

बिहार सरकार
पथ निर्माण विभाग

पत्रांक-प्र0-6/नियम-02/2010

8131 (5) पटना, दिनांक 21-7-12

प्रपक,

प्रत्यय अमृत
सचिव,

सेवा में,

प्रधान सचिव/सचिव, बिहार, पटना।
जल संसाधन विभाग, बिहार, पटना।
ग्रामीण कार्य विभाग, बिहार, पटना।
भवन निर्माण विभाग, बिहार, पटना।
लोक स्वास्थ्य अभियंत्रण विभाग, बिहार, पटना।
नगर विकास एवं आवास विभाग, बिहार, पटना।
योजना एवं विकास विभाग, बिहार, पटना।
निगरानी विभाग, बिहार, पटना।
लघु जल संसाधन विभाग, बिहार, पटना।
ऊर्जा विभाग, बिहार, पटना।

विषय :- Standard Bidding Document आधारित निविदाओं में Joint Venture
के रूप में भाग लेने हेतु Joint Venture के शर्तों के उपबंध के संबंध में।

महाशय,

निदेशानुसार उपर्युक्त विषय पर आपका ध्यान आकृष्ट करते हुए कहना है कि राज्य में लागू Standard Bidding Document के Instruction to Bidders Chapter के कंडिका-4.4 में रुपये 10.00 करोड़ से अधिक प्राक्कलित राशि के निविदाओं में संवेदकों द्वारा Joint Venture के रूप में भाग लेने का प्रावधान है। किन्तु Joint Venture के लिए Criteria एवं Guideline का उपबंध नहीं होने के कारण इसके कार्यान्वयन हेतु मार्गदर्शन की अपेक्षा की जाती रही है।

तदनुसार सम्यक विचारोपरान्त एवं सरकार के अनुमोदनोपरान्त Standard Bidding Document में Joint Venture के लिए सामान्य Criteria एवं Guideline तथा Format for joint venture agreement का प्रावधान निम्नवत् किया जाता है :-

Criteria for Joint venture participating in the bids for procurement of civil works.

1. Bids from joint venture are only allowed for the works having estimated cost more than 10.00 cr. Bids submitted by a joint venture (JV) of not more than a total of three firms as partners shall comply with the following requirements :-

- 1.1 There shall be a Joint Venture Agreement (Refer Annexure 1) specific for the contract package between the constituent firms, indicating clearly, amongst other things, the proposed distribution of responsibilities both financial as well as technical for execution of the work amongst them. For the purpose of this clause, the most experienced lead partner will be the one defined. A copy of the Joint Venture agreement in accordance with requirements mentioned in Annexure-I shall be necessarily submitted with the bid.
- 1.1.1 Alternatively, a letter of intent to execute a JV in the event of successful bid shall be signed by all partners of JV and submitted with the bid together with a copy of the proposed agreement. Pursuant to the foregoing, the JV shall include among other things, the joint venture's objectives, the proposed management structure, the contribution of each partner to joint venture operation, the commitment of the partners to joint and several liability for due performance, recourse/sanctions within the joint venture in the event of default or withdrawal of any partner and arrangements for providing the required indemnities.
- 1.1.2 The JV so formed shall also have to be registered with the concerned department after issue of LOA but before the agreement.
- 1.2 The bid, and in the case of the successful bidder, the form of agreement, etc, shall be signed and /or executed in such a manner as may be required for making it legally binding on all partners (including operative parts of the ensuing contract in respect of Agreement of Arbitration, etc). On award of work, the Form of Agreement and Contract Documents shall be signed by all partners of the Joint Venture to conclude Contract Agreement.
- 1.3 Lead partner shall be nominated as being partner-in-charge; and this authorization shall be evidenced by submitting a power of attorney signed by the legally authorized signatories of all the partners.

- 1.4 The partner-in-charge shall be authorized to incur liabilities and to receive instruction for and on behalf of the partners of the Joint venture, whether jointly or severally and entire execution of the Contract (including payment) shall be carried out exclusively through the partner-in-charge. A copy of the said authorization shall be furnished with the bid.
 - 1.5 All partners of the Joint Venture shall be liable jointly and severally for the execution of the contract in accordance with contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under sub clause (1.3) above as well as in the Form of tender and the Form of Agreement (in case of a successful bidder).
 - 1.6 In the event of default, all the partners of the Joint venture will retain the full and undivided responsibility for the performance of their obligations under the contract and/or for satisfactory completion of the works.
 - 1.7 The bid submitted shall include all the relevant information as required under the provisions of sub-clause 4.5 of ITB and furnished separately for each partner. The requirement of key plants & equipments construction equipments as per Annexure I of SBD testing equipment for establishing field laboratory key personnel to be employed on contract work as per Annexure II of SBD shall be counted altogether for the partners it shall be less than the requirement.
 - 1.8 The bank guarantee/other suitable instrument in shape of bid security shall be issued in the name of JV and pledged in favor of employer.
2. Each partner of the JV must produce:
- 2.1 The Permanent account number (PAN) of Income Tax
 - 2.2 An affidavit through 1st class Executive Magistrate that the information furnished with the bid documents is correct in all respect; and
 - 2.3 Such other certificates as defined in the Appendix to ITB. Failure to produce the certificates shall make the bid non-responsive.

3. Each bidder must demonstrate:
- 3.1 Availability for construction work, either owned, or on lease or on hire, of the key equipment stated in the Appendix to ITB including equipments required for establishing field laboratory to perform mandatory test, and those stated in the Appendix to ITB. The requirement of key plants & equipments construction equipments as per Annexure I of SBD testing equipment for establishing field laboratory key personnel to be employed on contract work as per Annexure II of SBD shall be counted altogether for the partners it shall be less than the requirement.
 - 3.2 Availability for construction work of technical personnel as stated in the Appendix to ITB. The requirement of key plants & equipments construction equipments as per Annexure I of SBD testing equipment for establishing field laboratory key personnel to be employed on contract work as per Annexure II of SBD shall be counted altogether for the partners it shall be less than the requirement.
 - 3.3 The joint venture must satisfy collectively the criteria laid down in para 3.1 & 3.2 above.
 - 3.4 Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of not less than the amount specified in the Appendix to ITB.
 - 3.5 The bidder must not have in his employment.
 - 3.5.1 The near relations (defined as first blood relations, and their spouses, of the bidder or the bidder's spouse) of persons. The bidder must produce an affidavit stating that the near relations of the following departmental officers are not in his employment:
JE/AE/EE/SE/CE/E-in- C & Divisional Accountant of any works department of Bihar State.

3.5.2 Without Government permission, any person who retired as gazetted officer within the last two years of the rank and from the departments. The bidder must produce an affidavit stating the names of retired gazetted officer (if any) in his employment who retired within the last two years with the following ranks from the departments listed below:

JE/AE/EE/SE/CE/E-in-C & Divisional Accountant of any works department of Bihar State.

In case there is no such person in his employment, his affidavit should clearly state this fact.

4. To qualify for a package of contracts made up of this and other contracts for which bids are invited in the Notice Inviting Tender, the bidder must demonstrate having experience and resources sufficient to meet the aggregate of the qualifying criteria for the individual contract.
5. If bidder is Joint venture, the partners would be limited to three (including lead partner). Joint venture firm shall jointly and severally responsible for completion of the project. Joint venture must fulfil the following minimum qualification requirement.
 - 5.1 The lead partner shall meet not less than 50% (fifty percent) of qualification criteria given in sub-clause 4.2, 4.5 A, 4.5 B, 4.7 & 4.8 of ITB.
 - 5.2 Each of the remaining partners shall meet not less than 25% (Twenty five percent) of all the qualifying criteria given in sub-clause 4.2, 4.5 A, 4.5 B, 4.7 & 4.8 of ITB.
 - ✓ 5.3 However in case one of the joint ventures partner is proposed to be included primarily to provide financial strength to the joint venture, such joint venture partner shall have to commit to provide liquidity support to the project to the extent of 10 % of the value of contract.
 - 5.4 The joint venture must also collectively satisfy the subject of the criteria of clause 4.2, 4.5 A, 4.5B, 4.7 and 4.8 of ITB for this purpose the relevant figures for each of the partners shall be 100% or more.

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- 5.5 In the event that the Employer has caused to disqualify under clause 4.8 of ITB and the constitutions stated below all of the Joint Venture partners will be disqualified.
 - 5.6 Joint venture applicants shall provide a certified copy of the Joint venture Agreement in demonstration of the partners undertaking joint and several liabilities for the performance of any contract entered into with the bid.
 - 5.7 The available bid capacity of the JV as required under clause 4.7 of ITB below will be applied for each partner to the extent of his proposed participation in the execution of the work. The total bid capacity available shall be more than estimated contract value.

The available bid capacity will be calculated as under

Assessed Available Bid capacity = $(A*N*M-B)$

Where

- A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the last year at the rate of 8 percent a year) taking into account the completed as well as works in progress.
- N = Number of years prescribed for completion of the works for which bids are invited.
- M = 3
- B = value, at the current price level, of existing commitments and on-going works to be completed during the period of completion of the works for which bids are invited.

Note: The statements showing the value of existing commitments and on-going works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Engineer in charge, not below the rank of an Executive Engineer or equivalent.

6. Sub-Contractor's (duly authorized) experience and resources shall be taken into account in determining the bidder's compliance with the qualifying criteria. The sub contractor's role may be verified by the employer.

7. Qualification of a joint venture does not necessarily qualify any of its partners individually or as a partner to any other joint venture. In case of dissolution of a joint venture, each one of the constituent firms may qualify if they meet all the qualification requirements subject to the written approval of the Employer.
8. The rescinding of contract of a joint venture on account of reasons other than non-performance, such as most experienced partner of joint venture pulling out, court direction leading to breaking up of a joint venture before the start of work, which are not attributable to the poor performance of the contractor will, however, not affect the qualification of the individual partners.

विश्वासभाजन
✓
(प्रत्यय अमृत)
सचिव,

झार्षांक-प्र०-६/नियम-०२/२०१० - ४१३१ (६) / पटना, दिनांक २५.७.१२

प्रतिलिपि :- सभी अभियंता प्रमुख, सभी कार्य विभाग / सभी मुख्य अभियंता, सभी कार्य विभाग / सभी अधीक्षण अभियंता, सभी कार्य विभाग एवं सभी कार्यपालक अभियंता, सभी कार्य विभाग, को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

✓
(प्रत्यय अमृत)
सचिव,
२५/७/१२

Format for Joint Venture Agreement

If the application is made by a joint venture of two or more firms (limited to three firms), the evidence of clear mandate (i.e., in the form of respective Board Resolution duly authenticated by competent authority) by such two or more firms willing to form Joint Venture among themselves for the specified projects should accompany duly recognizing their respective authorised signatories signing for and on behalf of the respective Firms for the purpose of forming the Joint Venture. A certified copy of power of attorney to the authorized representatives, signed by legally authorized signatories of the all the firms of the joint venture shall accompany the application. The JV agreement shall be signed by the authorized representative of the Joint Venture. The JV Agreement shall need to be submitted consisting but not limited to the following provision:-

- a. Name, style and project (s) specific JV with head Office address.
- b. Extent (or Equity) of participation of each party in the JV.
- c. Commitment of each party to furnish the Bond money (i.e., Bid Security, performance security and security for Mobilisation Advance) in proportion to his participation in the JV.
- d. responsibility of each partner of JV (in terms of Physical and Financial Involvement)
- e. Working capital arrangement of JV
- f. Operation of separate bank account in the name of JV to be operated by at least one foreign partner and one local partner. In case of JV among local partners, all the partners are required to operate.
- g. Provision for cure in case of non-performance of responsibility by any party of the JV.
- h. Provision that NEITHER party of the JV shall be allowed to sign, pledge, sell or otherwise dispose all or part of its respective interests in JV to any party including existing partner (s) of the JV The Employer derives right for any consequent action (including blacklisting) against any or all JV partners in case of any breach in this regard.
- i. Management Structure of JV with details.
- j. Lead partner to be identified who shall be empowered by the JV to incur liabilities on behalf of JV.
- k. Parties/firms committing themselves to the Employer for jointly and severally responsible for the intended works.
- l. The Power of Attorney shall be duly notarized.
- m. Any relevant detail.