

Delhi Tele: 25686914/25686875

Email: bro-e8@nic.in

<http://www.bro.gov.in>

Regd./SDS/E-Mail

Headquarters

Dte General Border Roads

Seema Sadak Bhawan

Ring Road, Delhi Cantt

New Delhi – 110010

24228/DGBR/ Policy Inst/2018/109/E8

28 NOV 2018

HQ ADGBR (North-West)
Sector – 48-C, Chandigarh,
Pin :- 160047

HQ ADGBR (East)
C/o 99 APO

All CE(P) _____

JOINT VENTURE IN BRO WORKS

1. Further to this HQ letter No 24228/DGBR/ Policy Inst/2018/22/E8 dt 21 Mar 2018.
2. Revised Policy on Joint Venture for BRO contracts is sent herewith by E-Mail. Same shall be downloaded and incorporated with immediate effect and instructions will be disseminated down up to OC level.
3. This has the approval of DGBR.



(S P Singh, IDCMS)
Dy .Dir (Contracts)
For Dte Gen Border Roads



Copy to :-

Shri U K Tiwary
Dir(BR-Works)
Mod (BR)
4th Floor 'B Wing',
Sena Bhawan,
New Delhi-110011

:- For info please alongwith enclosure
(Encls :- 07 sheets)

HQ DGBR/EPC Cell

:- For compliance alongwith enclosures
(Encls :- 07 Sheets)

1.23 Joint Venture in BRO Works

1.23.1 Two firms are permitted to bid for the tender based on Joint Venture agreement between them: Joint Venture (JV) shall not comprise more than two firms (called parties of JV). The format of agreements at Annexure 1. The JV shall be considered as un-enlisted contractor. The JV shall submit Earnest Money Deposit for all tenders and Individual Security deposit as per instructions, if contract is awarded.

1.23.2 JV shall be allowed for following works:-

- (a) Road work with estimated cost more than Rs 50 crore.
 - (b) Bridge work and via duct with estimated cost more than Rs 20 crores.
 - (c) Tunnel Works of any value.
 - (d) Runway Work any value.
 - (e) PEB structure works of any value.
 - (f) Solar Power works of any value.
 - (g) Works for specialist E/M services with estimated cost more than Rs 20 crore.
 - (h) Consultancy Work for Preparation of DPR for Bridges, Tunnels & EPC roads with estimated Cost more than Rs.5 Crore.
 - (i) Works other than the types at (a) to (h) above with estimated cost more than Rs 50 crore.
- 1.3 No JV shall be allowed for furniture works.
- 1.4 (a) Foreign Companies shall not be permitted to participate in JV except in case of tunnel project. Security clearance of Foreign Companies having foreign citizenship Directors shall be dealt with as prescribed under subsequent para.
- (b) (i) Indian Companies having Director(s) of foreign origin and Indian Companies having Director(s) of Indian origin but residing abroad/ having foreign citizenship shall be permitted to participate in JV. However security clearance in such cases shall be obtained by following procedure laid down by Ministry of Home Affairs vide their letter No II/20034/2013-IS II dt 30 Jun 2015 and amendment there if vide OM No II/20034/2013-II dt 09 Dec 2015. These letters, being classified, are not being shared. The case for security clearance shall be processed to HQ DGBR for taking up matter with concerned authorities.
- (ii) Case for security clearance shall be processed to HQ DGBR on PRIORITY after opening Tbid (Cover-1). Further processing of tender to open Finance Bid (Cover-2) shall not be held up awaiting receipt of security clearance. However, if the JV requiring security clearance of Director(s) becomes L1, the tender shall be accepted only on receipt of security clearance. For this, the Accepting officer will pursue the security clearance vigorously.
- (iii) For runway tenders, all other policies issued vide E-in-C's Branch letter No A/37696/OSDPL/POL/E2 W (PPC) dt 15 May 2015 as amended vide their letter even No dt 14 Mar 2017 pertaining to experience, nature of works executed, requirement of tools, plants and machinery, financial turnover, Available Bid Capacity etc shall be followed.

1.5 A valid agreement shall exist between the parties of JV defining clearly the role, responsibility and scope of work of each party, percentage share of each party along with nomination of leader (lead Party) for the purpose of this work and a confirmation that the parties of the JV are jointly and severally responsible.

1.6 JV as a single unit or each party of the JV shall have Permanent Account Number (PAN) and GSTIN. However if the contract is awarded to the JV, then PAN & GSTIN shall be obtained by the JV as single unit.

1.7 The JV shall have two parties. The lead party of the JV shall meet minimum 60% or the percentage of share in the JV (whichever is higher) of the qualifying criteria pertaining to (a) past experience of completed works, (b) Average Annual Turnover, (c) Bank Solvency/Financially Sound for engagement and (d) Working Capital. Both the parties combined shall meet minimum 120% of the above qualifying criteria.

1.8 Both the Parties of JV shall jointly possess the required T&P, machinery and engineering/ supervisory staff. T&P can be either on ownership basis or lease hold as stipulated in NIT/ tender documents and documentary proof of the same shall be submitted. Other qualification criteria shall be met fully/jointly by both the parties of JV or as a single unit of JV.

1.9 In the Residual Bid Capacity (in the formula $2XAX-N-B$, where A = Maximum turnover in last five financial years, N = Period of completion of contracted (tendered) work (in years calculated till two decimal places) and B = Value of balance work in all Govt & Private works), in respect of a JV, values of A and B shall be the sum total of the respective figures of both the parties.

Similarly when a Firm / Contractor working in JV applies for tender(s) in his own capacity (i.e. independently), the part value of A and B of his JV work(s) in proportion to his percentage share in JV shall also be considered against the tender applied in his own capacity and hence these details shall be submitted by the Firm/Contractor in his 'T' bid.

1.10 JV concluded upto the date of bid submission are permitted to apply. Copy of JV should be uploaded. The Department reserves the right to verify the particulars furnished by the applicant independently. If any information furnished by the applicant JV is found incorrect and / or misleading and / or false representation and/or deliberately suppressed information, at a later stage, the JV and both the parties shall be liable to be debarred from tendering/taking up of any work in BRO.

1.11 Party/ parties will not be allowed to bid for the same tender in their independent capacity as well as under JV. Also no party will be allowed to bid for the same tender under multiple JVs. In case of violation (party/parties bidding independently as well as under JV for the same tender, party/parties bidding for the same tender under multiple JVs), the bid of the party/parties concerned as well as the bid(s) of the related JV(s) shall not be opened (ie shall not be qualified in 'T' bid Cover'1').

1.12 The lead party shall attend all progress review meetings and shall be answerable to all issues relating to the project.

1.13 For any of the defaults as under of the JV, administrative action shall be taken against both the parties of JV :-

(a) In case of non-submission of physical original documents of cost of tender, EMD - Barring from bidding for six months.

(b) Due to default in performance of contract etc-Administrative actions as per existing instructions.

1.14 Any unrealized recovery from JV shall be recovered proportionately from the parties in proportion to their percentage share in the JV. If it is not possible to recover proportionate share (partly/fully) from one party, it shall be recovered from other party.

1.15 The provisions of JV including its related stipulations shall have to be incorporated in the NIT.

ANNEXURE 'I'

Format for Joint Bidding Agreement for Joint Venture (to be executed on stamp paper of appropriate value)

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

AMONGST

1. having its registered office at (hereinafter referred to as the First Part which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. 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 and SECOND PART are collectively referred to as the "Parties" and each is individually referred to as a "Party"

WHEREAS,

(A) The BORDER ROADS ORGANIZATION, represented by its (Name of tendering office) and having its office at _____ (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 bid by its Tender ID No. _____ for _____ (name of work).

(B) The Parties are interested in jointly bidding for the tender as member of a Joint Venture and in accordance with the terms and conditions of the tender document in respect of the work, and

(C) It is necessary condition under the pre-qualifying criteria (PQC) that the parties of the Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the PQC in the Notice Inviting Tender.

2 Joint Venture

(a) The parties do hereby irrevocably constitute a Joint Venture for the purposes of jointly participating in the Bidding Process for the project.

(b) The Parties hereby undertake to participate in the Bidding Process only through this Joint Venture and not individually and/or through any other Joint Venture constituted for this Project, either directly or indirectly.

3 Covenants

The parties hereby undertake that in the event the Joint Venture is declared the selected Bidder and awarded the contract, it shall perform all its obligations as the Contractor in terms of the Contract.

Role of the Parties

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

4

(a) Party of the First Part shall be the Lead member of the Joint Venture and shall have the power of attorney from the other Party for conducting all business for and on behalf of the Joint Venture during the Bidding Process and execution process as well as post execution process.

(b) Party of the Second Part shall be the Member of the Joint Venture.

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 and conditions given in the NIT and Tender Documents.

Field of expertise

The parties do hereby declare that the field of expertise of the parties are as under :-

First Party :

Second Party:

Share of Work in the Project

The parties agree that the proportion of the Contract to be allocated among the parties shall be as follows:-

First Party:

Second Party:

8 Representation of the Parties

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

- (a) Such Party is duly organised, validly existing all 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 Joint Venture party 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 organisational documents thereof;
- (iv) Violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, 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 interest, 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 Affiliates 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.

This Agreement shall be effective from the date hereof and shall continue in full force and effect until completion of Defect Liability Period under and in accordance with the Contract, in case the Project is awarded to the Joint Venture. However, in case the Joint Venture does not pre-qualify for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant does not pre-qualify or upon return of the Bid Security by the Authority to the Bidder, as the case, may be.

10. Miscellaneous

- (a) This Joint Bidding Agreement shall be governed by Lawsof India.
- (b) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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: SECOND PART

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

WITNESS

In the presence of:

1

7.