Auction of Mineral Blocks in Odisha

Garramura and Kottameta Limestone Blocks (Mining Lease)

Responses to Queries

on

Tender Document

(Notice Inviting Tender dated October 26, 2016)

Director of Mines

Steel & Mines Department

Government of Odisha

November 30, 2016

Sr. No.	Query	Response
1	**Clause 2.22: Definitions** **Clarification:** Definition of Upfront Payment under schedule no. 2.22 is not clear.	The definition of Upfront Payment is provided in Rule 11 of the Mineral (Auction) Rules, 2015.
2	**Clause 3.5: Introduction** **"The Bidders are expected to conduct due diligence …….Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act 2013."** **Clarification:** **Which are the specific laws applicable to Kottameta Block?** **Suggestion:** **The applicable Laws should be specifically elaborated.** **Rationale:** State Government should clearly define which law is applicable on the block rather than giving list of all the laws which may or may not be applicable. Since area has been selected & notified by the State Government, applicable Land laws should also be specifically elaborated by State Government.	It is the responsibility of the bidders to do their own due diligence before participating in the auction.
3	**Clause 6: Review Period and Site visit** **Clarification:** Will the Government representative from State Geology and land department shall be available at site? **Suggestion:** Site visit can be arranged in the presence of Govt. representative of concerned department, it can be arranged on some fixed date. **Rationale:** There are few questions on the land, mineral prospecting, core etc. which need to be satisfied in the field also.	The bidder may send a prior notice to the State Government before site visit. However, there is no onus on State Government to make the said official(s) available during the site visit.

Sr. No.	Query	Response
4	**Clause 6.1: Review Period and Site visit** **Clarification:** Under schedule No. 6.1 it is mentioned that a fixed 47 days window will be given between sale of tender document and commencing of bidding process. However as per schedule no. 11, the last date of sale of tender document is 5th December 2016 (Sl. No. 6 in the table) and date of opening of Technical Bid as 14th December 2016; which means the window is only 8 days not 47 days as mentioned.	Bidders are provided with a fixed period of 47 days from the start date of sale of Tender Document i.e. 26th October 2016 till Bid Due Date i.e. 12th December 2016.
5	**Clause 7.10: Pre Bid Conference** **"The State Government shall endeavour to provide clarifications and such further information, as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive tender process."** **Clarification:** It has been observed from last few 'Reply to pre Bid Queries" issued by various State Governments that a single line reply of "Tender Conditions Prevails" has been given for most of the queries raised by Bidders. **Suggestion:** The State Government shall endeavour to provide clarifications for the query asked by bidders with at least some brief details that why the query/ suggestion cannot be entertained rather than giving no clarification & single line reply. **Rationale:** Pre Bid Conference is planned for interactive meeting between bidders & state government in which State Government should provide further clarification regarding Tender Document and giving a single line reply of "Tender Conditions Prevails" does not full fill the purpose and motive of Pre Bid Conference.	The State Government shall try to clarify in the best possible manner.

Sr. No.	Query	Response
6	**Clause 9.1: Reserve Price** **Clarification:** Under schedule No. 9.1 it is given the reserve price of the minerals will be calculated based on the value of the minerals despatched from different mines. Please explain.	The Reserve Price of each mineral block put on Auction is different. The Reserve Price of Garramura Block is 2% whereas the Reserve Price of Kottameta Block is 5% of the value of mineral despatched. "And the value of mineral despatched" is already spelt out in this clause itself.
7	**Clause 10.1.1 Issuance of Letter of Intent** **"Accordingly, the State Government shall not issue a letter of intent without prior approval from the Central Government in case the Bidder holds or may hold (including the area relating to the auction hereunder) one or more mining leases covering a total area of more than ten square kilometres in respect of any mineral or prescribed group of associated minerals in the State of Odisha."** **Clarification:** As per Section 6(1)(b) of the MMRD Act, 1957 now the relaxation is not given to an individual but it is for any particular mineral or industry. Recommendation to Central Government for such relaxation is in scope of State Government. How an individual will get such relaxation from Central Government. **Suggestion:** State Government should obtain relaxation under section 6(1)(b) from Central Government before start of Auction process or give assurance to get the relaxation later on. Otherwise in present condition as per clause 10.1.1 will greatly discourage potential bidders to participate in e-auction process for more than one bigger block & similarly it will prohibit existing holder of 10 Sq Km area and question mark on fairness of whole process.	The provision of Section 6 of MMDR Act, 1957 will be applicable.

Sr. No.	Query	Response
8	**Clause 10.1.1.(b) Issuance of Letter of Intent** **Clarification:** As per the revised section 6 (1) (b) under the MMDR amendment Act 2015, It is for the State Govt. to specify how much the area limit need to be increased in respect of any mineral/category of deposits/area etc. and then get that increased limit approved from Govt. of India. Therefore the bidder on its own cannot comply the said condition. **Suggestion:** State Govt have to get the necessary prior approval from Central Govt to comply with the provisions under Section 6 of the MMDR Amendment Act 2015. **Rationale:** For bidder's clarification on the responsibility of the State Govt.	The provision of Section 6 of MMDR Act, 1957 will be applicable.
9	**Clause 10.3: Execution of Mine Development and Production Agreement:** **"The State Government and the Successful Bidder shall enter into the MDPA upon the Successful Bidder having obtained all consents, approvals, permits, no-objections and the like as may be required under Applicable Law for commencement of mining operations."** **Clarification:** Few clearances/permission for commencement of mining operations can be obtained only after the execution of Mining Lease e.g. DGMS permissions. Further, pursuant to the tender document, MDPA is predecessor to the mining lease. Hence, it will not be possible for the Successful bidder to obtain all consents, approvals, permits, no-objections for commencement of mining operation before MDPA, as required under this clause. **Suggestion:** The clause 10.3 to be suitably amended.	As per Rule 10(4) of the Mineral (Auction) Rules, 2015, the successful bidder shall sign the Mine Development and Production Agreement with the State Government upon obtaining all consents, approvals, permits, no-objections and the like as may be required under applicable laws for commencement of mining operations. Therefore, no amendment is required.

Sr. No.	Query	Response
10	**Clause 11: Stage II: Timetable** **Submission of Mining Plan T1** **MDPA to be executed upon obtaining all clearances T1+20** **Clarification:** Is it possible to get all necessary clearances in 20 Days? **Suggestion:** At least 900 days should be given after submission of Mining Plan for getting all clearances, NOC as Mining Plan approval; Environment Clearances etc. need much more time than 20 days. **Rationale:** Only 20 days has been provided after submission of Mining Plan for obtaining all clearances.	The tentative time limit for obtaining clearances/approvals etc. is mentioned in the "Schedule VI- Indicative Format of Letter of Intent". Hence, sufficient time has been provided for execution of MDPA.
11	**Clause 12.1 Payments by the Successful Bidder** **Upfront Payment** **"The Upfront Payment paid by the Successful Bidder shall be adjusted in full against the amount payable in accordance with the percentage of Value of Mineral Dispatched quoted as the Final Price Offer within the first 5 years of commencement of production of mineral(s) as specified in MDPA."** **Clarification:** If upfront payment is not adjusted in first 5 years , then how it will be refunded / adjusted. **Suggestion:** After adjustment for first five years of mineral production remaining amount of upfront payment should be refunded. **Rationale:** There is no specific provision for any particular production requirement in the Tender Document. In view of this remaining amount of Upfront payment should be refunded. Mineral Auction rules also does not restrict that remaining amount should not be refunded.	If the Upfront Payment is not adjusted fully within 5 years, the remaining amount will not be adjusted / returned.

Sr. No.	Query	Response
12	**Annexure I: Format of Bid Letter Para 11(f)** **"No mining dues or outstanding payments are pending with any State Government for a period more than 60 days after the due date."** **Clarification:** Why Odisha Government is concerned with No dues pending with other state governments. There may be various reasons for not getting the No dues and this condition is unwarranted. There is no such legal requirement. It should only for Odisha. **Suggestion:** This para should be deleted from Bid Letter. **Rationale:** If such no dues status is required overall, it should only for Odisha state. No other state have so far imposed such conditions.	Mining dues clearance certificate from other states is not a pre-requisite for participation in this auction process. However, the bidder is required to give a declaration in this regard in the prescribed format as provided in the tender document.
13	**Annexure II: Format of Bid Security** **Clarification:** Format of Bid Security provided in Annexure II has no provision & mention that Where the bank guarantee will be payable. **Suggestion:** The format should be suitably amended.	Please refer to clause 9 of Annexure II (Format of Bid Security) of the Tender Document where it is stated that "We undertake to make the payment on receipt of your notice of claim on us as addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized receive the said notice of claim." The name and address of branch should be the same as mentioned in Clause 1 of Annexure II (Format of Bid Security) i.e. Bhubaneswar, Odisha

Sr. No.	Query	Response
14	**Schedule IV: Format of MDPA: Minimum Production Requirement** **Clarification:** MDPA is linked with approved Mining Plan. Is it permissible to modify Mining Plan later on for a lower capacity. **Rationale:** Looking to the market condition the requirement of mineral may be lower in future so it should be specifically mentioned in Tender Document that Mining Plan may be modified for lower production later on also.	Please refer to Rule 17 (Modification and review of the mining plan) of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016.
15	**Schedule IV: Format of MDPA:** **Clause 4.1.2 Performance Security and Appropriation** **"The amount of Performance Security shall be reassessed every five years commencing from the date of issuance of the Performance Security i.e. [date], so that the amount of Performance Security corresponds to 0.5% of the reassessed Value of Estimated Resources."** **Clarification:** Initially the performance security will be submitted at the time of submission of Mining Plan. **Suggestion:** As the reassessment of estimated resources will take place at the time of submission of next mining plan for 5 year, later on performance security five year period should be co terminus with Mine Plan period.	As per Rule 12 of the Mineral (Auction) Rules, 2015 the performance security shall be adjusted every five years so that it continues to correspond to 0.50% of the reassessed value of estimated resources.
16	**Specified End use** **Clarification:** There is no mention of any specified end use in the whole tender document. We understand that there is no specific minimum production requirement or any restriction on transportation of mineral/ clinker outside state or sale of mineral. **Suggestion:** As there is no such specific end use condition in tender document, it should be assured by state government that same should not be imposed in future also.	No end use condition has been stipulated.

Sr. No.	Query	Response
17	**MDPA to be executed on stamp paper of adequate value** **Clarification:** Please share information on the value of Stamp paper required and relevant calculation regarding Stamp duty during execution Mining Lease. **Rationale:** For bidder's clarification	The Stamp Duty will be calculated as per The Odisha Gazette Notification No. 312-SM-REM-3/2011-SM Dated 13th January, 2012 or as per prevailing provision as applicable at the time of payment of Stamp Duty.
18	**General: para no. 17.1(iii)** **Clarification:** Role of State Govt. in enabling the successful bidder to get the permissions/NOCs from the reportedly trouble prone area. **Suggestion:** Some form of Assurance to the successful bidder to create an atmosphere for peaceful exercising the rights. **Rationale:** The area is reportedly infested with extremism activities.	The Government of Odisha shall endeavour to provide assistance on best effort basis.