

कोल इण्डिया लिमिटेड
(भारत सरकार का उपक्रम)
Coal India Limited
(A Govt. of India Enterprise)

CIN.L23109WB1973GOI028844
Website: www.coalindia.in



A Maharatna Company

सतर्कता विभाग
VIGILANCE DIVISION
"COAL BHAWAN"

Premises No. 04 MAR, Plot No. AF-III
Action Area - 1A, New Town, Rajarhat
Kolkata 700156 (WB)
Ph. (033)2324 4134/4152, Fax: 2324 4055
E-Mail: cvo.cil@coalindia.in

संदर्भ संख्या / Ref. No. CIL/VIG/05/5243

तिथि / Date: 09.08.2021

सेवा मे,
मुख्य सतर्कता अधिकारी,
डब्लूसीएल, नागपुर (WCL, Nagpur)

Sub: Eligibility criteria of individual partner in JV as bidder.

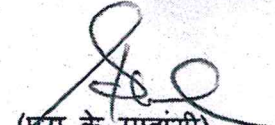
Ref.: Your letter no. WCL/VIGILANCE/CVO/SPP/2021/605 dated 16.06.2021

महोदय,

In reference to your above referred letter please find enclosed herewith a letter of GM(CMC), CIL vide no. CIL/GM(CMC)/2021/1442 dated 06.08.2021 along with letter of Company Secretary, CIL vide no. CIL:XI(D):04135:2021:26979 dated 04.08.2021 & other Annexures.


This is for kind information.

Enclosure: As above.


(एस के साहांगी)

मुख्य सतर्कता अधिकारी,
कोल इण्डिया लिमिटेड

वेकोलि./मु.स.अधि./सचि.क्र.
WCL/CVO/Sect./No. 230
दिनांक/Dated 20/08/2021

	कोल इंडिया लिमिटेड (भारत सरकार का उपक्रम) Coal India Limited (A Government of India Enterprise) CIN: L23109WB1973GOI028844 Website: www.coalindia.in	संविदा प्रबंधन प्रकोष्ठ Contract Management Cell (CMC) Coal Bhawan, Premises No. 04 MAR, Plot No. AF-III Action Area - IA, New Town, Rajarhat, Kolkata: 700156 Phone: 033-71104198 e-mail: gmcmc.cil@coalindia.in

Ref. No: CIL/GM(CMC)/2021/1442-

Date: 06.08.2021

To
 The General Manager (Vig)
 CIL, K O L K A T A

Sub: Eligibility Criteria of individual partner in JV as Bidder

Ref: 1. Your letter No. CIL/Vig/05/4569 dated 02.07.2021

Dear Sir,

Pursuant to the letter under reference above on the cited subject, it is to state that the observation of CTEO regarding Experience Criteria of individual JV partner as communicated in the letter No.605 dated 16.06.2021 of CVO, WCL was put up to CFD, CIL in its 262nd meeting held on 27th & 28th July'2021.

The decision of CFD, CIL as communicated by Company Secretary vide letter No.26979 dated 04-08-2021 is as under:


After detailed deliberations, CFD, CIL has advised that the basis of decision and the decision taken in 253rd CFDs meeting held on 16th March'2021 be communicated to CETO. CFDs decision was to encourage more competition.

From the agenda note of 253rd CFD meet on the subject matter it is observed that a Committee at CIL Level was constituted to review the issues of Joint Venture across all the Manuals of Works & Services and the said Committee had considered the following references to arrive the considered opinion and make its recommendation:

A. References discussed and deliberated by the Committee:

- a. It was observed that there is no legal framework for the formation and operation of Joint Ventures in India which is evident from the judgement of Hon'ble Supreme Court of India in the case "*Faqir Chand Gulati vs Uppal Agencies and Anr. [(2008) 10 SCC 345]*"; *New Horizons Ltd vs Union of India 1995 SCC (1) 478* and other judgements given by different Hon'ble High Courts (viz. *Gvprel-Mee (J.V.), vs Government of Andhra Pradesh, 2005 ALD 450, 2005(5) ALT 325, 2005 (2) CTLJ 307 AP of Hon'ble H.C. of Andhra Pradesh; Asia Foundations & Constructions Ltd. v. State of Gujarat: AIR 1986 Guj 185 and In Chahal Engg. And Construction Co. (P) Ltd. v. State of Gujarat, (1987) 1 Comp. LJ 1 (Guj.) (D.B.) of Hon'ble H.C. of Gujarat.*) in this regard. It is inferred in the eyes of law that this type of JVs are a limited partnership firm (**Annexure-G**).
- b. The provisions regarding Pre-Qualification of JV in the "Manual for Procurement of Works 2019" (**Annexure-H**) as indicated in the MoM dated 04.02.2021 were deliberated upon. The relevant excerpts are as follows:

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QUOTE

- g) Pre-qualification of JV members are "jointly and severally responsible and liable" in a contract. For pre-qualification, the JV should fulfil the criteria specified in the pre-qualification document. The attributes to be evaluated will be the same as for individual contractors; however, certain parameters up to the specified limits have to be essentially met by them collectively, some by the lead partner, and some by the other partner, as briefly described below:
1. Qualifying factors to be met collectively: (i) annual turnover from construction; (ii) particular construction experience and key production rates; (iii) construction cash flow for the subject contract; (iv) personnel capabilities; and (v) equipment capabilities;
 2. Qualifying factors for lead partner: (i) Annual Turnover from Construction; (ii) particular construction experience; (iii) financial capability to meet cash flow requirement of subject contract -not less than of 50 (fifty) per cent of the respective limits prescribed in case of individual contractors may be accepted; (iv) adequate sources to meet financial commitments on other contracts; (v) financial soundness;
 3. Qualifying factors for other partner: Same as for lead partner except that for the factors specified in (2) (iii) above, a lower limit of 25 (twenty-five) per cent may be accepted instead of 50 (fifty) per cent.

UNQUOTE

- c. In GFR 2017 and Works manual of CPWD has got no reference of Joint Venture in this context.
- B. Opinion of the Committee:
- i) The formation of JV is made to get the synergy of respective core competence of the partners so that a particular contract is executed in all respect.
 - ii) However, the provisions kept in CMM Chapter 2 should be uniformly adopted in MCEW and CMM Ch. 3 & 6 with an additional condition in all the manuals uniformly that no member should have less than 20% participation share in the JV.
 - iii) It was opined during the discussion that the restrictions on eligibility parameters with respect to individual partners may restrict more participation affecting the competitive bidding. Secondly, it shall also negate the very purpose of Joint Venture.
 - iv) Considering the above aspect, the provision in Manual for Procurement of Works as quoted above has prescribed that qualifying factors are to be made collectively. However, it also speaks about qualifying factor for lead partner at serial No.2 and for other partner at serial No.3.

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- v) On perusal, it is inferred that the financial capability to meet cash-flow requirement has been quantified in the cited provision of Manual, whereas for other eligibility requirement, the respective share in eligibility requirement to be met by each partner has not been quantified.
- vi) It is also observed that since the JV members are "jointly and severally responsible and liable" in a contract and thus the legal arrangement is similar to a Partnership Firm for which the provisions exist in Partnership Act-1932, Section-25. Hence, the provisions as prescribed in Sr. No. 1 in the cited Clause appears to be in line with legal prescriptions.

C. Recommendation of the Committee on the issue of "Joint Venture across all the Manuals of Works & Services":

- i) The participation share in the formation of JV shall be as follows:
1. Lead member: Minimum 50%
 2. Each other member: Minimum 20%
- ii) The eligibility requirement with respect to Work/Service Experience shall be met collectively by the partners as it is provided in Chapter 3 & 6 of CMM at present.
- iii) The requirement of Working Capital, wherever it is applicable shall be met as per following proportion:
1. The lead member shall have to possess at least 50% share in the Working Capital, as required to qualify in the Tender (i.e., 50% of 20% of annualized value or estimated value put to tender, whichever is less).
 2. All other members shall have to possess at least 25% share in the Working Capital, as required to qualify in the Tender (i.e. 25% of 20% of annualized value or estimated value put to tender, whichever is less).
- iv) The financial turnover wherever it is applicable shall be met collectively by the partners as it is provided in MCEW and CMM, Chapter-2 at present.
- v) The other provisions of Joint Venture shall remain unchanged.

The above Committee report was deliberated in 253rd CFDs meeting held on 16-03-2021 and the recommendation approved by CFD, CIL is as under:

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"Joint Venture across all the Manuals of Works & Services"

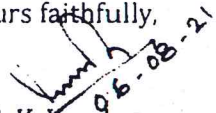
- i) The participation share in the formation of JV shall be as under:
 1. Lead member: Minimum 50%
 2. Each other member: Minimum 20%
- ii) The eligibility requirement with respect to Work/Service Experience shall be met collectively by the partners as provided in Chapter 3 & 6 of CMM.
- iii) The requirement of Working Capital, wherever applicable shall be met as per following proportion:
 1. The lead member shall have to possess at least 50% share in the Working Capital, as required to qualify in the Tender (i.e., 50% of 20% of annualized value or estimated value put to tender, whichever is less).
 2. All other members shall have to possess at least 25% share in the Working Capital, as required to qualify in the Tender (i.e. 25% of 20% of annualized value or estimated value put to tender, whichever is less).
- iv) The financial turnover wherever applicable shall be met collectively by the partners as it is provided in MCEW and CMM, Chapter-2.
- v) The other provisions of Joint Venture shall remain unchanged.

The above approval was intimated to CIL Board as directed by CFD, CIL and communicated to Subsidiaries for implementation vide letter No.1281 dated 19.03.2021 (enclosed).

CFD, CIL in its 262nd meeting has opined that the above decision was taken to encourage more competition.

Encl: Annexures as above

Yours faithfully,


 S. K. Kundu
 GM (CMC), CIL

Copy:

1. TS to D(T), CIL
2. Office file