

## **5. ELIGIBILITY CRITERIA**

### **5.1. Eligibility of Bidders:**

**5.1.1.** For determining the Eligibility of Bidders, the following shall apply:

- a. A Bidder may be a natural person, private entity, government-owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in clause (5.2). The term Bidder used herein would apply to both a single entity and a Consortium.
- b. A Bidder shall not have a conflict of interest that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process if:
  - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest or
  - (ii) a Bidder or any constituent of such Bidder is also a constituent of another bidder; or
  - (iii) such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other bidder, its Member or any Associate thereof; or
  - (iv) such Bidder shall have the same legal representative for purposes of this bid as any other bidder; or
  - (v) such Bidder, or any Associate thereof has a relationship with another bidder, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other's' information about, or to influence the bid of either or each other or
  - (vi) Such Bidder, or any Associate thereof has participated as a consultant to the Indian Railway in the preparation of any documents, design or technical specifications of the procurement.

*Explanation:* In case a Bidder is a Consortium, then the term Bidder as used in this Clause (5.1.1) shall include each Member of such Consortium.

- c. The Bidder(including its Associate) shall meet all the financial eligibility and technical eligibility requirement specified in clause 5.1.2 and clause 5.1.3 respectively. In case of Consortium, the Lead Member of the Consortium must meet the technical eligibility requirements with respect to either the Mechanical system(Clause 5.1.3A) or at least one item of the propulsion system(Clause 5.1.3B).
- d. A bidder, who has procured the design of three items listed in clause 5.1.3 B from a third party (not being an Associate) shall be eligible hereunder in following situations:-
  - (i) In the event that Bidder has developed its own technology, following the acquisition of technology from a third party it shall certify that the proposed technology is its own property and does not infringe on the intellectual property rights of a third party:
  - (ii) Provided, that if such technology was acquired from a third party within a period of 10 (ten) years prior to the bid due date, the bidder shall also furnish a certificate from such third party that it has no intellectual property rights or claims on such technology.

*Note: Associate shall mean, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.*

**5.1.2 Financial Eligibility:** Annual turnover of the Bidder (along with its Associates), shall be more than Rs. 1100 crore in any two years out of the last 5 years preceding the bid opening date. Copies of Audited Profit and Loss account and balance sheet should be submitted in support of this. Where the same is not available for the latest financial year, certificate of statutory Auditor should be enclosed. For converting the US \$ in Indian rupees 1 USD= Rs 75 shall be considered. For other currencies, these shall be firstly be converted to US dollars as per Exchange rates prevailing as per IMF, 30 days prior to the bid opening date and then converted to INR as per above conversion rate.

NB: 1. For the purpose of this clause Year refers to financial year means the accounting year followed by the Bidder in course of its normal business. A certificate from the statutory Auditor/ Chief Financial Officer of the bidder certifying the period reckoned as accounting year followed by the bidder, in the course of its normal business shall also be submitted.

**5.1.3 Technical Eligibility:** To be eligible for qualification and short-listing for placement of order, the Bidder shall fulfill the following conditions of eligibility:

**A) Mechanical System:**

- (i) The bidder must have experience of carrying out Vehicle Design, Manufacture, Supply, Testing and Commissioning of minimum of total 250 cars with Aluminium and/or Stainless Steel carbody in EMU based Train sets during the last Ten years ending 30 days prior to deadline for bid submission.
- (ii) Provided that minimum 25% of specified quantity at SN (i) (i.e. 62 nos. of cars) out of above supplies must have design/operating speed of 176/160 kmph or more.
- (iii) Provided further that at least, 25% of specified quantity at SN (i) (i.e. 62 nos. of cars) and (ii) (i.e. 15 nos. of cars) out of the above supplies, must have completed satisfactory revenue operation for three years or more ending 30 days prior to deadline for bid submission.

However, Bidders opting to use IR's existing design of Vande Bharat Chair Car Trains for carbody shell and bogie frame for their Trains, in terms of the provisions specified in Clause 13.1 of the Agreement, would be considered eligible for this requirement if such Bidder has manufactured and supplied at least 48 cars of EMU based Trainsets.

**B) Propulsion System:**

The bidder must have experience covering design, manufacturing, supplying, testing and commissioning of minimum 125 unit sets of following Propulsion Equipment of EMU based Train-sets and/or Locomotive during the last Ten years ending 30 days prior to deadline for bid submission:

- (i) IGBT based traction converter sets, each unit set of rating 1000 (or 2 x 500) kVA or more.
- (ii) 3-phase traction motor of rating at least 180 kW for speed 130 kmph or more (each unit set comprising 4 traction motors i.e. total of 500 traction motors), provided that minimum 25% such unit sets (i.e. total of 125 traction motors) must have design/operating speed of 176/160 kmph or more.
- (iii) Microprocessor Based Train Control and Management System (TCMS) based on IEC 61375 where TCMS for Locomotive shall be counted as one unit set for each Locomotive and TCMS for EMU based Train-set shall be counted as one unit set for each motor car (one motor car equivalent to 4 powered axle) forming part of such Train-set.

Provided that at least 25% of specified quantity at SN (i), (ii) (individually for both speed categories), and (iii) each, out of the above supplies, must have completed satisfactory revenue operation for three years or more ending 30 days prior to deadline for bid submission.

*Note :1) EMU based Train Sets shall mean Electrical Multiple Units being used for Commuter/ Regional/ Intercity/Metro/Sub-urban Railways/ High-Speed Railways.*

*2) 25% quantity shall be rounded down to nearest integer in case of fraction.*

*3) In case of a Consortium, the combined Technical and Financial Capacity of those Members, who has minimum share of 15% (fifteen per cent) in the Project, along with their respective Associates, should satisfy the above conditions of eligibility.*

5.1.4 **O & M Experience:** The Applicant shall furnish an undertaking that if selected to undertake the Project, it shall employ experienced and qualified staff/O&M Subcontractor for discharging its maintenance obligations under the agreement.

5.1.5 Bidders shall enclose with their Bid, the following **MANDATORY DOCUMENTS** as the format given below to establish their Eligibility:

- (i) Form -I : Letter of Technical Bid
- (ii) Form -II: Particulars of the Bidder.
- (iii) Form -III: Statement of Legal Capacity
- (iv) Form-IV: ‘Power of Attorney’ for the authorized signatory, authorising the signatory of the Bid to commit the Bidder.
- (v) Form -V: ‘Power of Attorney’ for Lead Member of Consortium, in case Bidder is a Consortium.
- (vi) Form -VI: ‘Joint Bidding Agreement’, in case Bidder is a Consortium.
- (vii) Form -VII: Details of ‘Technical Eligibility’ in terms of Clause 5.1.3 above (along with requisite Certificate(s) from Client/Project Owner/statutory auditors of the Bidder or its Associates)
- (viii) Form-VIII: Details of ‘Financial Eligibility’ in terms of Clause 5.1.2 above (along with Certificate(s) from the Statutory Auditors of the Bidder or its Associates).
- (ix) Form IX: Associate Declaration Form.
- (x) Form X: IPR of Technology.
- (xi) Form-XI: Certificate for local content.
- (xii) Form- XII: Format for Affidavit.

5.1.6 For evaluating the Technical Eligibility in terms of Clause 5.1.3 above, only the portion of contract as executed by the bidder in his own name should be indicated and shall be considered. Where a work is undertaken by a group (**Consortium**), only that portion of the work which is undertaken by the concerned bidder shall be considered and the remaining done by the other partners of the group shall be excluded. This is to be substantiated with documentary evidence such as Consortium agreement clearly giving

the scope of work/ share in work done/percentage participation/ of each member of Consortium or a specific certificate from the Client.

- 5.1.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the Bid due date, would not be eligible to submit a Bid, either individually or as member of a Consortium.
- 5.1.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where an Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 5.1.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

## **5.2 Consortium**

- (i) The bid shall be signed by lead partner so as to be legally binding on all other partners. (This should be supported by letter of intent). Number of partners in Consortium shall not be more than five (5).
- (ii) The lead partner shall be responsible for coordinating the entire program of manufacture and supply of trains including Maintenance. There should be an authorization to this effect evidenced by submission of a power of attorney (Form-V) with bid duly signed by legally authorized signatories of all partners.
- (iii) The lead partner shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the Consortium, and the entire execution of the contract, including payment, shall be done exclusively by the lead partner.

- (iv) The Lead Member shall commit minimum participation of 26% in the Project and all such Members whose Financial and Technical credentials are proposed to be considered shall commit minimum participation of 15% in the Project.
- (v) A 'Joint Bidding Agreement' entered into by the Consortium partners shall be submitted with the bid (Form-VI). The 'Joint Bidding Agreement' should:
  - (a) include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical, System Integrator and O&M obligations;
  - (b) clearly outline the proposed roles and responsibilities, if any, of each member;
  - (c) commit the minimum share of participation in the project by each member;
  - (d) be Registered/Notarized in India;
  - (e) not be varied/ modified subsequently without the prior approval of the purchaser.
- (vi) All partners of the Consortium shall be liable jointly and severally for the execution of the contract in accordance with the contract terms.
- (vii) A firm can be a partner in only one consortium. Bids submitted by Consortium including the same firm as partners in more than one bid, will be rejected. (This restriction will not apply to sub-contractors for the bought out items).
- (viii) The lead member of Consortium shall be responsible for all financial covenants and bank guarantees.
- (ix) Any change in Consortium is not permitted during bidding stage. However a Consortium member may be substitute/dropped during project execution stage with prior written approval of the Government. Such change may be permitted by the Government, only where:
  - (a) the Lead Member continues to be the Lead Member of the Consortium with minimum share of 26% in the Project;
  - (b) each other Consortium Members whose credentials were used to meet the Eligibility requirements during bidding shall have minimum share of 15% in the Project;
  - (c) the Contractor continues to meet the Eligibility requirements specified in the bid document.
- (x) A Bidder shall be liable for disqualification and forfeiture of Bid Security, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the bidding process or subsequent to the (i) issue of LOA or (ii) Execution of the Agreement. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior

to the date of issue of this tender. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

**5.3. FALSE AND OR INCOMPLETE STATEMENTS:**

If bidder gives/upload wrong information/credentials/documents in his/their e-tender and thereby create(s) circumstances for acceptance of his/their bid at any stage of tender or at any stage of contract in the event of his tender having been accepted, his tender or contract shall be liable to be cancelled/rescinded, in addition to forfeiture of full amount of his EMD/Performance Security.

**5.4. Compliance to Make in India:**

The procurement shall be done in accordance with extant instruction of Department for Promotion of Industry and Internal Trade (DPIIT) for "**Make in India**" policy.

Only **Class-I local supplier** is eligible to bid in this tender. The class-I Local supplier, as defined for this tender:

“ **Class-I** local supplier means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 60%.”

**5.4.1.** The tenderer has to submit local content as percentage at the space provided in NIT-IREPS and the same should be supported by certificate from the statutory auditor or cost auditor of the company and as per Form- XI; which needs to be submitted along with the offer failing which offer will not be considered. In addition, tenderer shall furnish the details of location at which the local value addition is made/proposed.

5.4.2 Train sets shall be manufactured in India only.

**5.5. Certificate for compliance to Rule 144(ix) of GFR, 2017:**

The eligibility for a bidder from a country which shares a land border with India to participate in the tender shall be as per Public Procurement Orders of Ministry of Finance, Department of Expenditure [Reference: Para 3.16 of Tender Document].The tenderers shall give a declaration to this effect, as indicated in FORM-I.

**5.6 Responsiveness of offer:**

a) **Validity of offer** for minimum period of 180 days from the date of Tender Opening – No Deviation is permitted and offer will be summarily rejected in case of deviation.

- b) **Submission of Bid Security:** No deviation is permitted and offer will be summarily rejected in case of deviation.

**5.7. EFFECTS AND VALIDITY OF OFFER**

- 5.7.1** The submission of any offer connected with these specifications and documents shall constitute an agreement that the bidder shall have no cause of action or claim, against the Purchaser for rejection of his offer. The Purchaser shall always be at liberty to reject or accept any offer or offers at his sole discretion and any such action will not be called into question and the bidder shall have no claim in that regard against the Purchaser.
- 5.7.2** The purchaser may solicit the bidder's consent to an extension of the period of bid validity. The request and the responses thereto shall be made in writing (or by FAX/e-mail).
- 5.7.3** If necessary, the purchaser will obtain clarifications on the offers by requesting for such information from any or all the bidders, in writing. Clarifications will be sought only on the documents submitted and **NO ADDITIONAL DOCUMENTS SHALL BE ENTERTAINED POST TENDER OPENING**. Bidders will not be permitted to change the substance of their bids after the offers have been opened.

**5.8. LEGAL REQUIREMENTS:**

- (a) The power of Attorneys should be signed by witnesses and notarized.
- (b) The power of Attorneys should be executed on non-judicial stamp and signed on all the pages.
- (c) Common seal should be embossed on the power of Attorney.  
If law of any country does not insist on payment of stamp duty, it can be executed as per their law and it should be notarized by Notary public and attested by Indian Embassy.
- (d) Company should submit a document/certificate of incorporation to show that the company is registered with the statutory body as mandated by respective Laws of the land. In India, the company has to be registered under the Companies Act 1956 with Registrar of Companies.
- (e) The firms should submit authenticated English translation of all documents (both technical and financial) which are in foreign language. The translation should be done by certified translators. The translated documents should be notarized in India. The translation should have reference to the document translated and in case of any dispute between the original and translated English document, only the English version would prevail.

**5.9. GENERAL**

- 5.9.1.** Bidders must ensure that the condition laid down for submission of bids detailed in the preceding paras, are completely and correctly fulfilled.
- 5.9.2.** Bids which are not complete in all details as stipulated above may be summarily rejected.



## **5.10. SECRECY**

**5.10.1.** The contractor shall take all reasonable steps necessary to ensure that all persons employed in any work in connection with the contract, have full knowledge of the Official Secrets Act and any regulations framed there under.

**5.10.2.** Any information obtained in the course of the execution of the contract by the contractor, his servants or agents or any person so employed, as to any matter whatsoever, which would or might be directly or indirectly, of use to any enemy of India, must be treated as secret and shall not any time be communicated to any person.

**5.10.3.** Any breach of the aforesaid conditions shall entitle the Purchaser to cancel the contract and to purchase or authorise the purchase of the stores at the risk and cost. In the event of such cancellation, the stores or parts manufactured in the execution of the contract shall be taken by the Purchaser at such price as he considers fair and reasonable and the decision of the Purchaser to such price shall be final and binding on the contractor.

## **5.11. EVALUATION OF OFFERS**

**5.11.1** The bids received will be evaluated by the authority to ascertain the best and lowest acceptable bid in the interest of the Authority, as specified in the specifications and tender documents.

**5.11.2** Bids will be evaluated as follows:

- (i) Evaluation of Administrative Requirements, Compliance and Responsiveness
- (ii) Evaluation of Eligibility and Qualification Requirements
- (iii) Evaluation of Financial Bids.

### **5.11.2.1 Evaluation of Administrative Requirements, Compliance and Responsiveness**

- a) The Evaluation will consist of checking the Bids to confirm whether they are substantially responsive to the administrative requirements, Compliance and Responsiveness of the Bid Documents.
- b) The following Administrative Requirements, Compliance and Responsiveness Items will be checked for substantially responsiveness:
  - i. The Bid Security as per Clause 2.1.2 of Bid Document.
  - ii. The power of attorney for the Bid signatory shall be in the acceptable form as provided in Form IV and properly notarized containing signature of the authorized person.

- iii. The Digital signature (DSC) used for uploading of the bid submission should be in the name of the person to whom the power of attorney (PoA) have been issued.
  - iv. The Bidder and/or Consortium Information Sheets are in the correct form.
  - v. All required Bid Forms have been submitted duly filled, signed and stamped.
  - vi. One Bid per Bidder.
  - vii. Compliance to Make-in-India order.
  - viii. Compliance to Rule 144(xi) of GFR 2017.
  - ix. Compliance to all the requirements in the Format for Affidavit (Form XII)
- c) Provided that a bid is substantially responsive, the Authority may waive any non-conformities in the bid that do not constitute a material deviation, reservation or omission.

#### **5.11.2.2. Evaluation of Eligibility and Qualification Requirements**

A bidder for his qualification in technical bid must meet all the Eligibility Requirements specified in Clause 5.1 (along with sub-clauses) as indicated below:

- a) No- conflicts of interests
- b) Not disqualified as per provisions of sub-Clause 5.1.7 and 5.1.8 above.
- c) Financial Eligibility as per Clause 5.1.2 above
- d) Technical Eligibility as per Clause 5.1.3 above
- e) Bidders not meeting the minimum eligibility criteria shall not be considered for further evaluation.

#### **5.11.2.3 EVALUATION OF FINANCIAL BID**

The offers of the bidders, which have been rejected on the grounds of being substantially non-responsive to the requirements of the bidding documents or which are not meeting the Eligibility and Qualification Requirements, their financial bids will not be opened.

Financial Bid of the bidder shall be evaluated based on the following components quoted in the “Financial Rate page”-**Base Price of a Train**

Authority reserves the right to go for negotiations with L-1 bidder to reduce the price in exceptional circumstances. The Bidder(s) with the lowest evaluated Financial Bid shall be considered for the award of work duly considering the provisions specified in Clause 2.10 and Clause 4.6 for splitting of the quantity.

- 5.11.2.4 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to suspend and/or cancel the Bidding process and/or amend and/or supplement the Bidding process or modify the dates or other terms and conditions relating thereto.