

AUCTION OF COAL MINES FOR SALE OF COAL

SECOND ATTEMPT OF AUCTION

(11th TRANCHE OF AUCTION UNDER THE COAL MINES (SPECIAL PROVISIONS) ACT, 2015)

(1st TRANCHE OF AUCTION UNDER THE MINES AND MINERAL (DEVELOPMENT AND REGULATIONS) ACT, 1957)

Queries & Responses

Pursuant to Standard Tender Document dated December 09, 2020

December 31, 2020

Nominated Authority

Ministry of Coal, Government of India

Queries and Responses to Standard Tender Document dated December 09, 2020

The following clarifications are applicable to the Standard Tender Document dated December 09, 2020 as well as to mine-specific Tender Documents dated December 09, 2020 pursuant to second attempt of auction under 11th Tranche of auction under the CMSP Act 2015 & second attempt of auction under 1st Tranche of auction under the MMDR Act 1957.

Sl. No.	Query	Response
1.	<p>Tender Document Clause 3.3.2 (e) - Preferred Bidder not to become Successful Bidder in certain cases</p> <p>As per the current interpretation of the Clause, it seems that Central Government/ Nominated Authority don't need any valid reason for termination of the process for a particular Bidder and prevention of the Preferred Bidder being selected as Successful Bidder. This can cause investor confidence reduction as well as lead to additional legal tussles between parties. In such a case, the Preferred Bidder also faces a challenge of being left out from rest of the mines in the Tranche as the Bidder has tied up the mine under the current round.</p> <p>Clear rationale should be a pre-requisite for such steps by Central Government/ Nominated Authority with provision of notice period wherein the successful bidder is allowed to understand and provide necessary clarifications if any. Any rationale of price discovery being fair should be excluded from the clause. The price discovery is a market driven element and Nominated Authority's / Central Government envisaged intervention in a fair market based mechanism should be avoided.</p>	<p>As per clause 3.3.2(e) of the Tender Document.</p>

Sl. No.	Query	Response
2.	<p>Tender Document Clause 3.3.2 (h)(ii) Fixed Amount</p> <p>a) It must be clarified that upon payment of the amounts mentioned in the Tender Document including the Fixed Amount, as applicable, the legal and beneficial ownership of the land, infrastructure, mining lease, statutory licenses, consent, permits, consents, approvals, etc. shall vest in the Successful Bidder without any encumbrances and without any delay. Legal and beneficial ownership of assets, leases and consents is a must for the bidders.</p> <p>b) It should also be clarified the Successful Bidder shall be insulated against costs and litigation in respect of the Fixed Amount for the period prior to the issuance of the Vesting Order. Any delays can impact the liability of the project for the Successful Bidder. The Successful bidder should be compensated for any delay. Taking learnings from last round, it is imperative that the Fixed Amount for the successful bidder be capped in the auction. It can potentially lead to disputes between previous and new allottee.</p> <p>c) The Successful Bidder should be compensated in case there is delay in transfer of land, mine infrastructure, mining lease, statutory licenses, consent, permits, consents, approvals, etc. The premium should be adjusted for any revision in Fixed Amount</p>	<p>a) As per the provisions of the Tender Document. Upon issuance of Vesting Order/ Allocation Order, the statutory licences, permits, permissions, approvals or consents obtained by the Prior Allottee for the Coal Mine, shall vest in the Successful Bidder. The Successful Bidder shall be required to follow due procedure for transfer/ obtaining of the same.</p> <p>b & c) Fixed Amount shall be payable as per Clause 3.3.2 (h)(ii) of the Tender Document. No compensation is payable to the Successful Bidder under the provisions of the Tender Document.</p>
3.	<p>Tender Document Clause 3.3.2 (h)(ii) Fixed Amount</p> <p>The Upfront Amount and the Fixed Amount are exclusive or inclusive of GST.</p>	<p>Upfront Amount and Fixed Amount shall be payable as provided in the Tender Document.</p>

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4.	<p>Tender Document Clause 3.4 Tests of Responsiveness Bidder should be asked for an explanation and make the bid responsive failing which he should be rejected. Considering the short timelines of the process, the bidder should be allowed to provide an explanation for the non-responsiveness of the bid. In case it still fails after one chance, the bid can be rejected. In either case, the bid security needs to be returned to the bidder as per standard contracting rules in prevalent power and telecom sector.</p>	As per Clause 3.4 of the Standard Tender Document.
5.	<p>Tender Document Clause 3.10 Periodic Payments by the Successful Bidder Notified price is not defined in the tender document. Clarification required if the definition is same as provided in tranche IX document i.e. “CIL Notified Price” shall mean the prevailing notified price of relevant grade(s) of coal by CIL or any of its subsidiaries, as may be territorially relevant to the Coal Mine, as on the date of sale of coal?</p>	Please refer to MoC’s OM NA-102/3/2017-NA dated June 4, 2020 regarding notification of representative prices.
6.	<p>Tender Document - Clause 3.11 Incentive for Early Commencement of Coal Production “the scheduled date of production shall be the scheduled date of production given in the approved Mining Plan.” How the calculation for early production will work for blocks where Mining Plan is not prepared?</p>	As per Clause 3.11 of the Tender Document, for Fully Explored Mines, the scheduled date of production shall be as given in the mine-specific tender document. For Partially Explored Mines, the scheduled date of production shall be the scheduled date of production given in the approved Mining Plan

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7.	<p>Tender Document Clause 9.4 Flexibility in Production Flexibility in production allows for 65% of scheduled production in a year subject to the condition that successful Bidder shall not produce less than 75% of scheduled production in any three year period. However, the Bidder would need additional flexibility in managing resource allocation internally. Suggested Modification The successful Bidder shall produce coal not below 50% of scheduled production in a year subject to the condition that Successful Bidder shall not produce coal less than 70% of scheduled production in any five-year block.</p>	<p>As per Clause 9.4 of the Tender Document</p>
8.	<p>Coal Evacuation a) How the Govt wants to build regional coal corridors and details such as tentative plan for coal evacuation infrastructure, may be provided. b) What relief will be given to the Successful Bidder in case logistics infrastructure is not built up?</p>	<p>The evacuation infrastructure shall be the responsibility of the successful bidder. However, the Govt. of India is also committed to development of coal sector infrastructure. The Government is taking many initiatives to augment coal evacuation infrastructure including new railway lines and presently undertaking studies to enhance the evacuation infrastructure.</p>
9.	<p>Clearances Coal Bearing Area Act should be allowed to be used by private companies for acquisition of land for the auctioned coal blocks</p>	<p>The Ministry has prepared a proposal to acquire land under CBA and proposal is under consultation with states. However, it is the responsibility of the bidder to undertake land acquisition in accordance with Applicable Law.</p>

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10.	<p>Clearances Please clarify whether the Government will give Single window clearance for the mines/ whether all clearances will be given/ arranged by Government? There should be no penalty for cascading delays due to the lack of support by government</p>	<p>A Project Monitoring Unit has been set up at the Office of Nominated Authority for assisting bidders in obtaining clearances. A single window clearance is being devised for faster online processing of applications for clearances. However, it shall be the responsibility of the Successful Bidder to obtain clearances/ approvals/ land acquisition etc. as per Applicable Laws.</p> <p>The conduct of mining operations at the Coal Mine shall be subject to the Efficiency Parameters and other provisions in the Agreement. In bona fide cases of delays not attributable to the Successful Bidder, the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters. For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision.</p>
11.	<p>Exit Clause Currently the bid document is silent on any exit clauses for the Bidders. With multi decade leases, it is imperative that exit clauses with clear liability for new bidders/ process for asset transfer be defined.</p> <p>It is suggested that exit clauses where in Bidders are provided a route in case mine operations/ development becomes a challenge. This would allow maximum bidder participation, thereby providing competition; also it would allow for bank funding being available on account of lower risk on the asset.</p>	<p>Surrender of the Coal Mine by the Successful Bidder shall be in accordance with the provisions of the Agreement.</p>