

AUCTION OF COAL MINES FOR SALE OF COAL

(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 to Standard Tender Document dated June 18, 2020

Part – II

**Nominated Authority
Ministry of Coal
Government of India
New Delhi**

September 10, 2020

Queries and Responses to Standard Tender Document dated June 18, 2020

The following clarifications are applicable to the Standard Tender Document dated 18 June, 2020 as well as to i) mine-specific Tender Documents dated 18 June, 2020, under 11th Tranche of auction under the CMSP Act & 1st Tranche of auction under the MMDR Act and ii) mine-specific Tender Documents dated 01 September, 2020, under 1st Tranche of auction under the MMDR Act.

S. No	Query	Response
1.	<p>Tender Document - Clause 3.9 Value of Estimated Geological Reserves and Upfront Amount</p> <p>A. It is observed that the first instalment i.e. 25% of Upfront Amount is paid to the Nominated Authority and the remaining 75% is paid to the State Govt. in three instalments. However, as per clause 3.9.3 of the standard tender document, 100% adjustment of the upfront amount is made against Monthly Payments to the state government. Whether the first instalment to the nominated authority will be transferred to the State Government. If not, whether the state government will bear the cost equivalent of 25% of Upfront Amount while allowing a rebate of 100% of the same in its revenue share?</p> <p>B. The first instalment of the Upfront payment is to be paid to the Nominated Authority. How it can be adjusted with the payments to the state? What is Upfront Amount adjustment formula? Which all taxes and duties and premiums shall be adjustable from the upfront payment paid for the mines?</p> <p>C. Since, the amount of monthly adjustment is capped, this may lead to cashflow issues during the inception of revenue/ operationalization of blocks; hence, it is advisable to increase the 50% ceiling of Upfront payment adjustment and allow quicker recovery of upfront payment amount and reduce payment burden Please clarify the methodology for the adjustment of the upfront payment. The Mineral (Auction) Rules and Discussion paper – Auction of Coal Mines for Sale of Coal, Jan 2020 did not cap the adjustment of Upfront payment amount. Quicker adjustment of Upfront payment will have a positive impact on the early cashflows and will ease the Monthly Payment burden at the beginning for the investors.</p>	<p>As per Clause 3.9.3 of the Tender Document, the Upfront Amount shall be adjusted in full, against the Monthly Payments to be made to the State Government. Provided however, such adjustment of Upfront Amount shall not exceed 50% of aggregate Monthly Payments for the year. The adjustment of Upfront Amount will be towards Monthly Payments only, and not towards any taxes, duties, statutory levies etc. The Upfront Amount shall be adjusted on a monthly basis from the Monthly Payments to be made by the Successful Bidder and would be reconciled at the end of the year.</p> <p>The first instalment of Upfront Amount shall be transferred by the Nominated Authority to the State Government.</p>
2.	<p>Tender Document Clause 3.10 - Periodic Payments by the Successful Bidder</p> <p>A. In case of washing of coal there should be limit of payment of revenue to the Govt. It shall be limited to Revenue sharing payable for the quantity of ROM coal.</p> <p>B. In case of a pit head washery whether the Actual Price will be Transfer Price of ROM coal or the actual sale invoice of washed coal?</p> <p>In case of Pit head coal washery, the sale invoice of washed coal is made. The value of washed coal is increased</p>	<p>Monthly Payments by the Successful Bidder shall be in accordance with Clause 3.10 of the Tender Document. Monthly Payments shall be made in the same manner as royalty is paid i.e. Monthly Payment shall be made on the quantity and grade of coal for which royalty is paid by washeries as per Rules</p>

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	<p>by additional process of beneficiation. As such in case of pit head coal washery the Actual Price shall mean the Transfer price of coal.</p> <p>C. In case of pithead washery, it has been clarified that price of washed coal is being considered for Revenue share. What about quantity; will it be ROM coal quantity or washed coal quantity?</p>	<p>during the month.</p>
3.	<p>Tender Document Clause 3.10.2 - Periodic Payments by the Successful Bidder The Monthly Payment under Clause 3.10.1 is required to be made to the State Government by the 25th Business day of the immediately succeeding month for the quantity of coal dispatched from the mine during the immediately preceding month, on which the statutory Royalty has been paid, in the manner as may be prescribed by the State Government. Further, the Monthly Payments may be subject to such adjustments as may be prescribed by the Nominated Authority, annually basis the audited financial statements of the Successful Bidder or at such other periodic intervals as may be prescribed. Such adjustments may be on account of the National Coal Index as may be notified for and applicable to the Monthly Payment dates.</p> <p>Payment of statutory royalty which is an advance payment, which the successful bidder is required to make, generally for a lump sum quantity, expected to be dispatched out of the mine over a period of a month or for a quarter.</p> <p>Therefore, as per clause 3.10.2, if the "Monthly payment" is required to be made on the date of royalty payment, it will not be reasonable. Besides, the concept & applicability of Actual Price, as per clause 3.10.1 for determination of "Monthly Payment" may not hold good, if the monthly payment is made in advance along with the statutory Royalty, when the period for sale of coal is yet to start and thus the quantity is yet to be sold.</p>	<p>As per Clause 3.10 of the Standard Tender Document</p>
4.	<p>Agreement Clause 26.3 Termination of the Agreement A. There is no provision for cure period and if the reason is not attributed to the Successful Bidder in that also there is no proviso. Suggested Amendment: There should be and additional condition in case of noncompliance to any conditions of the Agreement as proposed below: The Central Government or State Government or Nominated Authority may allow a further extended period for execution of work if the reasons for delay were beyond the control of the preferred bidder/Successful bidder.</p>	<p>As per Clause 26.3 of the Agreement.</p>

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	<p>B. There is no provision mentioned under the tender doc. Wherein in the successful bidder can terminate the contract due to the fault of the Authority</p>	
5.	<p>Tender Document - Clause 6.1.3 Bid Security As there is no provision of L2 bidder in auction process. Bid Security of the unsuccessful Bidders must be returned after a specific period of time, preferably in a fortnight time. Bid Security are kept on hold for L2, L3 and other unsuccessful bidders for chances of negotiation with them, after failure of L1 bidder to provide necessary supporting documents to proof its eligibility for the contract.</p>	<p>Bid Security of the unsuccessful Bidders will be returned, without any interest, upon the recommendation of the name of the Preferred Bidder to the Central Government by the Nominated Authority as per Clause 3.3.2(d) of the Tender Document or when the tender process is cancelled by the Nominated Authority.</p>
6.	<p>Tender Document Clause 7.1.5 Appropriation of Performance Security Suggested Amendment: ...whatsoever. However, such appropriation event shall not be for any reason beyond the control of the successful bidder. Provided that the Central Government or State Government on being satisfied may allow such relaxation for the event of appropriation by granting additional time for achieving the efficiency parameter.</p>	<p>Appropriation of Performance Security shall be in accordance with Clause 7.1.5 of the Tender Document. However, as per Clause 10 of 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>
7.	<p>Tender Document - Clause 9.1 Mandatory Work Program for Partially Explored Mines A. In the event the successful bidder is unable to conduct geological prospecting/ exploration as per the Mandatory Work program, seeking revised Mandatory Work Program from the Nominated Authority may be time-consuming. Also, the successful bidder, with its experience/ understanding of the area, would be in a relatively better position to propose changes in the Mandatory Work Program. The successful bidder thus may be given the freedom to propose a revised mandatory work program (instead of seeking revised Mandatory Work Program from the Nominated Authority). This would not only allow the process to be quickened, but also formulate a workable program as per the successful bidder's understanding</p>	<p>As per the provisions of the Standard Tender Document in Clause 9.1, in the event the Successful Bidder is unable to conduct geological prospecting/ exploration of the area as per the Mandatory Work Program, due to any technical constraints including subsurface geological uncertainty duly accepted by the Government, the Successful</p>

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	<p>on the prospecting/ exploration requirements. This will also encourage adoption of latest techniques & practices. In any case, the proposed revised Mandatory Work Program would be required to be approved by the Nominated Authority</p> <p>B. Enabling successful bidder to propose revision in mandatory work program for Exploration: This will invite latest technology in Exploration Work Programme. There should not be a compulsion to seek clearance for the program from Ministry of Coal/Nominated Authority.</p> <p>C. Can bidder revise mandatory work program based on his requirement and then seek approval from NA?</p>	<p>Bidder may propose a revised Mandatory Work Program having estimated exploration expense not less than the estimated exploration expense as provided in the Annexure I of the Tender Document, to the Nominated Authority. The revised Mandatory Work Program shall be subject to the approval of the Nominated Authority.</p>
8.	<p>Clause 9.1 Mandatory Work Program for Partially Explored Mines What are the limits of these technical constraints? In cases of political unrest, terrorism, natural calamity and other unforeseen events, Mandatory Work Program may come to halt, what are the provision for such scenarios?</p>	<p>In accordance with Clause 9.1.1 of the Standard Tender Document, in the event the Successful Bidder is unable to conduct geological prospecting/ exploration of the area as per the Mandatory Work Program, due to any technical constraints including subsurface geological uncertainty duly accepted by the Government, the Successful Bidder may propose a revised Mandatory Work Program having estimated exploration expense not less than the estimated exploration expense as provided in the Annexure I of the Tender Document, to the Nominated Authority. The revised Mandatory Work Program shall be subject to the approval of the Nominated Authority.</p>
9.	<p>Agreement Clause 10.1 Efficiency Parameters Clarification is requested for the event when delay exceeds the 'grace period' as provided in the mentioned clause for reasons not solely attributable to the Successful bidder.</p>	<p>As per Clause 10 of 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</p>

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		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.
10.	<p>Agreement Clause 26.3 Termination A. Termination events defined in Clause 26.3 except point (j) are those events where Successful Bidder is in default. However in point (j), termination is due to Force Majeure. Termination due to Force Majeure can not be dealt with in the same way as termination due to default. Under principle of natural justice, Successful Bidder is party suffering due to Force Majeure and hence can not be penalised as well.</p> <p>B. It is suggested that clear provisions should be provided in the event of termination of agreement by Nominated Authority on account of event of Force majeure so that Performance security and other payments made by successful bidder should not be forfeited.</p>	Termination event shall be in accordance with Clause 26.3 of the Standard Tender Document. Please refer to Corrigendum No 3 to the Agreement issued in this regard.
11.	<p>Agreement New Clause 26.3A Termination due to Force Majeure 26.3A.1 Upon suspension of obligations on account of an Event of Force Majeure for a period longer than as specified in Clause 25.5, Successful Bidder may elect to terminate this Agreement by providing a 15 Business Days written notice to the Nominated Authority. 26.3A.2. In case the Successful Bidder elects to terminate this Agreement, then the Upfront Amount, Performance Security, Fixed Amount and all other payments made by the Successful Bidder shall be returned by Nominated Authority and the Successful Bidder shall not be entitled to any benefits under this Agreement not would be liable towards any antecedent liability, all obligations accrued on or after termination date.</p> <p>Rationale: Successful Bidder should not be double penalised for termination due to Force Majeure. On one hand Successful Bidder would lose coal block and on other hand also money spent.</p>	Termination event shall be in accordance with Clause 26.3 of the Standard Tender Document. Please refer to Corrigendum No 3 to the Agreement issued in this regard.
12.	<p>Agreement Schedule D Efficiency Parameters A. For MS-2 MS-3, MS-4 and MS-5 tasks, why is it liability of Successful Bidder to complete the tasks with specified months of time line for the following tasks? Approval of Mining Plan/Project Report subject to the provisions of Clause 15 Forest Clearance Application Environment Clearance Application Forest Clearance (FC)-stage 1</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

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	<p>Forest Clearance (FC)-stage 2 Wildlife Clearance Approval under PESA Environment Clearance (EC) Approval under PESA Environment Clearance (EC) All activities under MS-4 All activities under MS -5 except Intimation to DGMS for Mine opening Application for Opening permission</p> <p>Why are the appropriation on performance security on timely competition of tasks where successful bidder doesn't have no/limited control?</p> <p>B. How viable these timelines to achieve various milestones in which approvals and clearances required from statutory authorities? In case of delay from statutory authorities' side, how do you address that? And would appropriation on performance security be applicable for delays in such cases? There are concern on Work Program as per SCHEDULE D and forfeit clauses on Performance Security amount in the event of delay. Land acquisition and forest approval for Schedule II mines shall not be restricted to within 9 months of timeline, as requested by Prospective bidders. Additionally approvals and clearances from various statutory authorities shouldn't be liability of Successful Bidders.</p> <p>C. It is our experience that after allocation of coal block, there are instances that the statutory clearances, Land status, Legal issues on land acquired by prior allottee, issues in possession over the acquired land, revelation of additional forest land etc occurs. This leads to delay in development of coal block. In case of change in land status like Forest land etc leads to delay in the development of the coal block. In such instances as narrated above, how much relaxation or extension in timeline will be granted by Ministry of Coal for development of coal block ?</p>	<p>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. All statutory clearances/ consents/ approvals shall be obtained by the Successful Bidder in accordance with Applicable Law.</p>
13.	<p>Clearances If due to any delay by the centre or state government production is not started on the schedule date of</p>	<p>As per Clause 10 of the Agreement, in bona fide cases of delays not attributable to the</p>

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	<p>production will the successful bidder be granted time extension for such period of delay and their performance security not be appropriated?</p>	<p>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>
14.	<p>Grade of coal: A. In case of improvement of grade through a washery, what would be the applicable grade for the purpose of computation of Representative Price for revenue share calculation. Clarification on the representative price and revenue sharing basis for the washed coal will help the bidders to explore the opportunity.</p>	<p>Monthly Payments shall be made in accordance with Clause 3.10 of the Tender Document. Monthly Payments shall be made in the same manner as royalty is paid i.e. Monthly Payment shall be made on the quantity and grade of coal for which royalty is paid by washeries as per Rules during the month.</p>