

DTC BOT IV Replies to Pre-bid queries

Times OOH - DTC BOT IV Queries

S.N	Clause No.	Clause/Substance of the clause	Comment	Reply
1	Reference to page 6	Eligibility Criteria	Eligibility criteria should be at least three years experience in either advertising <u>or</u> urban infrastructure instead experience in urban infrastructure <u>and</u> advertising.	No change
2	Reference to page 6	Eligibility Criteria	Please elaborate with examples the eligibility criteria that stipulates turnover of Rs. 1500 million in urban infrastructure development.	Refer reply at S.N 8
3	Reference to page 7	Submission of Bids	We would like to request DTC for an extension of one month for submission of proposal as we need more time to evaluate 770 Bus Shelters and explore possibility for consortium with urban infrastructure player.	No change
4	Reference to page 30	A-9 Bid Security	DTC should allow advertiser's to submit Bank Guarantee instead of Demand Draft.	No change
5	Reference to page 69	4.1.2 Construction Schedule	We would like to request DTC to increase the construction period from 44weeks (11 months) to 72 weeks (18 months)	Increased to 48 weeks
6	Reference to page 99	2.2 Concession Period	For clarity and transparency we would like to	Mutual consent

			know, if DTC has any criteria to extend concession period for next 5 years?	
7	Reference to page 107	Viii The Concessionaire shall also pay/ ensure payment of advertisement tax, service tax, other taxes & levies if any	Do advertisers need to pay any property tax?	Concessionaire to make own checks

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8	Eligibility Criteria (b)	The Bidder shall have Average Annual Turnover of at least Rs 500 million in advertising in the preceding three financial years out of which at least Rs 300 million shall be from outdoor advertising and at least Rs 1500 million in urban infrastructure works (design/ manufacture/ construction/ operation and maintenance of projects such as Parking Lots/ Street Furniture/ Commercial Area Development/ Transportation/ Real Estate Development) in the preceding three financial years.	The requirement of atleast Rs. 1500 million in urban infrastructure works is unclear as to whether its with respect to AAT or experience in implementation of urban infra projects of that scale.	AATO in terms of amount paid for development and/or paid/recd for construction and /or appropriated user revenue

S.N	Clause No.	Clause/Substance of the clause	Comment	
9	3.2.6	<p>Scope of Work</p> <p>After handing over of site by DTC the concessionaire shall get upto</p> <p>10% of the BQS as identified by DTC removed at his cost and deposited with DTC for future use such as replacement of damaged BQS in non-BOT areas. In respect of the balance BQS the Concessionaire shall pay the material value at the rate of Rs 15000/- per BQS to DTC irrespective of its type and condition and then get the BQS removed at his cost and dispose the BQS as deemed fit and proper.</p>	<p>Clarification need to be sought on the intent and meaning of this clause.</p>	<p>Removal of existing BQS is to cost of Concessionaire.</p> <p>10% of removed BQS are deposited with DTC and balance used by Concessionaire upon payment of salvage value to DTC.</p>
10	A-5	<p>At the end of each quarter, along with Audited Financial Statements,</p> <p>the Concessionaire shall furnish to Owner DTC a certificate to the</p> <p>effect that it has not entered into any transaction, in whatsoever form,</p> <p>with the Agents/Clients other than those that fall in the category of an</p> <p>'arms length transaction'.</p>	<p>'Arms length transaction' has been defined. We are part of a big corporate group wherein sometime it may have difficulty in furnishing this certificate. Even though the transactions are at arm-length in terms of pricing, but it will not satisfy the definition provided by DTC in the RFP. Request to please eliminate / soften this clause.</p>	<p>No change</p>

11		<p>Bid Security is liable to be forfeited if the Bidder fails to sign up the Concession Agreement within the stipulated time.</p> <p>If there is a delay in signing of the Concession Agreement DTC has the right to withdraw the offer and proceed ahead in any manner it deems fit</p>	<p>What happens if the delay is not attributable to the Bidder but its from DTC's end. It could be forfeited if the delay is solely attributable to the Bidder. Plus there should be an option to mutually agree to postpone the timelines for signing the Concession Agreement</p>	No change
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Draft Concession Agreement (Agreement):

S.N	Clause No.	Clause/Substance of the clause	Comment	
12	Parties to the Agreement	The Agreement is said to be between The Chairman and Managing Director (CMD) DTC through Chief General Manager (Tech) D.T.C in his executive capacity	We would need to confirm who is the person/entity with whom the rights are.	CMD/DTC
13	Recital E	"The Concessionaire, after due diligence, hereby accepts....."	The due diligence process needs to be carried out.	Due diligence of site conditions to be done before bid submission; rights of land owning agency ensured by DTC.
14	1.1 to be read with clause 6.1 and 16.1(2)	"COD" means Commercial Operations Date.....Completion certificate or the Provisional Certificate upon completion of the construction of the Project and which shall,	What happens if the Independent Engineer (IE) defaults. 48 weeks timelines need to change accordingly.	DTC being the Owner is interested in timely COD.

		subject to the provision o this Agreement, be not later than 50 weeks from the date of signing of this Agreement.	The Independent Engineer is appointed by DTC. What if payments are not made to IE, DTC has to make 50% of the payments. DTC has to raise invoices. What happens if there are lapses by DTC.	
15	1.1	Concessionaire....	The definition should include Group companies/or any entity that is formed due to re structuring	No change
16	1.1	Emergency.....	Not understood why would situation leading to relocating of BQS be included as an emergency	DCA 9.7 (d) states emergencies include other Projects warranting de-commissioning of parts of BQS project. Such Projects may lead to relocation of BQS. No conflict.
17	1.1 to be read with 16.1 (4)	Encumbrance....	Not understood how designation of Loss Payee under an insurance policy is included herein. Going by this we will not be able to insure the BQs and be entitled to claim under the insurance policy.	No change

18	1.1	“Good Industry Practice” means those practices, methods,and reasonably expected of and accepted internationally from a reasonably skilled and experienced.....and good engineering practices...	Very vague, ambiguous and subjective definition. The awardee under this agreement would be required to follow Good Industry Practice in discharge of all its obligations under the Agreement.	The definition states “--- generally and reasonably expected ----”.
19	1.1	O and M expenses	What is the intent behind this. As we incur costs or not we will pay Minimum license fees, so why all this break up and Auditors requirement?	21.1.1 (d) Disbursements from Escrow Account include O&M expenses and so is the need for audit.
20	2.1(b)	Title, interest in and ownership of land remains with the land owning agency.	Who is the land owning Agency? What is the arrangement with DTC and them? Does DTC have rights to give these sites to Concessionaire? Vide what document? Mutation entries are in whose name?	Relationship of DTC with land owning agency is the obligation of DTC.
21	2.6	DTC makes no representations and gives no warranty to the concessionaire in respect of the condition of the project sites.	The concessionaire has to rely on his own judgement with respect to the condition of the sites. In the event of any issues with respect to the sites concessionaire has	Site conditions can be seen by Bidder. Handing over of un-encumbered sites is the obligation of DTC.

			no legal recourse to DTC.	
22	2.7(a) and (b)	Peaceful Possession...	This clause should specifically include land owning agency and the land on which the BQS are going to be built.	No change.
23	2.8	<p>Concessionaire is not allowed to sublet any of the site/facility or to subcontract whole or part of the work/facilitites.</p> <p>DTC is planning to provide suitable digital passenger info service in the BQSs. Such displays shall be provided and maintained by selected agencies. The Concessionaire shall permit the same without any rights and claims.</p>	<ol style="list-style-type: none"> 1. the third party agency will have an access to the structure of the BQS. 2. The revenue, if any from here should be shared by DTC and concessionaire 3. The concessionaire cannot be responsible to ensure the security of the display systems. 	<p>Revenue from electronic advertisements on passenger information displays shall not be shared with Concessionaire. However any such display shall not hamper visibility of the main advertisement.</p> <p>Security of all assets is responsibility of Concessionaire. Refer Schedule H, DCA item 10.</p>
24	4.3 to be read with Article 21 and its sub clauses.	Revenue collected is to be deposited in an Escrow Account	<p>Why Escrow Account?</p> <p>Irrespective of the earnings a Minimum fee is to be paid to DTC. Plus there is a BG plus Performance Security. Its not like we are going to be allowed recoupment of all expenses prior to payment of fees.</p>	<p>Timelines, concession fee, wages, 3rd party claims, cleanliness are among Events of Default likely to lead to appropriation OF Performance Security and possible termination which is an extreme event. Further Performance Security does not compensate for all expenditure.</p>

				<p>EA ensures systematic and monitored availability, disbursement and utilization of money for all expenditure and thus proper operation of BQS.</p> <p>EA protects the Lender also.</p> <p>Revenue can fluctuate but expenditure secularly increases. To allow for deficit, Minimum Balance in EA is proposed; however surplus in EA after providing for Minimum Balance and all disbursements can be utilized by Concessionaire.</p>
25	5.1(iii) read with (iv)	Concessionaire to pay Rs. 15000 per old shelter irrespective of condition.	Onerous provision. Not sure why the same is forced on the concessionaire.	Concessionaire is allowed to dispose upto 90% of released BQS and appropriate the proceeds. The residual value of a BQS is typically Rs 15,000/-.
26	5 (ix), (xii), (xiii), (xv), (xxv)	Difficult to ensure compliance.	Obligations under these clauses should be on best effort basis. In addition to that in clause 5 (xii) in the first line solely should be	No change.

			dropped.	
27	5(xxii)	Apply for and obtain all necessary clearances and/or approvals for the construction of the BQS	Whose permission is required in addition to DTC and the land owning agency. Critical to ascertain the same. Is MCD involved?	Civic utility and enforcement agencies.
28	6.2	Independent Engineer to be appointed and terminated by DTC	What happens to timelines on Completion certificate etc. The same should be accounted for as otherwise it would result in a breach by the Concessionaire. The Concessionaire has no control over appointment etc. The IE should be mutually decided/appointed. The IE should sign a tripartite Agreement with DTC and Concessionaire	No change.
29	7.1	Steering Committee will have one representation from the concessionaire.	The representation should be proportional.	No change.
30	8.2	The drawings of the BQS are pre-approved by DTC. Notwithstanding the same adequacy of such design shall be the sole responsibility of the concessionaire. DC is to approve drawings,	What does the responsibility for adequacy of the design mean? What are the timelines for	DCA 8.2 is adequate. No change.

		all delays are attributable to the Concessionaire	DTC to revert. What happens if the delay is from DTC's end.	
31	9.2	Sub-Clause c should include delays/laches due to DTC. 20,000/- penalty is too high Sub Clause (e) Punch list	What if the delay is for reasons not solely attributable to concessionaire? The penalty needs to be reduced. On production of valid invoices the cost of Punch List items shall be reimbursed to DTC by Concessionaire.	No change.
32	9.4(v)	Preventing encroachments....	This should be on best effort basis.	No change
33	9.7	Re-commissioning	Charges for relocation in this instance should be borne by DTC. This can be done by reducing the Fee proportionately.	No change.
34	11.1.3	Interest @ 18% (1.5% per month)	Too high. 1m8% p.a. is not equal to 1.5% p.m.	No change
35	11.2	Arms length transaction banned	See comments above.	No change.
36	11.2.1	Statutory auditors	Statutory Auditor of the concessionaire to be	List mutually agreed but

			mutually decided. Not practicable for an existing company which is a subsidiary of a listed company.	choice by Concessionaire.
37	11.2.3	Concession fee is payable under all circumstances	What about force majeure	Refer DCA 15.10.
38	14.1	The DTC may within one year of achieving the CoD, decide to augment the capacity of the project by increasing the number of BQS by up to 25%.	<p>Concessionaires should have the first and last right of Refusal and also a clear option to opt out of the capacity augmentation.</p> <p>The option to opt out is more important as the term of license is going to be the same as the original and hence, the augmentation at concessionaire's cost will be a burden.</p>	No change
39	15.2(iii) & 15.3	15.2(iii).....general strikes and boycotts (other than those involving the Concessionaire, its Contractors or their respective/\ employees/representatives or attributable to any act or omission of any of them)	This needs to be deleted as this is also Force Majeure.	No change.

		Certain circumstances of force majeure have been described which are deemed to be force majeure events only when such events continue for a continuous period of 15/30 days in an accounting year.	The condition of accounting year needs to be removed as such instances may even be spread in two accounting years e.g.7 days in one accounting year and the other 8 in another.	
401	15.10	If the force majeure event continues for a period of more than 6 months, DTC may in its sole discretion terminate the Agreement.	Concessionaire does not have a right to terminate in a similar situation. No mention of what happens to the BG, Performance Security etc.	No change.
41	16.1 (8)	Any petition for winding up is admitted by a court of competent jurisdiction....	This should be an event of default only if there are winding up orders against the Concessionaire.	Petitions adversely affect operation of Project and so are significant enough to be EoD. No change.
42	16.1(12)	Clean and hygienic maintenance	Too ambiguous and cleaning etc will not be practical 24 by 7.	Regular cleaning etc is as per maintenance Manual to be prepared by Concessionaire and got approved by IE/DTC. Realistic but regular cleanliness can be ensured through this Manual.

43	16.2	Termination	DTC should permit the Concessionaire to carry out all advertising pertaining to contracts that were already entered into by the Concessionaire till the date of termination.	No change
44	19.2	(a) Arbitrators (Are to be Chosen from a panel of 5 arbitrators on the list furnished by DTC) (e) The Parties are waiving rights to appeal/review of arbitration award.	This should be deleted. Each party should appoint its own Arbitrator not necessary from the panel proposed by DTC. This needs to be deleted.	Note the phrase ``--- extent permitted by law--``. No change.
45	Article 20	No representations, Warranties from DTC	Mirror representations and warranties need to be given by DTC.	Warranties from DTC about its standing and authority are vested with DTC. No change.
46	20.1	Irrevocable waiver for any immunity in any jurisdiction by Concessionaire	The same needs to be deleted.	Essential. No change.

47	20.2	Disclaimer	DTC shall not be liable for any inadequacy, mistake or error in or relating to any of the matters set forth in the subject matter of this Bid.	No change.
48	21.1.1	Disbursements from the escrow account.	No clear means of withdrawing the surplus funds from the escrow account.	Refer reply at S.N 24.
49	22.1	Assignment	Assignment of this agreement requires prior consent of DTC and DTC is entitled to decline the same. Group companies should be automatically allowed.	Successful completion of Project is in DTC's interest. No change.
50	22.2(a) and (b)	Liability & indemnity	Un-quantified damages/indemnity clause. Includes DTC subsidiaries. The clause is too harsh and scope is too wide and can have a far reaching financial implication/liability that too not ascertainable.	No change.
51	22.2 (c)(d)	Damages on infringement of copyright. Concessionaire among other things is required to give a satisfactory bond. Plus dispute cannot	This needs to be deleted.	No change.

		be settled without prior approval of indemnifying party		
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Additional Queries

S.N	Clause No.	Clause/Substance of the clause	Comment	Reply
52		Will DTC allow display of advertisements on the existing shelters during the construction period?		Advertisement can be placed on BQS constructed by Concessionaire after issue of COD.
53		Does concessioner need to share revenue with any other authority like MCD?		No
54		Will DTC allow display of advertisements on the existing shelters during the construction period?		As in S.N 52 above.
55		Referring to outdoor advertising policy page no. 7 "Electricity from Renewable energy sources..." Will DTC provide 1/3 (one third) rebate on monthly licensee fee, to encourage concessionaire to make necessary investments in procuring alternate renewable resources like Solar power technology.		1/3 (one third) rebate on the Concession fee for the package in proportion to the number of BQS operating on solar power.
56		If the available size is less than the specified size, then is it possible to customize the design as per available space.		Refer C-1.1 of RFP.
57		If there is any hindrance to foundation work (like Sewer, water or electricity line), then what is the alternate – Relocation of the BQS?		Primarily Site specific foundation to be designed by

		Concessionaire.
58	Design & Specs of Rain Water Harvesting System & interconnecting pipeline are not made available.	Refer Ground Water Authority.
59	Execution Sequencing – Who will do it?	Concessionaire.
60	Location of the Electricity feeder pillar should be close to the BQS.	Cannot be ensured. Concessionaire to meet site conditions.
61	What would be DTC criteria for technical evaluation for providing electricity from solar panels? Do the bidders have choice on number of bus shelters to install solar panels on?	Refer reply to S.N 55.
62	We would like to propose DTC Mild Steel instead of ASTM 304 grade steel as it is just as good and more economical?	No change.
63	Will bidders have the option of not installing top advertisement panel on bus shelters in non-performing areas?	Refer RFP C-1.1 and DCA 2.1 c)
64	We urge DTC for not increasing the Minimum Guarantee of Package 1 and Package 2 shelters by any amount?	Rs 15000 per BQS per month for Package 1 (North Delhi) and Rs 10000 per BQS per month for Package 2 (East Delhi).
65	Only advertising firms/OOH agencies with an average annual turnover of INR 500 million for 3 years should be allowed to participate.	No change.

JCDecaux

S.N	Clause/Substance of the clause	Reply
66	The minimum guarantee fee as per the earlier tender document was Rs 5000 per shelter per month which has been revised now to Rs 15,000 and Rs 10,000 per shelter per month. During the Pre-bid meeting it has been agreed that the minimum guarantee will be revised back to Rs 5000 per shelter per month.	Refer reply at S. N 64.
67	The tender main features mentions that Bus Q shelters to be constructed as per approved conceptual design provided by DTC. In context to the same we had requested to include a clause with the option of design to be provided by the Bidder with the final decision lying with DTC to accept or reject the Design.	No change
68	The bid submission date to be deferred to 1 st July 2009 instead of 15 th June to give sufficient time to the Bidders to prepare the required tender documents.	No change
69	During the prebid meeting it was principally agreed to consider separate design for performing and non-performing Bus Q shelters depending upon the locations.	Refer reply at S.N 63.
70	The installation period to be increased to 60 weeks.	The construction period shall be 48 weeks
71	The installation period to be staggered. In the first phase of construction the sites closer to Commonwealth Games Area will be taken up on priority for installation and the sites on outskirts will be	No change.

	installed in the later stage of the construction period.	
72	As discussed DTC will consider the duration of the concession from 10+5 year s= 15 years to 15+5 years =- 20 years to make the project viable and sustainable.	No change.
73	It was deliberated that the Bidders will submit ` NO DUE CERTIFICATE` ALOGWITH THEIR Bids obtained from the accounts Department of DTC.	Yes.