

**GUIDELINES FOR PARTICIPATION OF JOINT VENTURE FIRMS IN SERVICE TENDER.**

***This Clause shall be applicable for Service tenders wherein a tender document provides for the same.***

<b>1</b>	Separate identity/name shall be given to the Joint Venture.
<b>2</b>	Number of members in a JV shall not be more than <b>three</b> , if the Service involves only one department (say Civil or S&T or Electrical or Mechanical) and shall not be more than <b>five</b> , if the work involves more than one Department.
<b>2.1</b>	One of the members of the JV firm shall be its <b>Lead Member</b> who shall have a <b>majority (at least 51%)</b> share of interest in the JV firm. The other members shall have a share of not less than <b>20%</b> each in case of JV with upto three members and not less than <b>10%</b> each in case of JV firm with more than three members. In case of JV firm with foreign member(s), the Lead Member has to be an Indian firm.
<b>3</b>	A member of JV firm shall not be permitted to participate either in individual capacity or as a member of another JV in the same Bid.
<b>4</b>	The Bid form shall be purchased and submitted only in the name of the JV firm and not in the name of any constituent member.
<b>5</b>	Normally EMD/Bid Security shall be submitted only in the name of the JV firm and not in the name of constituent member. However, in exceptional cases EMD/Bid Security in the name of Lead member can be accepted subject to submission of specific request letter from Lead member stating the reason for not submitting EMD/Bid Security in the name of JV firm and giving written confirmation from JV members to the effect that EMD/Bid Security submitted by the lead member may be deemed as EMD/Bid Security submitted by JV firm.
<b>6</b>	A copy of Memorandum of Understanding (MoU) executed by the JV members, shall be submitted by the JV firm along with the Bid. The complete details of the members of the JV firm, their share and responsibility in the JV firm etc. particularly with reference to financial, technical and other obligations shall be furnished in the MoU. <b>(Format of MOU is given at the end of this Annexure).</b>
<b>7</b>	Once the Bid is submitted, the MoU shall not be modified / altered / terminated during the validity of the Bid. In case the bidder fails to observe/comply with this stipulation, the full EMD/Bid Security shall be liable to be forfeited.
<b>8</b>	Approval for change of constitution of JV firm shall be at the sole discretion of the Railway. The constitution of the JV firm shall not be allowed to be modified after submission of the bid by the JV firm, except when modification becomes inevitable due to succession laws etc. and in any case the minimum eligibility criteria should not get vitiated. However, the Lead Member shall continue to be the Lead Member of the JV firm. Failure to observe this requirement would render the offer invalid.
<b>9</b>	Similarly, after the contract is awarded, the constitution of JV firm shall not be allowed to be altered during the currency of contract except when modification become inevitable due to succession laws etc. and in any case the 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.
<b>10</b>	On award of contract to a JV firm, Performance Guarantee shall be submitted by the JV firm as per <b>clause-4.11</b> . All the Guarantees like Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance etc. shall be accepted only in the name of the JV firm and no splitting of Guarantees amongst the members of the JV firm shall be permitted.

<b>11</b>	On issue of LOA (Letter of Acceptance), an agreement among the members of the JV firm (to whom the work has been awarded) shall be executed and got registered before the Registrar of the Companies under Companies Act or before the Registrar/Sub-Registrar under the registration act'1908. This JV agreement shall be submitted by the JV firm to the railways before signing the contract agreement for the service. In case the bidder fails to observe/Comply with this stipulation the full EMD/Bid Security shall be forfeited and other penal actions due shall be taken against partners of the JV and the JV. This Joint Venture agreement shall have inter-alia, following clauses:
<b>11.1</b>	<b><u>Joint And Several Liability</u></b> - Members of the JV firm to which the contract is awarded, shall be jointly and severally liable to the Railway for delivery of service in accordance with General and Special Conditions of Contract. The JV members 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.
<b>11.2</b>	<b><u>Duration of the Joint Venture Agreement</u></b> - 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.
<b>11.3</b>	<b><u>Governing Laws</u></b> - The Joint Venture Agreement shall in all respect be governed by and interpreted in accordance with Indian Laws.
<b>12</b>	<b><u>Authorized Member</u></b> - Joint Venture members shall authorize one of the members on behalf of the Joint Venture firm to deal with the Bid, sign the agreement or enter into contract in respect of the said Bid, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said Bid/contract. All notices/ correspondences with respect to the contract would be sent only to this authorized member of the JV firm.
<b>13</b>	No member of the Joint Venture firm 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 Bid/contract.
<b>14</b>	<b>Documents to be enclosed by the JV firm along with the Bid:</b>
<b>14.1</b>	In case one or more of the members of the JV firm is/are partnership firm(s), following documents shall be submitted:- <ul style="list-style-type: none"> <li>A. A notarized copy of the Partnership Deed.</li> <li>B. Consent of all the partners to enter into the Joint Venture Agreement on a stamp paper of appropriate value (in original).</li> <li>C. Power of Attorney (<b>duly registered as per prevailing law</b>) in favour of one of the partners of partnership firm to sign the MOU/JV Agreement on behalf of the partnership firm and create liability against the firm.</li> </ul>
<b>14.2</b>	In case one or more members is/are proprietary firm or HUF, the following documents shall be enclosed:- <ul style="list-style-type: none"> <li>• Affidavit on Stamp Paper of appropriate value declaring that his/her concern is a proprietary concern and he/she is sole proprietor of the concern OR he/she is in position of '<b>KARTA</b>' of Hindu Undivided Family (HUF) and he/she has the authority, power and consent given by other partners to act on behalf of HUF.</li> </ul>

14.3	<p>In case one or more members of the JV is/are limited companies, the following documents shall be submitted:-</p> <p>A. Notary certified copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement, authorizing MD or one of the Directors or managers of the company to sign JV Agreement, such other documents required to be signed on behalf of the company and enter into liability against the company and/or do any other act on behalf of the company.</p> <p>B. The copies of MOA (<b>Memorandum of Association</b>) / AOA (<b>Articles of Association</b>) of the company.</p> <p>C. A copy of Certificate of Incorporation.</p> <p>D. Power of Attorney (<b>duly registered as per prevailing law</b>) by the company authorized the person to do/act mentioned in the <b>Para (A)</b> above.</p>
15	<p>All the Members of JV shall certify that they are not blacklisted or debarred by Railways or any other Ministry/Department/PSU (Public Sector Undertaking) of the Govt. of India/State Govt. from participation in Bids/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>
16	<p><b><u>Credentials &amp; Qualifying Criteria:</u></b> Technical, financial eligibility and Bid capacity of the JV shall be adjudged based on satisfactory fulfillment of the following criteria:-</p>
	<ul style="list-style-type: none"> <li>• <b><u>Technical Eligibility Criteria:</u></b> All Members of the JV for instant tender shall satisfy the requirement of “<b>Technical Eligibility Criteria</b>” mentioned at <b>item no.01</b> of ‘<b>Special Technical Criteria</b>’ of Tender document.</li> </ul>
	<ul style="list-style-type: none"> <li>• <b><u>Financial Eligibility Criteria:</u></b> The JV shall satisfy the requirement of “<b>Financial Eligibility Criteria</b>” mentioned at <b>item no.01</b> of ‘<b>Special Financial Criteria</b>’ of Tender document.</li> </ul>

## MODEL FORMAT FOR MOU/JOINT VENTURE AGREEMENT.

1.	<p>This Joint Venture Agreement executed on this _____ day of _____ 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><b>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.</b></p>
2.	That the name of JV Firm under this agreement shall be M/s ..Joint Venture.
3.	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 .....
4.	That M/s ..... having a majority ( <b>at least 51 %</b> ) 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.
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/s .....having share of.....% responsible for .....</p> <p>(ii) The 2nd party M/s .....having share of.....% responsible for ..... (Add other parties if applicable).</p>
6.	M/s ..... ( <b>Member of JV</b> ) Shall deal with the <b>tender/Contract</b> , sign the agreement or enter into <b>contract</b> , 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.
7.	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 ' <b>The Companies Act-2013</b> ' (in case of Company) or before the Registrar/Sub-Registrar under the ' <b>The Indian Partnership Act, 1932</b> ' (in case of Partnership Firm) or under ' <b>The LLP Act 2008</b> ' (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.
<b>8.</b>	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.
<b>9.</b>	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.
<b>10.</b>	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.
<b>11.</b>	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.
<b>12.</b>	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 **Para-2.1 to 2.6 of General Condition of Contract for Service published in January-2018** with upto date correction slip and the Guidelines for participation of Joint Venture Firms in Works tender. *In case if any contradiction between the **Model Format and provisions mentioned in General Conditions of Contract for Service-2018**, then the provisions/conditions mentioned in **General Conditions of Contract for Service-2018** shall prevail over it.*