

Jogighopa Inland Waterway Terminal Responses to Pre-Bid Queries

S.No	Reference Clause	Queries /observations/ comments of Bidders	Responses
1	-	The design throughput is not mentioned, So how are the bids to be evaluated	1) The throughputs have been included in the RFP (PIM Page No : 12) and draft Development Agreement clause 2.1 (scope of the project) . A design report of the conveyor system by IIT Guwahati is also available which can be used by the bidder as a reference.
2	-	Whether acquisition of vessel will be considered as a part of project cost to be eligible to qualify under the Technical criteria	The acquisition of vessels in the last six years shall be considered as a part of project cost to meet the eligibility criteria. Same is mentioned in clause 3.2 of the draft RFP document.
3	-	Marking system for qualification	We have taken cognizance of your suggestion that the terminal will be fully beneficial only when actual cargo gets handled. The marking system has been changed and included in the revised RFP.
4	-	Bank may not agree to issue BG wherein they undertake to pay amount as principal debtor	The point on bank guarantee has been noted and the necessary changes have been made in appendix 1 Annexure VIII of the revised RFP.
5	-	Concession Period: In RFP the concession period is 15 years, however in our last meeting we were informed that concession period is reduced to 8 years. Please confirm the concession Period	The Development Agreement period has been revised and it extends upto 10 years from the date of signing of agreement. Out of this period of 10 years 1 year 6 months is the maximum time permissible for construction and completion of the required infrastructure and 8 years 6 months shall be the operations period commencing immediately on starting of operations. The annuity will be paid to the operator, on quarterly in arrear basis, for this period of 8 years and six months only.

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6	-	As per the RFP The concession period is 15 Years and the concessionaire is required to Build & Operate the facility for the concession Period (please clarify 8 years /15 years shall include Construction Period or not)	The changes have been made in the revised RFP. The entire period of development and operation has been fixed at 10 years. This will include maximum 1 year and 6 months of construction period permissible and 8 years and 6 months of fixed operation and maintenance period.
7	-	Please clarify if the total Capital Cost for the Project or the capital cost incurred in the last five years be considered in the calculation of the score	In case of ongoing projects the criteria will be capital cost incurred in the last 6 years.
8	-	As per the criteria mentioned in clause 2.2.2, revenue appropriated should also be considered while calculating the technical score. But the same has not been provided for in clause 3.2.1	In clause 3.2.1 under the table detailing marking criteria and under the column titled operations (payment), the revenue appropriation is covered.
9	-	No reference has been provided for the Column Heading "Category" "\$" of Appendix I (Annexure II)	The necessary modifications have been incorporated in the appendix 1 Annexure 2 of the revised RFP
10	-	No reference source has been provided for conversion of US Dollars to Rupees in Appendix I (Annexure II) "\$\$"	The reference has been provide at the bottom of the Annexure 2 table of appendix 1 of the RFP
11	-	The format requires the Bidder to submit details of Net Cash Accruals for last five years while the same has not been mentioned anywhere in the "Instruction to Bidders"	Net Cash Accruals are not required to be submitted. The change has been incorporated in Appendix I of the Revised RFP document

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12	-	Estimated Landed Project cost has not been defined	Estimated project cost will include 1) Capital cost of each component of the project to be constructed 2) cost of obtaining technical/ other commercial consultancy 3) Interest on capital employed during construction 4) Statutory charges and fees payable for operating the projects
13	-	We understand from the clause 3.2.1 that the projects will be considered for years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08. Please confirm the same	It is confirmed that the projects will be considered for years commencing 2003-04 and would cover up to financial year 2008-09.
14	-	Short-listing of applicants for the bidding stage	The clause 3.5 has been modified in the revised RFP to indicate short listing criteria for stage 2 of the bid evaluation.
15	Experts	As per the definition, Expert will be appointed by IWAI. It is requested that the appointment to be done on mutual consent between the developer and IWAI	Existing definition to be retained IWAI intends to continue with the existing provisions on the appointment of experts and no change is agreed.
16	Transferee	It may be noted that there is a reference of Clause 7.2, however it is not included in the agreement	The clause 1.1 XIII has been changed to remove the word ‘transferee’ and any reference to clause 7.2
17	Users	Please provide the rationale for inclusion of only trucks in the definition	The definition clearly defines users of the facility as persons, entities and trucks using the project facilities. Trucks are included in the definition as it is envisaged that trucks would be used for loading and unloading coal / other cargo at the proposed terminal as there is no provision for a rail line.
18	Ambiguities	Please clarify how the ambiguity shall be dealt with incase two clauses address the same issue.	This has been already specified in clause 1.4 of the development agreement.

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19	Priority of Documents	Bid/Proposal is a part of annexure to the agreement '(b)'. However, it has been separately provided as '(g)'	Suitable modification has been made in the development agreement clause 1.5.
20	Development Rights	Substitution Agreement has not been defined and included as a part of the Development Agreement	Substitution Agreement is not required and has been removed from the from the revised RFP
21	Essential Conditions	It is requested that a specific clause on 'Conditions Precedent' for both the developer and IWAI be included. The Conditions Precedent should be defined clearly for both the Developer and IWAI. It should be noted that the handing over of Project site is essential to achieve financial closure. Also, the implications if any of the parties do not comply with the Conditions Precedent should be included and these should be equitable for both the parties	We have taken cognizance of the point raised and have included conditions precedent as clause 4 of the Development Agreement.
22	Performance Security	As per this clause, the validity of performance security is 24 months from the approval date, but in the RFP clause 1.3 the validity has been mentioned as 24 months from the date of signing of the Development Agreement	The validity of the performance security is 24 months from the signing of the development agreement or upto six months from the date of commissioning and operations of the facility whichever is later. The relevant modifications have been made in the revised RFP
23	Appropriation of Performance Security	It is requested that the 'relevant cure period' (within which the developer can remedy the default) may be included	The relevant remedial period is provided for under clause 13.1 (a)(i), of the Development Agreement

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24	Appropriation of Performance Security	As per the clause, IWAI can make demand to recover any amount with respect to loss or damages caused to it. It is requested to define the maximum limit upto which the amounts can be recovered. Also, it is recommended the Developer be allowed to verify such loss to IWAI	The amount recoverable by IWAI is already defined by the limit of the Performance Security..
25	Consideration for handing over of Project Site	The consideration has been given as 'at the rate of Re. 1 per sq mtr'. It is requested to clarify the period for the rate (per month, per quarter or per annum)	The mentioned clause no longer exists in the revised RFP issued as the there would be no provision of any lease agreement.
26	Obligations of IWAI	As per the clause, IWAI shall provide all reasonable support and assistance to the Developer in procuring permits. But as per clause 8.12 (ii), IWAI shall issue and publish or cause to be issued and published all applicable permits. It is requested to clarify if IWAI shall only provide assistance in procuring permits or shall get the permits issued. Also, please clarify the implications in the event of failure to procure clearances/permits (including environmental clearance) by either party	It is hereby clarified that IWAI will only facilitate if clearances are required for the project and it fails to be acquired by the developer in specified time period then IWAI may extend the time period to fulfill Conditions precedent or may terminate the Agreement as may deem fit by IWAI.
27	Obligations of IWAI	As per the clause, IWT shall grant to the Developer the authority to regulate traffic on IWT. It is requested to clarify if IWT has the power to delegate such authority to the developer	The clause pertained to regulation of surface traffic on the terminal land for smooth operations of the terminal. IWAI does not delegate to the operator any right to regulate the IWT traffic on the water way.

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28	Obligations of IWAI	As per the clause, the project site shall be provided to the Developer “free of all encumbrances”. As per the definition of “Encumbrances” in the Agreement shall include all legal obstructions or encroachments on / of the Project Site”. This appears in conflict with the term “As is where is basis” in clause 7.1 (a)	There is no conflict between 8.1.3 and clause 7.1(a) as referred in the query. The expression "as is where is basis" covers the physical structure which might be existing over the project site and it shall be the developers responsibility to remove on its own cost suitable to make use of the project site in the intended manner. whereas the expression free from all encumbrances refers to any kind of security interest created over the project site more particularly specified under the defined clause
29	Obligations of Developer	As per the, the Developer cannot transfer or dispose off or otherwise alienate any of the Project assets without the prior written approval of IWAI. It is requested to relax this condition, as Lenders may not agree to this provision	It is clearly stated that the Developer cannot transfer or dispose off or otherwise alienate any of the Project assets without the prior written approval of IWAI. This clause cannot be modified or altered.
30	Obligations of Developer	As per the clause, each Project Agreement should have a provision to entitle IWAI or a nominee of IWAI to step into such agreement at IWAI's discretion, in place of the Developer in case of termination. It is requested that the substitution be effected with the consent of the Lenders	As is mentioned in the clause that IWAI or a nominee of IWAI can step into such agreement in case of Termination. This solely remains at IWAI's discretion and Its comfort with the operator in a case of termination. The step in right of IWAI /the nominee of IWAI in the event of termination is solely related to undertaking the operation and maintenance of the terminal. The consent of the lenders to such step in rights would have assumed importance incase the development Agreement didn't provide/ secure the Financial Assistance provided by the lenders. The provision for termination payments under Article 14 as well as that of appropriation of amounts standing credit of the project Escrow account (clause 10.2.3) amply secures the financial assistance.

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31	Construction Completion	As per the clause, the Project may be completed and commissioned in phases. Please define the 'Phasing of the Project' and its execution as well as the implications therein Also, incase construction is completed before the scheduled construction completion date, please indicate the bonus/incentive to the Developer. Also please clarify if the annuity be paid for the extra period in this case	1. The successful developer is expected to give its plan for implementation which must include project scheduling to adequately reflect in what time frame which component of the project will be completed subject to the entire project being developed in 18 months. 2. No bonus/incentive is eligible for early completion of the project. However annuity will commence immediately upon successful commissioning of the project even if the project is commissioned before 18 months., 3 The operations and maintenance period is fixed at 8 years and 6 months irrespective of the project getting commissioned anytime within the permissible period of 18 months. However no annuity will be payable beyond the eligible period of 8 years and 6 months.
32	Operations and Maintenance	Please define the performance standards	The performance standards are defined in clause 9.7 (Operations and Maintenance) of the development agreement.
33	Escrow Account - Disbursements	Provision for repayment of Revenue Shortfall loans should be removed as it is not applicable in the present case	The subject provision has been removed from the revised development agreement.
34	Escrow Account - Disbursements	Facility Agreement has not been defined. It is requested that the same may be in the Agreement	Since facility agreement is not relevant it has been removed from the said provision of the clause on Escrow Account of the revised development agreement.

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35	Escrow Account - Disbursements	It is mentioned that the withdrawal by the developer after meeting all payment obligations shall be with the consent of the lender. It is suggested that once the developer is able to meet its obligations with respect to payments provided for, withdrawal of outstanding amount should not require lenders' consent	The suggestion is not acceptable.
36	Annuity	Please clarify if the annuity will be paid as advance or at the end of the year by IWAI to the Developer	The Annuity payments will be made as defined in clause 10.5 (ii) of development agreement which is quarterly payments of the annuity in arrears.
37	Insurance Cover	Prior written consent of IWAI is required to designate the lenders as the loss payees. This should be relaxed as lenders may not agree	The insurance proceeds are assignable to IWAI. Hence their permission is needed to designate lenders as loss payee.
38	Force Majeure Events	Definition is not clear	The definition clearly defines an act, event, condition or occurrence, of nature and kind as specified in Clause 12 of the Agreement
39	Performance Excused	Please clarify as to who will decide the duration for 'excuse from performance'	The duration for excuse from performance will be decided by IWAI on receiving the notice from the affected party as mentioned in clause 12.2 and 12.4
40	Resumption of Performance	Please define 'as soon as possible'	The continuation of a Force Majeure cannot be predicted however it has already been provided under clause 12.9 that it will be amicably decided between both parties. 'As soon as possible' refers to the affected party making reasonable efforts to mitigate and restart operations

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41	Costs, Revised Timetable	It has been mentioned that the Force Majeure costs shall be reimbursed by IWAI to the Developer at its option in cash or extension of development period. It is suggested this may be mutually agreed between IWAI and the Developer	Suggestion accepted and necessary changes have been made in the revised RFP.
42	Consequences of termination - Guarantees	The treatment of guarantees should be mentioned in case termination is due to IWAI's event of default	Necessary changes have been made in the development agreement to include in 14 (g) (a) iv that IWAI shall return the bank guarantee within reasonable time from the date of termination of agreement
43	Termination Payments - IWAI Event of default / Political Force majeure events	The certification of works completed by the Developer should be undertaken by Statutory Auditor	No change is considered necessary.
44	Governing Law and Jurisdiction	Place of Arbitration is New Delhi while Governing Law of Noida/New Delhi is applicable. Please clarify	There is no ambiguity in the clause as it clearly states that the agreement would be governed by laws of the land and shall be subject to the jurisdiction of courts of Noida/Delhi and arbitration shall be as per clause 18.1 of the RFP
45	Severability	Please clarify as to why the failure to agree upon provisions as defined is not subject to dispute resolution	The said situation would not give rise to a dispute because the parties are not under any obligation to agree upon a substitution clause. However the same is to be done on a best effort basis
46	Counterparts	Three counterparts have been provided for but reference has been made only to two (both)	Point has been noted and subsequent changes will be made in the RFP

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47	Occurrence of Natural Event	Please clarify that in the event the river changes its direction, what will be the implications for the developer and also the provisions for lenders' protection as the same will not be covered by insurance	This event is covered in detail under Article 12 clause 12.1(A)(a)
48	-	Extension in date for submission of Bid	The Bid Due Date is extended to 15 th July 2009
49	-	Clause 14.6 (g) (b) Non-political Force majeure. Developer should be compensated for Non-political force majeure either by IWAI or via the insurance procured for covering such events.	In case of IWAI receiving any claim due to force majeure event, suitable provisions have been created for sharing of the claims with the operator based on assessment of actual losses incurred by both, IWAI and the operator, by an independent expert. Changes have been carried out in clauses 12.6 (a) and 11.3 respectively

ANNEXURE-I

Table 1: Conveyor Belt System for Coal Handling

S.NO	Particulars	Specifications
1	Rate Capacity	100 (TPH)
2	Design Capacity	125(TPH)
3	Horizontal Length	
	1) Gangway conveyor	40 m c/c
	2) Feeder conveyor	25 m c/c
	3) Portable conveyor	5 m c/c
4	Lift	
	1) Gangway conveyor	8m
	2) Feeder conveyor	6m
5	Belt	
	1) Width	800 mm
	2) Ply	4
	3)Top Rubber	3 mm
	4) Bottom Rubber	1.5 mm
	5)Grade	M 24
6	Carrying Idler Diameter	114.3 mm

7	Idler	
	1) Tube	I.S 9295 ERW
	2) Bearing	SKF 6204/420204 Deep Groove Ball/ Size Resistant
	3) Shaft	EN-8
	4) Bearing Housing	3.15THK.CRCA Sheet
	5) Retainer/ End cap	Nylon-6
	6) Labrynth inner	Nylon-6
	7) labrynth outer	Nylon-6
	8) Dust Seal/ rain cap	M.S.
	9) Dust cap	M.S.
	10) CirClip IS 3075	Spring Steel
8	Return Idler Diameter	114.3 mm
9	Pitch of idler carrying / return	1/1.5 m
10	Idler carrying quality/Return /Saci/Sari/Impact	55/33/6/4/5
11	Drive pulley/Shell/Shaft/ Hub/Bearing	500/80/75/70/1316K
12	Trail pulley/Shell/Shaft/Hub/Bearing	400/80/75/70/1316K
13	Snub Pulley/Shell/Shaft/Hub/Bearing	219/50/45/40 Qty-1/1209 k
14	Take-up	1 meter Screw Travel (Automatic)
15	Number of feed point	1
16	Motor	1440 RPM-10 HP
17	Gear Box	5 Inches 30:1
18	Coupling	Pin Bush
19	Rubber Lagging	(Head Pulley)12 mm thick checker
20	Vulcanizing	Cold Process
21	Pull cord Switch	6 number

22	Belt Sway	6 number
23	External Scrapper	Counter weight type
24	Internal Scrapper	V- plough type
25	Technological Structure	ISMC-100/50
26	Drive Base Frames	ISMC-150/75
27	Trail take up frames	ISMC-150/75
28	Deck Plate	5 mm thick H.S
29	Skirt Guard	6 mm thick H.S
30	Walk way	Both sides