

GUIDELINES FOR PARTICIPATION OF JOINT VENTURE FIRMS IN WORKS TENDER.

This Clause shall be applicable for works tenders wherein a tender document provides for the same.
1. Separate identity/name shall be given to the Joint Venture.
2. Number of members in a JV shall not be more than three, if the work involves only one department (say Civil or S&T or Electrical or Mechanical) and shall not be more than five, if the work involves more than one Department. One of the members of the JV shall be its Lead Member who shall have a majority (at least 51%) share of interest in the JV. The other members shall have a share of not less than 20% each in case of JV with upto three members and not less than 10% each in case of JV with more than three members. In case of JV with foreign member(s), the Lead Member has to be an Indian firm/company with a minimum share of 51%.
3. A member of JV shall not be permitted to participate either in individual capacity or as a member of another JV in the same tender.
4. The tender form shall be purchased and submitted only in the name of the JV and not in the name of any constituent member. The tender form can however be submitted by JV or any of its constituent member or any person authorized by JV through Power of Attorney to submit tender.
5. Bid Security shall be submitted by JV or authorized person of JV either as : (i) Cash through e-payment gateway or as mentioned in tender document, or (ii) Bank Guarantee bond either in the name of JV, or in the name of all members of JV as per MOU irrespective of their share in the JV if the JV has not been constituted legally till the date of submission of tender.
6. A copy of Memorandum of Understanding (MoU) duly executed by the JV members on a stamp paper, shall be submitted by the JV along with the tender. The complete details of the members of the JV, their share and responsibility in the JV etc. particularly with reference to financial, technical and other obligations shall be furnished in the MoU. (Format of MOU is given in the end of this Annexure).
7. Once the tender is submitted, the MoU shall not be modified / altered / terminated during the validity of the tender. In case the tenderer fails to observe/comply with this stipulation, the full Bid Security shall be liable to be forfeited.
8. Approval for change of constitution of JV shall be at the sole discretion of the Railway. The constitution of the JV shall not normally be allowed to be modified after submission of the tender bid by the JV, except when modification becomes inevitable due to succession laws etc., provided further that there is no change in qualification of minimum eligibility criteria by JV after change of composition. However, the Lead Member shall continue to be the Lead Member of the JV. Failure to observe this requirement would render the offer invalid.
9. Similarly, after the contract is awarded, the constitution of JV shall not normally be allowed to be altered during the currency of contract except when modification becomes inevitable due to succession laws etc. and minimum eligibility criteria should not get vitiated. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract conditions.
10. On award of contract to a JV, a single Performance Guarantee shall be submitted by the JV as per tender conditions. All the Guarantees like Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance etc. shall be accepted only in the name of the JV and no splitting of guarantees amongst the members of the JV shall be permitted.

11. On issue of LOA (Letter of Acceptance), the JV entity to whom the work has been awarded, with the same shareholding pattern as was declared in the MOU/JV Agreement submitted along with the tender, shall be got registered before the Registrar of the Companies under 'The Companies Act - 2013' (in case JV entity is to be registered of Company) or before the Registrar/Sub-Registrar under the 'The Indian Partnership Act, 1932' (in case JV entity is to be registered of Partnership Firm) or under 'The LLP Act 2008' (in case JV entity is to be registered of LLP). A separate PAN shall be obtained for this entity. The documents pertaining to this entity including its PAN shall be furnished to the Railways before signing the contract agreement for the work. In case the tenderer fails to observe/comply with this stipulation within 60 days of issue of LOA, contract is liable to be terminated. In case contract is terminated railway shall be entitled to forfeit the full amount of the Bid Security and other dues payable to the Contractor under this contract.

The entity so registered, in the registered documents, shall have, inter-alia, following Clauses:

11.1. Joint And Several Liability - Members of the entity to which the contract is awarded, shall be jointly and severally liable to the Railway for execution of the project in accordance with General and Special Conditions of Contract. The members of the entity shall also be liable jointly and severally for the loss, damages caused to the Railways during the course of execution of the contract or due to non-execution of the contract or part thereof.

11.2. Duration of the Registered Entity - It shall be valid during the entire currency of the contract including the period of extension, if any and the maintenance period after the work is completed.

11.3. Governing Laws - The Registered Entity shall in all respect be governed by and interpreted in accordance with Indian Laws.

12. Authorized Member - Joint Venture members in the JV MoU shall authorize lead members on behalf of the Joint Venture to deal with the Contract, sign the agreement or enter into contract in respect of the said tender, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said tender/contract. All notices/correspondences with respect to the contract would be sent only to this authorized member of the JV.

13. No member of the Joint Venture shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the Railway in respect of the said tender/contract.

14 Documents to be enclosed by the JV along with the tender:

14.1. In case one or more of the members of the JV is/are partnership firm(s), following documents shall be submitted:-

A notarized copy of the Partnership Deed, or a copy of the Partnership deed registered with the Registrar. A copy of consent of all the partners or individual authorized by partnership firm, to enter into the Joint Venture Agreement on a stamp paper, A notarized or registered copy of Power of Attorney in favour of the individual to sign the MOU/JV Agreement on behalf of the partnership firm and create liability against the firm. An undertaking by all partners of the partnership firm that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP in which they were / are partners/members. Any Concealment / wrong information in regard to above shall make the bid ineligible or the contract shall be determined under Clause 62 of the Standard General Conditions of Contract.

<p>14.2. In case one or more members is/are proprietary firm or HUF, the following documents shall be enclosed:-</p> <p>(i) A copy of notarized affidavit on Stamp Paper declaring that he is signing the affidavit on behalf of HUF is in the position of ‘Karta’ of Hindu Undivided Family (HUF) and he has the authority, power and consent given by other members to act on behalf of HUF.</p>
<p>14.3. In case one or more members of the JV is/are companies, the following documents shall be submitted:-</p> <p>A copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement, The copies of MOA (Memorandum of Association) / AOA (Articles of Association) of the company. A copy of Certificate of Incorporation. A copy of Authorization/copy of Power of Attorney issued by the Company (backed by the resolution of Board of Directors) in favour of the individual to sign the tender, sign MOU/JV Agreement on behalf of the company and create liability against the company.</p>
<p>14.4 In case one or more members of the JV is/are LLP firm/s, the following documents shall be submitted:</p> <p>A copy of LLP Agreement</p> <p>A copy of Certificate of Incorporation of LLP</p> <p>A copy of resolution passed by partners of LLP firm, permitting the Firm to enter into a JV agreement.</p> <p>A copy of Authorization /copy of Power of Attorney issued by the LLP firm (backed by resolution passed by the Partners) in favour of the individual, to sign the tender and/or sign the MOU/ JV agreement on behalf of the LLP and create liability against the LLP.</p> <p>(v) An undertaking by all partners of the LLP that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP or JV in which they were / are partners/members. Any Concealment / wrong information in regard to above shall make the contract liable for determination under Clause 62 of the Standard General Conditions of Contract.</p>
<p>14.5 In case one or more members of the JV is/are Society/s or Trust/s, the following documents shall be submitted:</p> <p>A copy of Certificate of Registration.</p> <p>A copy of Memorandum of Association of Society/Trust Deed. (iii)A copy of Rules & Regulations of the Society.</p> <p>(iv) A copy of Power of Attorney, in favour of the individual to sign the tender documents and create liability against the Society/Trust.</p>
<p>All the Members of JV shall certify that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders/contract on the date of opening of bids either in their individual capacity or as a member of the JV in which they were/are members.</p> <p>All other documents in terms of explanatory notes in clause 10 of eligibility criteria in tender document.</p>
<p>15. Credentials & Qualifying Criteria: Technical, financial eligibility and Bid capacity of the JV shall be adjudged based on satisfactory fulfillment of the following criteria:-</p>

Technical Eligibility Criteria ('a' or 'b' mentioned hereunder):

For Works without composite components

The technical eligibility for the work as per Para 10.1, shall be satisfied by either the '**JV in its own name & style**' or '**Lead member of the JV**'.

Each other (non-lead) member(s) of JV, who is/ are not satisfying the technical eligibility for the work as per **Para 10.1 above**, shall have technical capacity of **minimum 10%** of the cost of work i.e., each non-lead member of JV member must have satisfactorily completed or substantially completed during the last 07 (seven) years, ending last day of month previous to the one in which tender is invited, **one similar single work** for a **minimum of 10%** of advertised value of the tender.

For works with composite components

The technical eligibility for major component of work as per Para 10.1 above, shall be satisfied by either the '**JV in its own name & style**' or '**Lead member of the JV**' and technical eligibility for other component(s) of work as per Para 10.1 above, shall be satisfied by either the '**JV in its own name & style**' or '**any member of the JV**'

Each other (non-lead)member(s) of JV, who is/ are not satisfying the technical eligibility for any component of the work as per Para 10.1 above, shall have technical capacity **of minimum 10%** of the cost of **any component of work** mentioned in technical eligibility criteria. i.e., each other (non lead) member of must have satisfactorily completed or substantially completed during the last 07 (seven) years, ending last day of month previous to the one in which tender is invited, **one similar single work for a minimum of 10% of cost of any component** of work mentioned in technical eligibility criteria.

Note:-

The Major component of the work for this purpose shall be the component of work having highest value. In cases where value of two or more component of work is same, any one work can be classified as Major component of work.

*Value of a completed work done by a Member in an **earlier JV** shall be reckoned only to the extent of the **concerned member's share in that JV** for the purpose of satisfying his/her compliance to the above-mentioned technical eligibility criteria in the tender under consideration.*

Financial Eligibility Criteria:

The JV shall satisfy the requirement of "Financial Eligibility" mentioned at Para 10.2 above. The "financial capacity" of the **lead member of JV shall not be less than 51% of the financial eligibility criteria mentioned at para 10.2 above.**

The arithmetic sum of individual "financial capacity" of all the members shall be taken as JV's "financial capacity" to satisfy this requirement.

Note: Contractual payment received by a Member in an earlier JV shall be reckoned only to the extent of the concerned member's share in that JV for the purpose of satisfying compliance of the above-mentioned financial eligibility criteria in the tender under consideration.

Bid Capacity (Applicable only if the tender value is more than or equal to Rs.20 crore)

The JV shall satisfy the requirement of "Bid Capacity" requirement mentioned at Para 10.3 above. The arithmetic sum of individual "Bid capacity" of all the members shall be taken as JV's "Bid capacity" to satisfy this requirement.

MODEL FORMAT FOR MOU/JOINT VENTURE AGREEMENT.

1.	<p>This Joint Venture Agreement executed on this _____ day of _____ 2022 at _____ between M/s _____ represented by Shri _____ as the first party</p> <p style="text-align: center;">AND</p> <p>M/s _____ represented by Shri _____ as the second party</p> <p style="text-align: center;">AND</p> <p>(If other party then add next para)</p> <p>Note: The expression and words of the First and Second part shall mean and include their heirs, successors, assigns, nominees, executors, administrators and legal representatives respectively.</p>
2.	<p>That the name of JV Firm under this agreement shall be M/s.....Joint Venture.</p>
3.	<p>That the Parties mentioned above are desirous of carrying on the works jointly against the tender invited by, South East Central Railway, Bilaspur vide Tender Notice No In connection with execution of</p>
4.	<p>That M/s..... having a majority (at least 51 %) share of interest in the JV and fulfills the stipulated 'technical eligibility criteria' and 'financial eligibility criteria' as mentioned in the tender notice/tender document shall be lead member.</p>
5.	<p>The share and responsibilities of the members of the JV firm shall be broadly as under:</p> <p>(i) The 1st party M/shaving share of..... % responsible for</p> <p>(ii) The 2nd party M/shaving share of.....% responsible for (Add other parties if applicable).</p>
6.	<p>M/s (Lead Member of JV) Shall deal with the tender/Contract, sign the agreement or enter into contract, to receive payment to witness joint measurements of work done, to sign the measurement books and also to make all sorts of correspondence on behalf of this JV firm with the Railway and all notices/correspondence with respect to the contract would be sent only to this authorized member.</p>
7.	<p>That on issue of LOA (Letter of Acceptance), the JV entity to whom the work has been awarded, with the same shareholding pattern as was declared in the MOU/JV Agreement submitted along with the tender, shall be got registered before the Registrar of the Companies under 'The Companies Act -2013' (in case of Company) or before the Registrar/Sub-Registrar under the 'The Indian Partnership Act, 1932' (in case of Partnership Firm) or under 'The LLP Act 2008' (in case of LLP). A separate PAN shall be obtained for this entity. The documents pertaining to this entity including its PAN shall be furnished to the Railways before signing the contract agreement for the work.</p>

8.	That all the parties to the JV shall be jointly and severally liable to the Railway for execution of the tendered project/works in accordance with the General and Special Conditions of the contract and also for the loss, damages caused to the Railways during the course of execution of the contract or due to non-execution of the contract.
9.	That all parties to JV shall not have the right to assign or transfer the interest, right or liability in the contract without written consent of the other parties to this J.V and also Railways in respect of the said tender/contract.
10.	That all the member of J.V. certify that they are not blacklisted or debarred by Railways or any other Ministry/Department of the Government of India from participation in tender/Contract on the date of opening of bids either in their individual capacity or as member of a JV or partnership firm.
11.	That the JV shall be valid during the currency of the contract including the period of extension if any and the maintenance period after the completion of work.
12.	That the Joint Venture agreement shall in all respect be governed by and interpreted in accordance with Indian Laws.

In witness, we signed, sealed and delivered.

..... Signature Name M/s.....(Seal) Address Signature Name M/s (Seal) Address (Add other parties if applicable)
1st Witness Signature Name Address	2nd Witness Signature Name Address

Note: - The Model Format for MOU/Joint Venture Agreement should be read in conjunction with provisions of **Clause-17 of Annexure –I of Indian Railways Standard General Condition of Contract published in April-2022** up to latest correction slip and the Guidelines for participation of Joint Venture Firms in Works tender.