

No. NH-37015/1/2009-H
Government of India
Ministry of Road Transport & Highways
(Highways Section)

1, Sansad Marg, Parivahan Bhavan,
New Delhi, dated the June, 2017.

Circular

Subject: Amendments to Model RFQ/RFP for BOT/DBFOT projects [Amendment No. 2/2017]-reg.

With reference to the Request for Annual Qualification (RFAQ), Request for Qualification (RFQ) and Request for Proposal (RFP) documents issued for works to be implemented under Build Operate Transfer (BOT) (Toll) mode, following are further amendments:-

BOT Toll

The Provision for RFAQ would be as under:

(i) Clause 2.2.10 may be read as follows:-

Clause 2.2.10 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Application, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Application, there is an acquisition of not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant shall be subject to approval of the Authority from national security and public interest perspective at the RFP stage for each individual Project. The decision of the Authority in this behalf shall be final and conclusive and binding on the Applicant.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.



The Applicant shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the RFAQ Process.

(ii) Clause 2.2.11 may be read as follows:-

Clause 2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Application, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India;
- or
- (b) if at any subsequent stage after the date of the Application, there is an acquisition of not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant shall be subject to approval of the Authority from national security and public interest perspective at the RFP stage. The decision of the Authority in this behalf shall be final and conclusive and binding on the Applicant.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Applicant shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

RFP for BOT Toll

(iii) Following clause is inserted at 2.1.19 of the RFP

2.1.19 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, not less than 50%(fifty percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or



- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 50%(fifty percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Eligibility and / or opening of Financial Bid and or award of the Project to such Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2 This issues with the approval of Competent Authority.


2/6/17
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Director (Highways)
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To

- i. Secretary, Department of Economic Affairs, North Block, New Delhi
- ii. Secretary, Department of Expenditure, North Block, New Delhi
- iii. Secretary, NITI Aayog, Yojana Bhawan, New Delhi
- iv. Secretary, Ministry of Law & Justice, Shastri Bhawan, New Delhi
- v. DG(RD) & SS, MoRTH
- vi. Chairman, NHA
- vii. MD, NHIDCL
- viii. AS&FA
- ix. All Members, NHA
- x. NIC Cell for uploading the circular on Ministry's website.

Copy for information to: PS to Hon'ble Minister (RT&H)/ PS to Hon'ble MoS(RT&H)-PR/PS to Hon'ble MoS(RT&H)-MM/PPS to Secretary (RT&H)