भारत सरकार Government Of India
रेल मंत्रालय Ministry Of Railways
रेलवे बोर्ड Railway Board

No. 2002/CE-I/CT/37 **New Delhi, Dated 07.09.2011**

Addressed to :
As per list attached.

Sub : Participation of Joint Venture Firms in Works Tenders on Indian Railways.

Ref : Railway Board's letter no. 2002/CE-I/CT/37, dated 02.09.2008.

In terms of letter under reference, Railway Board had issued instructions to the Railways on the above-mentioned subject for incorporating suitable and adequate Clauses in works tenders to facilitate participation of Joint Venture Firms.

Board have now reconsidered the matter and decided to amend the above mentioned instructions and formulate these in the form of Clause-65 to the General Conditions of Contract as detailed in the Annexure herein.

This Clause-65 to GCC for "Joint Venture Firms" shall be applicable to the works tenders of value more than Rs. 25 crore (Rupees twenty five crore) only.

However, for not allowing participation of the JV Firm in the tenders valuing more than Rs. 25 crore or for allowing participation of the JV Firm in tenders valuing less than Rs. 25 crore, approval of the HAG officer shall be necessary on case to case basis; alongwith the concurrence of Associate Finance, based upon merit/justification for the individual case. This decision shall invariably be communicated through the Notice Inviting Tender (NIT).

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

Please acknowledge receipt.

संलग्नक / उपरोक्तानुसार

07/09/11
(आलोक कुमार)
कार्यकारी निदेशक / सिविल इंजीनियरिंग(जी)/रेलवे बोर्ड

No. 2002/CE-I/CT/37 **New Delhi, Dated 07.09.2011**

Copy forwarded for information to :

1. The FA&CAOs, All Indian Railways.
2. The Deputy Comptroller & Auditor General of India (Railways), Room No. 224, Rail Bhawan, New Delhi.

For **Financial Commissioner/Railways**

LIST FOR DISTRIBUTION

1. General Managers, All Indian Railways & Production Units
1a. General Manager (Con), N.F. Railway, Guwahati
2. Principal Chief Engineers, All Indian Railways
3. Chief Administrative Officers (Con), All Indian Railways
4. Chief Vigilance Officers, All Indian Railways

Copy to :

(A)

1. CAO/CAO(R), COFMOW, Tilak Bridge, New Delhi
2. CAO/CAO(R), Diesel Locomotive Works, Patiala (Punjab)
3. CAO, Rail Coach Factory/Rae Bareli Project, Kishanganj, Delhi - 110007

(B)

1. Director General, RDSO, Manak Nagar, Lucknow
2. Director General, Railway Staff College, Vadodara
3. Chief Commissioner of Railway Safety, Ashok Marg, Lucknow

(C)

1. Director, IRICEN, Rail Path, Pune - 411001 (Maharashtra).
2. Director, IRIEEN, P.B.No.-233, Nasik Road - 422101 (Maharashtra)
3. Director, IRISET, Taar Naka Road, Lalla Guda, Secunderabad
4. Director, IRIMEE, Jamalpur – 811214 (Bihar)
5. Director, IRITM, Saraswati Residential Estate, IRITM Campus, Manak Nagar, Lucknow

(D)

1. MD, DMRC, Metro Bhawan, 13, Fire Bridge Lane, Bara Khamba Road, New Delhi - 110 001
2. MD, CONCOR, Concor Bhawan, C-3, Mathura Road, Opp. Apollo Hospital, New Delhi - 11076
3. MD, IRCON International Limited, C-4, District Centre, Saket, New Delhi - 110017
4. MD, RITES Ltd., RITES Bhawan, Plot No.1, Sector-29, Gurgaon
5. MD, RVNL, August Kranti Bhawan, Plot No.25, 1st Floor, Bhikaji Cama Place, New Delhi
6. MD, MRVC Ltd., Churchgate Station Building, Mumbai - 400020
7. MD, KONKAN Railway Corporation Ltd, Rail Bhawan, New Delhi - 110001
8. MD, DFCCIL, 5th Floor, Pragati Maidan Metro Station Building Complex, New Delhi - 110001
9. MD, RLDA, Near Safdarjung Railway Station, Moti Bagh Phase-I, New Delhi - 110021
10. CAO, RCF, Rae Bareilly, Kishan Ganj, Delhi
11. CME, IROFAF, 12th Floor, Core-1, Scope Minar, Distt. Centre, Laxmi Nagar, Delhi - 110092
12. CAO, Indian Railways (Workshop Projects), Chamber Bhawan, Judge's Court Road, Anta Ghat, Patna-800001

(E)

1. General Secretary, IRCA, DRM Office, New Delhi
2. General Secretary, AIRF, Rail Bhawan, New Delhi
3. General Secretary, NFIR, Rail Bhawan, New Delhi
4. General Secretary, IRPOF, Rail Bhawan, New Delhi
5. General Secretary, FROA, Rail Bhawan, New Delhi
6. General Secretary, AIRPA, Rail Bhawan, New Delhi
7. General Secretary, AISC&STREA, Room no. 7, Rail Bhawan, New Delhi
8. The Secretary, RBSS, Group (A) Officers Association, Rail Bhawan
9. The Secretary, RBSS, Group (B) Officers Association, Rail Bhawan
10. The Secretary, RBMSA, Rail Bhawan
11. The Secretary, Railway Board, Group (D) Employees Association, Rail Bhawan

Copy to :

CRB, FC, ME, ML, MS, MM, MT, Secretary, AM(CE), AM(Works), AM(Planning) AM(Staff), AM(ME), AM(Elec.), AM(PU), AM(Tele), AM(Sig.), AM(Traffic), AM(F), AM(B), AM(Stores), AM(IT), AM(T&C), AM(Comml.) DG(RHS), DG(RPF), Adv.(Projects), Adv.(L&A), Adv.(Bridges), Adv.(Vig.), Adv.(Rates), Adv.F(X)-I, EDCE(G), EDCE(P), EDTK(M), EDTK(MC), EDTK(P), EDCE(B&S), EDCE(B&S)-II, ED(Works), EDW(Plg.), ED(Project), ED(L&A)-I, ED(L&A)-II, ED(L&A)-III, ED(PSU), EDF(X)-II, ED(E&R), EDVE, EDV(S), EDV(T), ED/DM, ED(Safety), ED(Sig.), ED(Tele), EDEE(Dev.), EDEE(G), EDEE(RS), EDRE, EDRE(S), EDME(Chg.), EDME(Frt.), EDME(Dev.), EDME(W), ED(Plg.), ED(Chg.), EDE, EDE(N), EDE(Res.), EDFE, EDPC-I, EDPC-II, ED(Accounts), ED(T&MPP), EDE(GC), EDRS(G), EDRS(P), EDRS(S), EDF(S), EDF(B), ED(FC), EDPM, EDPG, EDTC(R), EDTT(F), EDTT(M), EDTT(S), DCE(B&S), DCE(P), Dir.(L&A), DF(X)-I, DF(X)-II, JS(Conf.), JS(G), JS(P), LA, Eco.(Adv.), F(X)I, II, Vig.III, Vig.(Conf.), L&A, Track I & II, Telecom, Signal, RS(G) & Electrical Branches of Railway Board.

Clause 65 To IR's General Conditions Of Contract (GCC)

{Ref : Railway Board's letter no. 2002/CE-I/CT/37, New Delhi, dated 07.09.2011}

Clause 65. Participation Of Joint Venture (JV) Firms In Works Tender

This Clause shall be applicable for works tenders of value as approved and communicated by Railway Board from time to time.

65.1 Separate identity/name shall be given to the Joint Venture Firm.

65.2 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 or Mechanical) and shall not be more than five, if the work involves more than one department.

65.3 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.

65.4 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.

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

65.6 One of the members of the JV Firm shall be its **Lead Member** who shall have a majority (at least 51%) share of interest in the JV Firm and also, must have satisfactorily completed in the last three previous financial years and the current financial year upto the date of opening of the tender, one similar single work for a minimum value of 35% of advertised tender value. 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%.

65.7 A copy of Memorandum of Understanding (MOU) executed by the JV members shall be submitted by the JV Firm alongwith 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 alongwith the tender.)

65.8 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 liable to be forfeited.

65.9 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. However, the Lead Member shall continue to be the Lead Member of the JV Firm. Failure to observe this requirement would render the offer invalid.

65.10 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.

65.11 On award of contract to a JV Firm, a single Performance Guarantee shall 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.

65.12 On issue of LOA (Letter Of Acceptance), an agreement among the members of the JV Firm (to whom the work has been awarded) shall 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 JV Agreement shall be submitted by the JV Firm to the Railways before signing the contract agreement for the work. 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 :

65.12.1 Joint And Several Liability - 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 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.

65.12.2 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.

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

65.13 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.

65.14 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.

65.15 Documents to be enclosed by the JV Firm alongwith the tender :

65.15.1 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 of the partnership firm to sign the JV Agreement on behalf of the partnership firm and create liability against the firm.

65.15.2 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/her Concern is a Proprietary Concern and he/she is sole proprietor of the Concern OR he/she is in position of "KARTA" of Hindu Undivided Family (HUF) and he/she has the authority, power and consent given by other partners to act on behalf of HUF.

65.15.3 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 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.

65.15.4 All the Members of JV shall certify that they are not black listed or debarred by Railways or any other Ministry/Department of the Govt. of India/State Govt. from participation in tenders/contract on the date of opening of bids either in their individual capacity as members of the JV or the JV Firm in which they were/are members.

65.16 Credentials & Qualifying Criteria : Technical and financial eligibility of the JV Firm shall be adjudged based on satisfactory fulfillment of the following criteria :

65.16.1 Technical Eligibility Criteria ('a' or 'b' mentioned hereunder) :

(a) Either the JV Firm or Lead Member of the JV Firm must have satisfactorily completed in the last three previous financial years and the current financial year upto the date of opening of the tender, one similar single work for a minimum of 35% of advertised value of the tender.

OR

(b) (i) 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, superstructure etc.), for each component, at least 35% of the value of

any of such components individually for single similar nature of work should have been satisfactorily completed by the JV Firm or by any member of the JV Firm in the previous three financial years and the current financial year upto the date of opening of tender. The member satisfying technical eligibility criteria for the largest component of the work shall be the Lead Member and that Member shall have a majority (at least 51%) share of interest in the JV Firm.

(ii) In such cases, what constitutes a component in a composite work shall be clearly pre-defined with estimated tender cost of it, as part of the tender documents without any ambiguity. Any work or set of works shall be considered to be a separate component, only when cost of the component is more than Rs. 2 crore each.

(iii) However, as long as the JV Firm or any member of the JV Firm meets with the requirements, in one or more components of the work, and has completed a minimum of 35% of the advertised value of the tender for the same value of the component, and resultantly, all the members of the JV collectively, then meet the prescribed technical eligibility criteria, the JV shall stand technically qualified.

Note : Value of a completed work done 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 his/her compliance to the above mentioned technical eligibility criteria in the tender under consideration.

65.16.2 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 upto 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.