

AMARAVATI DEVELOPMENT CORPORATION LIMITED

Government of Andhra Pradesh

Additional Pre-bid Queries & Responses for the Development of "Sports & Recreation Club" at Amaravati Central Park in Amaravati Capital City.

Additional Pre-bid Queries from a Prospective Bidder for 'Sports & Recreation Club' Project and Responses of the ADCL, GoAP.

Sl. No.	Document Reference Clause No., Page No.	Clause	Request and Clarification Sought	Response of the ADCL., GoAP.
1	Draft Concession Agreement, Section 1.1 Definitions (rr)	"Gross Annual Turnover" or "Gross Revenue" means the pre-taxation gross revenues of the Concessionaire from all sources or amounts of money by whatever name called, that arise, accrued and/or are received for any period including all amounts received (or which would have been received) by the Concessionaire from the operation of the Project/ Project Facilities including without limitation the monies towards the User Charges collected demanded, levied, received by from the Users and all other net amounts which fall (or would fall) to be credited to the profit and loss account of the Concessionaire for the Accounting Year in which the relevant period falls excluding (i) insurance proceeds except insurance indemnification for loss of revenue; and (ii) payments and/or monies collected by the Concessionaire for and on behalf of any Government. Authorities under Applicable Laws. It is clarified that the amounts payable to the Authority under this Agreement shall not be deducted from Revenue/Gross Annual	We request that following receipts to the Concessionaire be excluded for calculation of the Gross Revenues (1) Charges at actual collected towards utilities, maintenance, reimbursement of expenses for any event or other usage from users, which are more of expenses in nature (2) Refundable deposits collected which is more of a liability rather than revenue	The request is accepted and the modifications in the definition would be accordingly undertaken

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		Turn Over;		
2	Draft Concession Agreement, Section 1.1 Definitions (jjj), Project Assets	"Project Assets" shall mean and comprise of all tangible and intangible assets relating respectively to the Project, as the case may be excluding land but including and not limited to, (a) rights over the Site in the form of license , right-of-way or otherwise; (b) each of tangible assets comprising the Project Facilities such as foundation, buildings, substructures and superstructures, pavements, over bridges, works, subways, drainage facilities, sign boards, equipment, electrical works for lighting of and telephone and communication equipment; (c) financial assets, such as receivables, cash and investments; (d) rights under the Project Contracts and other Agreements relating to the Project entered into by the Concessionaire and (e) proceeds from insurance policies taken by the Concessionaire in relation to the Project Facilities;	Please change the word from " license " to " lease hold rights " as the Project is site is offered on lease basis	The lease hold rights would be available, which can be mortgaged by the Concessionaire, if required for raising finances. This Sentence can be read as " Project Assets " shall mean and comprise of all tangible and intangible assets relating respectively to the Project, as the case may be excluding land but including and not limited to, (a) rights over the Site in the form of license , right-of-way or otherwise; (b)"
3	Draft Concession Agreement, Section 3.2 Condition Precedent for the Authority	Handed over to the Concessionaire, the Vacant Possession of the Site free from all encumbrances, on "as is where is basis" and executed Land Lease Deed substantially in the form attached hereto in <i>Appendix</i> in accordance with the terms of this Agreement; Shall issue necessary notification/government	The Condition Precedent for the Authority should include the following. (1) Execution of Substitution Agreement (2) Execution of Lease Deed As (1) & (2) above are critical to	Agreed and the same can be incorporated.

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	(a)	orders, if any, required for change of land use of the site for development of the Project Facilities as mentioned in the RFP	financial closure and release of funds to the Concessionaire from the lenders.	
4	Draft Concession Agreement Section 4.2 (b)	For the purpose of exercising its rights pursuant to Article-2 of this Agreement, the Concessionaire shall, subject to the provisions hereof, however be allowed to lease any built-up area or space in the Project Site, and it shall have the right, subject to the provisions of this Agreement, to enter into Contractual Arrangements with third parties in relation to any part of the Built-up Area or Space in the Project Site provided the terms and conditions of such Contractual Arrangements shall not be inconsistent or contrary to the provisions of this Agreement and that such Contractual Arrangements shall be coterminous with the Project Site Lease Deed and this Agreement.	While the clause permits the Concessionaire to lease out the built up space, it is required that further sub lease must be allowed for the lessee. This is considering the fact that in operation and management of sports infrastructure, multiple domain specialists would be operating in lease / sub lease arrangements	Sub lease of the vacant land parcel as part of the Project shall not be allowed but sub-lease of the built up facilities can be allowed in part or whole by the Concessionaire. RFP Conditions Prevail.
5	Draft Concession Agreement Clause 8.2.1	In consideration of the lease of the Site and the rights appurtenant thereto in favor of the Concessionaire, the Concessionaire shall, during the Concession Period, in terms of this Agreement and the Land Lease Agreement, make payments to ADCL with respect to the Annual Lease Rentals. The Annual Lease Rental for the first Year of Concession is Rs. _____. The amount of Annual Lease Rental shall be escalated at the	It is requested that escalation of 5% on Annual Lease Rentals be made applicable once in every 3 years. The Revenue potential from Sports infrastructure will not be equivalent to that from a real estate project where escalation every year could be viable. Escalation of 5% every year will make the operation of the facility financially unviable. We	The 'Annual Land Lease Rental' is very nominal based on the basic market value of the land as per concerned SRO records, where as the actual market value of this land is very very high at this area. Hence, RFP Condition Prevails.

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		rate of five percent__ (5%) every Year during the Concession Period The Annual Lease Rentals	request you to kindly revise the escalation to 5% once in every 3 years	
6	Draft Concession Agreement, Clause 8.2.2 (c)	At the end of each Year, based on finalised audited accounts and the determination of the audited Gross Revenue for that Year as certified by the statutory auditor of the Concessionaire, necessary adjustments shall be made in respect of the Revenue Share on the basis of the Revenue Share quoted by the Preferred Bidder in its Financial Bid for the respective Year (subject to escalation of 5% over previous Year). In the event the Revenue Share paid in the course of the quarters of the relevant Year (on the basis of the Revenue Share quoted by the Preferred Bidder in absolute figures) is less than the 3% Revenue Share for the respective Year, then the Concessionaire shall, within 30 Days of finalisation of its accounts for the particular Year, pay the difference between the revenue share and the amount already paid as per the quoted Revenue Share for that particular Year.	This clause given an impression that the Revenue Share will be escalated by 5% every year. Our understanding is that Revenue share percentage quoted by the Concessionaire will remain constant in percentage throughout the Concession Period Escalation in Revenue share shall simply render the project financially unviable for the bidder Hence we request to modify the clause as highlighted above	The 'Revenue Share' is the Bid Parameter to be quoted higher than the minimum guaranteed amount of Rs.22.38 Lakhs (Rupees Twenty Two Lakh and Thirty Eight thousands only) for the 5 th Year of 'Concession Period'. Subsequently, the Selected Bidder/Concessionaire shall pay to the ADCL either the 'Revenue Share' Quoted by the Bidder with an annual escalation of 5% (OR) 3% of the Revenue, whichever is higher for that respective year. The minimum guaranteed revenue share is worked out very conservatively and reasonably to make it viable and attractive to the investors. Moreover, this is as per prevailing Tourism Policy of Govt. of A.P. Hence, the RFP Condition

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				Prevails.
7	Draft Concession agreement Clause 4.1(g),4.2(a) & (b)	Under Clause 4.1(g), the Project Site is leased to the Concessionaire on as is where is basis. As per Clause 4.2(a) the Concessionaire is prohibited from sub-leasing the Project Site to any third party. However, As per Clause 4.2(b) any super structure/ built up area/ space in the Project Site can be leased to third parties.	So, once such third party rights, say by way of sub-lease, are created in the built up structure, how would the enforcement be done in case there is a default under the Financing Documents executed with the lenders? Please clarify.	The sub lease of the built up facility along with the leasehold rights for the underlying land shall be allowed.
8	Draft Concession Agreement , Clause 2.1(c) and 8.1 (b)	As per Clause 2.1(c) of the CA - The Concessionaire has no right to mortgage the title to the Site or any whole or part of the Site. However, as per Clause 8.1(b) of the CA, security interest can be created in the Project Assets, excluding the Project Site. "Project Assets" has been defined to mean all tangible and intangible assets pertaining to the Project, including rights over the Site (i.e. Project Site) in the form of licence, right of way or otherwise	This appears to be conflicting. Further, in this case also it needs to be determined how would the enforcement be done in case there is a default under the Financing Documents executed with the lenders. Since the land underneath the Project Assets cannot be alienated, what would actually be the recourse available to the Lenders	Will be discussed and finalised in consultation with the Selected Bidder / Concessionaire for better bankability of the project, within in the overall framework of the Draft Concession Agreement.
9	Draft Concession Agreement 8.1 (b)	This clause allows assignment of the Concessionaire's right to receive User Charges in favour of the lenders. The CA also provides for creation of the Escrow Account, wherein a waterflow mechanism has been prescribed	Kindly clarify that whether the charge is to be created on all user charges received at source or is the same created only on the bucket reserved for the lenders as per the water flow mechanism	Will be discussed and finalised in consultation with the Selected Bidder / Concessionaire for better bankability of the project, within in the overall framework of the Draft Concession Agreement.

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10	Draft Concession Agreement 8.1	<p>Here the Concessionaire has been inter alia, allowed to create Security Interest on the Project Assets including a charge on the User Charges.</p> <p>Parallely, under the same clause 8.1 of the CA, it is provided that in the event, the Lenders fail to realise their outstanding's during the term of the Concession, they can exercise the right of seeking substitution of the Concessionaire in consultation with the Authority.</p>	<p>In our view these 2 sets of security offered are mutually exclusive, i.e. only any 1 can be exercised to the exclusion of the other.</p> <p>However, our opinion is that this existing clause may not be in the interest of the project as substitution is prescribed as a remedy to the lenders, and not by enforcing the security interest against the Project Assets which would only further jeopardise the Project as a whole</p>	RFP Conditions Prevail.
11	Draft Concession Agreement 8.2 (c)	<p>This clause states that at all times, the first and foremost payments from the Concessionaire shall be to the Authority, even if the Concession Agreement is terminated or expires. The proviso to this clause states that "Provided always, all the payments by the Concessionaire to the Authority under this Agreement, including the Lease Rental, Additional Development Premium, Annual enhancement in the Six months Advance Lease Rental Deposit deposits, Charges and expenses, in terms with the Agreement shall have priority over all other payments that are due and payable by the Concessionaire on any account whatsoever, excepting the payment of</p>	<p>It is inferred from the clause that the charge created on user charges and other revenue streams collected by the concessionaire do not have any security interest in favour of lenders</p> <p>This is detrimental to the bankability of the Project and we request you to modify the clause accordingly.</p>	<p>During the time of financial closure, if the lenders to the project seek any revisions / modifications in the clause and the understanding thereof, the same requires to be approved by the Authority (ADCL) and shall be dealt on case to case basis.</p>

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		taxes by the Concessionaire to any Government Authority".		
12	Draft Concession Agreement para 2, page 7	The said clause states that the land extent is 2 acres	The RFP clause 1.1.4 states that the land extent is 4.10 acres against 2 acres as mentioned in the draft concession agreement Based on our experience the land extent of 2 acres would be inadequate for the program and facility as conceptualized in the bid document. Request you to kindly clarify and provide the exact extent of land available for the project.	It is a Typographical mistake. The proposed Site is 4.10 Acres .
13	Other important requirements	Lease Deed Substitution Agreement Escrow Agreement	These documents should be part of the draft Concession Agreement as they are very critical while approaching the lenders for financial closure	These Agreements will be part of the draft Concession Agreement and would be provided.
14	Other important requirements	Mortgage of Leasehold Rights	While the Authority has clarified vide mail dated May 26, 2018 that the Draft Concession Agreement does not restrict the selected bidder from mortgaging lease hold rights, it is required that this is explicitly stated in the Draft Concession	Mortgage of Leasehold Rights is available and allowed.

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			Agreement and Draft Lease Deed rather than being implicitly inferred.	
15	Other important requirements	Termination Payments	<p>Recourse for Termination Payments in case of termination due to Force Majeure events or Event of Default is a standard norm in PPP projects.</p> <p>In any case of termination, the lenders need to be protected and accordingly there should be a provision for making payment for the Debt Due part in the project.</p> <p>In any case the project assets get transferred to the authorities and hence the authorities are adequately protected</p> <p>This is a very critical aspect from banks and financial institutions from the lending perspective</p> <p>We request you to kindly incorporate the same.</p>	A mechanism and an enabling clause would be provided to the Selected Bidder / Concessioner in the draft Concession Agreement accordingly.
