damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the bidding documents and / or under the Agreement, or otherwise, under the following conditions: (a) If a Bidder submits a non-responsive BID as defined in 3.1.6 ; (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in <u>Section 4</u> of this RFP; (c) If a Bidder withdraws its BID during the					The BID Security shall be forfeited and appropriated by the Authority as damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the bidding documents and / or under the Agreement, or otherwise, under the following conditions: (a) Deleted (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in <u>Section 4</u> of this RFP; (c) If a Bidder withdraws its BID								

		<p>period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;</p> <p>(d) In the case of Selected Bidder, if it fails within the specified time limit -</p> <p>(i) to sign and return the duplicate copy of LOA;</p> <p>(ii) to sign the Agreement; or</p> <p>(iii) to furnish the Performance Security within the period prescribed therefor in the Agreement; or</p> <p>(d) In case the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Performance Security.</p>	<p>during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;</p> <p>(d) In the case of Selected Bidder, if it fails within the specified/extended time limit by Authority -</p> <p>(i) to sign and return the duplicate copy of LOA;</p> <p>(ii) to sign the Agreement; or</p> <p>(iii) to furnish the Performance Security within the period prescribed therefor in the Agreement; or</p> <p>(e) In case the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Performance Security.</p>
7	3.3.4 of RFP (Single stage)	New clause may be added	Authority shall return Bid. Security of all bidders except L-1 within a week from opening of financial bid.
8	2.2.4(ii) of RFQ (dtd 10.07.14) And 2.2.2.9 (ii) of RFP of RFP (Single stage) dated 27.05.14)	Certificate(s) from its statutory auditors.....net worth (the "Net worth") shall mean the sum of subscribed and paid up equity and reserve from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.	Certificate(s) from its statutory auditors.....net worth (the "Net worth") shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
9	Para 3 under Instructions in Annex-III of Appendix-I of RFQ dated (10.07.2014) And Para 3 under Instructions in Annex-III of Appendix-IA of RFP	Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).	Net worth (the "Net worth") shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

	(Single stage dated 27.05.14)		
10	2.2.6 (f) of RFQ dated (10.07.2014) and 2.1.15 (f) of RFP of RFP (Single stage dated 27.05.14)	the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the Project Highway.	the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the Project Highway, and Lead Member shall hold at least 51% of equity share among the members/partners of Joint Venture. if the contract is allocated to the Joint Venture.
11	Last sentence of para 6 – “Share of work in the Project” in Format for Joint Bidding Agreement for Joint Venture under Appendix - IV- of RFQ dated (10.07.14) & Appendix-V of RFP (Single stage dated 27.05.14)	Further, the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the Project Highway, if the contract is allocated to the Joint Venture.	Further, the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the Project Highway, and Lead Member shall hold at least 51% of equity share among the members/partners of Joint Venture, if the contract is allocated to the Joint Venture.
12	clause 3.2.1 of RFQ and 2.2.2.5 (iii) of RFP (single stage)	<p>For the purpose of this RFP:</p> <p>(a) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and</p> <p>(b) core sector would be deemed to include ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.</p>	<p>(a) In case of projects executed by applicant under category 3 and 4 as a member of joint venture, the project cost should be restricted to the share of the applicant in the joint venture for determining eligibility as per provision under clause 2.2.2 (A ii). In case Statutory Auditor certifies that, the work of other member(s) is also executed by the applicant, then the total share executed by applicant can be considered for determining eligibility as per provision under clause 2.2.2 (A ii).</p> <p>(b) Maintenance works are not considered as eligible project for evaluation as per Instruction No.6 to Annex-IV. As such works with nomenclature like PR, OR, FDR,</p>

			<p>SR, site/micro grading, surface renewal, resurfacing work, Tarring, B.T. surface work, temporary restoration, urgent works, periodic maintenance, repair & rehabilitation, one time maintenance, permanent protection work of bank, external pre stressing, repair of central hinge, short term OMT contract of NHAI, any type of work related to boarder fencing, work of earthwork alone, construction of buildings/ hostels/hospitals, etc, or not specified. shall not be considered.</p> <p>(c) The works such as Improvement in Riding Quality work (IRQP/IRQ), riding quality shall be considered for threshold technical capacity [2.2.2(A i)] but not for single completed works ([2.2.2(A ii)]</p> <p>(d) Project in Highway sector shall constitute the following for the purpose of consideration under category 1 or 3 as applicable, if :</p> <ul style="list-style-type: none"> (i) Widening / reconstruction / up-gradation works on NH / SH or on any category of road taken up under CRF, ISC/ EI, SARDP, LWE (ii) Widening/ reconstruction/ up-gradation works on /MDRs with loan assistance from multilateral agencies or on BoT basis, (iii) Widening/ reconstruction / up-gradation work of roads in Municipal corporation limits, construction of Bypasses, (iv) Construction of stand- alone bridges, ROBs, tunnels w.r.t roads. (v) Long term OMT works of NHAI/MoRT&H. <p>(e) The projects with the title of RIDF, PMGSY road, link road, city roads, rural road, sector/ municipality road, Bridges for railway line, work of metro rails (bridges/ tunnel), real estate projects which demonstrate road development/ construction bridges or culverts may be considered under category – 4</p>
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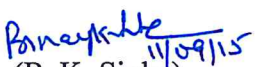
			(f) In case both the estimated cost of project and revised cost of project are provided, the revised cost of project shall be considered for evaluation.
13	Clause 2.1.15 (c) of RFP (Single Stage)	Members of the Joint Venture shall nominate one member as the lead member (the "Lead Member"). Lead Member shall meet at least 60% requirement of Technical and Financial Capacity required as per Clause 2.2.2.2(i) & 2.2.2.3. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members of the Joint Venture. Other Member(s) shall meet at least 30% requirement of Technical and Financial Capacity required as per Clause 2.2.2.2(i) & 2.2.2.3;	Members of the Joint Venture shall nominate one member as the lead member (the "Lead Member"). Lead Member shall meet at least 60% requirement of Bid Capacity, Technical and Financial Capacity required as per Clause 2.2.2.1, 2.2.2.2(i) & 2.2.2.3. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members of the Joint Venture. Other Member(s) shall meet at least 30% requirement of Bid Capacity, Technical and Financial Capacity required as per Clause 2.2.2.1, 2.2.2.2(i) & 2.2.2.3;
14	Clause 2.2.2.4 (i) of RFP (single stage)	In case of a Joint Venture: The Threshold Technical Capacity and Financial Capacity of all the Members of Joint Venture would be taken into account for satisfying the above conditions of eligibility. Further, Lead Member shall meet at least 60% requirement of Technical and Financial Capacity required as per Clause 2.2.2.2(i) and 2.2.2.3 and each of other JV members shall meet at least 30% requirement of Technical and Financial capacity as per Clause 2.2.2.2 (i) and 2.2.2.3. For avoidance of doubt it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria.	In case of a Joint Venture: (i) The Threshold Technical Capacity and Financial Capacity of all the Members of Joint Venture would be taken into account for satisfying the above conditions of eligibility. Further, Lead Member shall meet at least 60% requirement of Bid Capacity , Technical and Financial Capacity required as per Clause 2.2.2.1, 2.2.2.2(i) and 2.2.2.3 and each of other JV members shall meet at least 30% requirement of Bid Capacity , Technical and Financial capacity as per Clause 2.2.2.1, 2.2.2.2 (i) and 2.2.2.3. For avoidance of doubt it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria.
15	Clause 2.2.3(i) of RFQ	In case of a Joint Venture: The Threshold Technical Capacity and Financial Capacity of all the Members of Joint Venture would be taken into account for satisfying the above conditions of eligibility. Further, Lead Member shall meet at least 60% requirement of Technical and Financial Capacity required as per Clause 2.2.2(A)(i) and 2.2.2(B) and each of other JV members shall meet at least 30% requirement of Technical and Financial capacity as per Clause 2.2.2(A)(i) and 2.2.2(B) For avoidance of doubt it is	In case of a Joint Venture: The Threshold Technical Capacity and Financial Capacity of all the Members of Joint Venture would be taken into account for satisfying the above conditions of eligibility. Further, Lead Member shall meet at least 60% requirement of Assessed Bid Capacity, Technical and Financial Capacity required as per Clause 2.2.1(e), 2.2.2(A)(i) and 2.2.2(B) and each of other JV members shall meet at least 30% requirement of Assessed Bid

		further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria	Capacity, Technical and Financial capacity as per Clause 2.2.1(e), 2.2.2(A)(i) and 2.2.2(B) For avoidance of doubt it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria
16	Clause 2.1.17(B) of RFP	<p>In case of Joint Venture:</p> <p>The Updated Bid Capacity Clause 2.1.17(A) shall be met by all Members of The Joint Venture. Further, Lead Member shall meet at least 60% requirement of Threshold Technical Capacity and each of other JV Member shall meet at least 30% requirement of Threshold Technical Capacity. For avoidance of doubt, it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria.</p>	<p>In case of Joint Venture:</p> <p>The Updated Bid Capacity Clause 2.1.17(A) shall be met by all Members of The Joint Venture. Further, Lead Member shall meet at least 60% requirement of Bid Capacity and Threshold Technical Capacity and each of other JV Member shall meet at least 30% requirement of Bid capacity and Threshold Technical Capacity. For avoidance of doubt, it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria.</p>

2. This issues with the approval of competent authority. The above amendments incorporate all the previous amendments and supersede all amendments issued earlier till date on the subject.

3. The contents of this circular may be brought to the notice of all concerned for its compliance.

Yours faithfully,


(B. K. Sinha)
Chief Engineer(EAP)

Copy to:

1. All Technical Officers at the Headquarters
2. Secretary General, Indian Roads Congress
3. Director, IAHE, NOIDA
4. Joint Secretary (Highways)
5. All ROs/ELOs

Copy for information to:

1. PS to Minister (RTH)/OSD to Hon'ble Minister/PS to Hon'ble MOS
2. PPS to Secretary (RT&H), PPS to DG(RD) & SS, PS to AS&FA, PS to ADG I/II, PS to Coordinator I/II/II
3. NIC- with the request to upload in the Ministry's portal

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