भारत सरकार GOVERNMENT OF INDIA
रेल मंत्रालय MINISTRY OF RAILWAYS
(रेलवे बोर्ड RAILWAY BOARD)

No. 2002/CE-1/CT/37 New Delhi, dated 2.9.2008.

To,

As per list attached.

Subject:- Participation of Joint Venture Firms in Works Tenders

Reference:- Railway Board's letter No. 2002/CE-I/CT/37 dated 2.8.2006.

Board vide letter referred above had issued instructions to the Railways that adequate clauses may be incorporated in major tenders to facilitate participation of Joint Venture Firms in works tenders. Since different zonal Railways adopt different procedures/clauses in this regard, Board have been considering for some time to issue guidelines in the matter to bring in uniformity in the procedure. Accordingly, in consultation with Ministry of Law & Justice, guidelines are issued herewith(annexure enclosed) for incorporating suitable clauses in works tenders of value more than Rs. 5.0 crore (Rupees five crore) each to facilitate participation of JV Firms.

2. This issues with the concurrence of Finance Directorate of Ministry of Railways.

3. Please acknowledge receipt.

DA: One(six pages)

(T. GUPTA)
Exe. Director Civil Engg(G)
Railway Board.

No. 2002/CE-1/CT/37 New Delhi, dated 2.9.2008.

Copy forwarded for information to:-

(i) FA & CAOs, All Indian Railways.
(ii) Dy. Comptroller and Auditor General of India(Railways), Room No. 224, Rail Bhavan, New Delhi (with 46 spares)

For Financial Commissioner/Railways

GUIDELINES FOR PARTICIPATION OF JOINT VENTURE FIRMS IN WORKS TENDER

1. Separate identity/name shall be given to the Joint Venture firm.

2. Number of members in a JV firm shall not be more than three if the work involves only one department (say Civil or S&T or Electrical) and shall not be more than five if the work involves more than one department.

3. A member of JV firm shall not be permitted to participate either in individual capacity or as a member of another JV firm **in the same tender.**

4. The tender form shall be purchased and submitted only in the name of the JV firm and not in the name of any constituent member.

5. Normally EMD shall be submitted only in the name of the JV and not in the name of constituent member. However, in exceptional cases EMD in the name of lead partner can be accepted subject to submission of specific request letter from lead partner stating the reasons for not submitting the EMD in the name of JV and giving written confirmation from the JV partners to the effect that the EMD submitted by the lead partner may be deemed as EMD submitted by JV firm.

6. One of the members of the JV firm shall be the lead member of the JV firm who shall have a majority (at least 51%) share of interest in the JV firm. The other members shall have a share of not less than 20% each in case of JV firms with upto three members and not less than 10% each in case of JV firms with more than three members. In case of JV firm with foreign member(s), the lead member has to be an Indian firm with a minimum share of 51%.

7. A copy of Memorandum of Understanding (MOU) executed by the JV members shall be submitted by the JV firm along with the tender. The complete details of the members of the JV firm, their share and responsibility in the JV firm etc. particularly with reference to financial technical and other obligations shall be furnished in the MOU. (The MOU format for this purpose shall be finalized by the railway in

consultation with their law branch and shall be enclosed along with the tender).

8. Once the tender is submitted, the MOU shall not be modified/altered/terminated during the validity of the tender. In case the tenderer fails to observe/comply with this stipulation, the full Earnest Money Deposit (EMD) shall be forfeited. In case of successful tenderer, the validity of this MOU shall be extended till the currency of the contract expires.

9. Approval for change of constitution of JV firm shall be at the sole discretion of the Employer(Railways).The constitution of the JV firm shall not be allowed to be modified after submission of the tender bid by the JV firm except when modification becomes inevitable due to succession laws etc. and in any case the minimum eligibility criteria should not get vitiated. In any case the Lead Member should continue to be the Lead Member of the JV firm. Failure to observe this requirement would render the offer invalid.

10. Similarly, after the contract is awarded, the constitution of JV firm shall not be allowed to be altered during the currency of contract except when modification become inevitable due to succession laws etc and in any case the minimum eligibility criteria should not get vitiated. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract conditions.

11. On award of contract to a JV firm, a single Performance Guarantee shall be required to be submitted by the JV firm as per tender conditions. All the Guarantees like Performance Guarantee, Bank Guarantee for Mobilization advance, machinery Advance etc. shall be accepted only in the name of the JV firm and no splitting of guarantees amongst the members of the JV firm shall be permitted.

12. On issue of LOA, an agreement among the members of the JV firm (to whom the work has been awarded) has to be executed and got registered before the Registrar of the Companies under Companies Act or before the Registrar / Sub-Registrar under the Registration Act, 1908. This agreement shall be submitted by the JV firm to the Railways before signing the contract agreement for the work. (This agreement format should invariably be part of the tender condition). In case the tenderer fails to observe/comply with this stipulation, the full

Earnest Money Deposit(EMD) shall be forfeited and other penal actions due shall be taken against partners of the JV and the JV. This joint venture agreement shall have, inter-alia, following clauses :

12.1 **Joint and several liability** - The members of the JV firm to which the contract is awarded, shall be jointly and severally liable to the Employer (Railways) for execution of the project in accordance with General and Special conditions of the contract. The JV members shall also be liable jointly and severally for the loss, damages caused to the Railways during the course of execution of the contract or due to non-execution of the contract or part thereof.

12.2 **Duration of the Joint Venture Agreement** - It shall be valid during the entire currency of the contract including the period of extension if any and the maintenance period after the work is completed.

12.3 **Governing Laws** - The Joint Venture Agreement shall in all respect be governed by and interpreted in accordance with Indian Laws.

13. **Authorized Member** - Joint Venture members shall authorize one of the members on behalf of the Joint Venture firm to deal with the tender, sign the agreement or enter into contract in respect of the said tender, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said tender/contract. All notices/correspondences with respect to the contract would be sent only to this authorised member of the JV firm.

14. No member of the Joint Venture firm shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the employer (Railways) in respect of the said tender/contract.

15. Documents to be enclosed by the JV firm along with the tender:

15.1 In case one or more of the members of the JV firm is/are partnership firm(s), following documents shall be submitted:

(a) Notary certified copy of the Partnership Deed,

(b) Consent of all the partners to enter into the Joint Venture Agreement on a stamp paper of appropriate value(in original).

(c) Power of Attorney(duly registered as per prevailing law) in favour of one of the partners to sign the MOU and JV Agreement on behalf of the partners and create liability against the firm.

15.2 In case one or more members is/are Proprietary Firm or HUF, the following documents shall be enclosed:

Affidavit on Stamp Paper of appropriate value declaring that his Concern is a Proprietary Concern and he is sole proprietor of the Concern OR he is in position of "KARTA" of Hindu Undivided Family and he has the authority, power and consent given by other partners to act on behalf of HUF.

15.3 In case one or more members is/are limited companies, the following documents shall be submitted :

(a) Notary certified copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement, authorizing MD or one of the Directors or Managers of the Company to sign MOU, JV Agreement, such other documents required to be signed on behalf of the Company and enter into liability against the company and/or do any other act on behalf of the company.

(b) Copy of Memorandum and articles of Association of the Company.

(c) Power of Attorney(duly registered as per prevailing law) by the Company authorizing the person to do/act mentioned in the para (a) above.

15.4 All the members of the JV shall certify that they have not been black listed or debarred by Railways or any other Ministry/Department of the Govt. of India/State Govt. from participation in tenders/contract in the past either in their individual capacity or the JV firm or partnership firm in which they were members / partners.

16. **Credentials & Qualifying criteria**

Technical and financial eligibility of the JV firm shall be adjudged based on satisfactory fulfillment of the following criteria:

16.1 **Technical eligibility criteria :**

Either the JV firm or any one of the members of the JV firm must have satisfactorily completed in the last three previous financial years and the current financial year up to the date of opening of the tender, one similar single work for a minimum value of 35% of advertised tender value.

OR

In case of composite works (e.g. works involving more than one distinct component such as Civil Engineering works, S&T works, Electrical works, OHE works etc. and in the case of major bridges, substructure and superstructure etc.), at least 35% of the value of each such component of similar nature should have been satisfactorily completed by the JV firm or any one of the members of the JV firm in the previous three financial years and the current financial year up to the date of opening of tender. In such cases, what constitutes a component in a composite work shall be clearly defined as part of the tender condition without any ambiguity.

NOTE :

Value of a completed work done by a Member in an earlier partnership firm or a JV firm shall be reckoned only to the extent of the concerned member's share in that partnership firm/JV firm for the purpose of satisfying his compliance of the above mentioned technical eligibility criteria in the tender under consideration.

16.2 **Financial eligibility criteria:**

The contractual payments received by the JV firm or the arithmetic sum of contractual payments received by all the members of JV firm in the previous three financial years and the

current financial year up to the date of opening of tender shall be at least 150% of the estimated value of the work as mentioned in the tender.

NOTE:

Contractual payment received by a Member in an earlier JV firm shall be reckoned only to the extent of the concerned member's share in that JV firm for the purpose of satisfying compliance of the above mentioned financial eligibility criteria in tender under consideration.

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