

## **Reply to the Queries pertaining to Thermal Power Plant on BOO basis (TE090/2016)**

1. We would like to submit that the PPA should be a tri-partite agreement with ICVL, EDM and the Bidder as three parties. Bidder shall be responsible for producing power, ICVL for supplying coal and Electricidade de Moçambique E.P. (EDM) for power off-take. Being a government owned company, ICVL would be in a better position to handle government-to-government negotiations in case of any issues in finalizing or implementing the PPA. It becomes even more pertinent given the precarious credit profile of Mozambique government and the recent issue of sovereign default

**Answer :** The sole responsibility of the agreement with EDM shall be of the successful Bidder . However, ICVL may help in co coordinating meeting with EDM

2, We would further like to submit that the Project execution window should be at least 48 months with zero date being the date on which all the clearances, consents and approvals are received and PPA, transmission, funding arrangement and other related agreements are in place. This duration should be extended in case the project is affected by Force Majeure events.

**Answer :** As per the terms of the tender the period for completion of the project is Three(3) years from the Contract execution date

3. We request that the tender conditions and any subsequent agreements may include terms such that the Force Majeure and Change in Law provisions would include events occurring within Mozambique, India and in countries that may affect the suppliers and investors in discharging their responsibilities related to the project during its construction and operation.

**Answer:** "Force Majeure" clause has been elaborated in clause no 18.3 of volume 3 of the tender and that stands.

Force Majeure has already been inserted in the contracts. The events that take place regard to the party to the Power Plant (whether in Mozambique or elsewhere) and provided that such event is unavoidable, unpredictable and uncontrollable. Single or isolated incidents do not constitute Force Majeure events, such as an isolated fail to supply by a supplier. The declaration of Force Majeure does not by itself suspend obligations. There must be a link between the Force Majeure event and the obligation in question.

4. We request that the tender conditions include terms such that the Bidder is allowed to use the ICVL transport arrangement for transporting equipment, coal and other items during project construction and operations phase on an actual cost to ICVL basis.

**Answer :** ICVL does not have necessary facility to take care of this request . However , ICVL will help in coordinating with the suppliers and successful bidder can directly discuss with the party. ICVL's transport arrangement consists only of Gondola wagons and Locomotives. These are not ideally suited for movement of project equipment. However, ICVL would be willing to provide the facilities wherever feasible at an appropriate cost.

S No	Clause Reference	Clause Content	Modifications requested	Response by MBL
1	Volume 1 of 4, Chapter 3, Clause 3.6	"Contract Execution Date " means the date on which the Agreement/Contract is signed between MBL and the Successful Bidder or LOI (Letter of Intent) is issued to the Successful Bidder, whichever is earlier.	Contract Execution Date should be kept as the date on which the Agreement/Contract is signed between MBL and the Successful Bidder and not the date on which LOI is issued.	The clause will stand . As per clause no 7.8.5 the successful bidder needs to sign the contract in Maputo within seven day of issue of LOI.
2	Volume 1 of 4, Chapter 3, Clause 3.7	"Commercial Production Period" means the period starting from the Commercial Production Date till the renewal of current Mining Concession Contract of the Benga Mine, valid up to year 2035.	"Commercial Production Period" should be 20 years post the actual COD for the project (In line with volume 2 of 4, Clause 5.1). Also, project construction and operations would be extended to the extent impacted by Force Majeure events.	"Commercial Production Period" means the period starting from the Commercial Production Date till the renewal of current Mining Concession Contract of the Benga Mine, valid up to year 2035 or 20 years if the Mining Concession contract of the Benga Mine is renewed." Project construction and operations would be extended to the extent impacted by Force Majeure events.
3	Volume 1 of 4, Chapter 3, Clause 3.9	"Earnest Money Deposit" shall mean the amount equivalent to USD 500,000.00 (Five Hundred Thousand United States dollars) to be furnished by the Bidder towards bid security in the form of bank guarantee or wire transfer to MBL's bank account along with Part A of the bid.	EMD amount should be kept at USD 100,000.	The original clause is ok
4	Volume 1 of 4, Chapter 3, Clause 3.13	"Performance Bank Guarantee" shall mean a sum equivalent to USD 20,000,000.00 (Twenty Million United States Dollars) in the form of bank guarantee towards performance security to be furnished by the Successful Bidder as per the terms and conditions of the Document. The validity period of Performance Bank Guarantee shall be from the Contract Execution Date and shall cover the whole Term plus One Year.	PBG amount should be kept at USD 5,000,000 (five million dollars) so that Bidder's ability to raise fund for other key project activities aren't affected.	The original clause is ok
5	Volume 1 of 4, Chapter 6, Clause 6.1.d	The plant shall be commissioned within 36 (Thirty Six Months) from the Contract Execution Date.	The plant shall be commissioned within 48 months subsequent to receiving all the clearances, licences and consents including	The plant shall be commissioned within 36 (Thirty Six Months) from the Contract Execution Date. Project construction duration would be

			signed long-term PPA and Transmission Agreement.  ☑ Also, project construction duration would be extended to the extent it is affected by Force Majeure events.	extended to the extent it is affected by Force Majeure events.
6	Volume 1 of 4, Chapter 6.1.e	It is to be noted that the coal required has to be sourced only from MBL and the coal supplied by MBL is strictly for the use in the Power Plant and cannot be sold.	Bidder should be allowed to off-take coal and use it for other purposes (local sale/export) to the extent the coal quantity exceeds power production requirement in the given month/quarter.	The original clause is Ok
7	Volume 1 of 4, Chapter 6, Clause 6.12.a	EMD Bank Guarantee should be as per Format 7 issued by/through a reputed commercial bank in Mozambique and shall be valid for the period of validity of the Bid.	EMD Bank Guarantee and PBG should be allowed to be from any reputed international bank including Indian banks and not restricted to only banks from Mozambique.	The original clause is ok
8	Volume 1 of 4, Chapter 6, Clause 6.17	This Document shall be governed by and interpreted in accordance with laws in force in Mozambique.	Governing Law should be kept as the Law of England and Wales given that international contractors and lenders would be involved in the project.	The original clause is ok
9	Volume 1 of 4, Chapter 7, Clause 7.2.2	The price per tonne is subjected to variation, whenever there is variation in the Platts Thermal Coal index price (symbol CSRBM01) FOB Richards Bay 6000 NAR average for the month over the same average for the previous month.	Coal price adjustment should be linked to price movement in similar GCV coal and not to FOB Richards Bay 6000 NAR as each variant may have its own price trajectory.	The original clause is ok
10	Volume 1 of 4, Chapter 7, Clause 7.6	Contractor/Successful Bidder failing to execute the order placed on them to the satisfaction of MBL under the terms and conditions set forth therein, will be liable to make good the loss sustained by MBL, consequent to the placing of fresh orders elsewhere at lower rate. In the event of such failure, the difference between the price accepted in the Agreement already entered into and the price at which fresh orders have been placed at a later date,	Bidder's liability would be restricted to the EMD/Performance Guarantee amount at any given point of time.	Contractor/Successful Bidder failing to execute the order placed on them to the satisfaction of MBL under the terms and conditions set forth therein will lead to their EMD/performance Guarantee amount to be forfeited by MBL.

		consequent to non-fulfilment of the Agreement will be recovered from the Contractor/Successful Bidder.		
11	Volume 1 of 4, Chapter 7, Clause 7.10	The Successful bidder has to start lifting the coal as per the ACQ at the end of 36 months from the date of Contract Execution date.	The compensation for short delivery/lifting should be applicable only after COD is achieved.	The original clause is ok
12	Volume 1 of 4, Chapter 7, Clause 7.10.3	For or a year, in respect of each type of coal, if the level of supply by the seller falls below 90 percent of ACQ with respect to the year, the seller shall be liable to pay compensation to the Successful Bidder for such shortfall.	Supply-or-pay clause for coal supply should be in-line with the PPA terms in a back-to-back manner.	The original clause is ok
13	Volume 1 of 4, Chapter 7, Clause 7.10.4	For a year, in respect of each type of coal, if the level of lifting by the purchaser (Successful Bidder) falls below the 90 percent of ACQ with respect to the year, the Successful Bidder shall be liable to pay MBL for such shortfall.	Take-or-pay clause shouldn't be imposed on the bidder if the failure results from EMD's inability to off-take power or from other circumstances beyond the control of the bidder.	The original clause is ok
14	Volume 1 of 4, Indicative Checklist	7. Business License or equivalent document issued by the competent authorities 11. Copy of the contract agreement/ Work Order	7. We understand the business license here refers to license issued for current operations of the Bidder. 11. Which specific Contract Agreement/Work Order document is referred here?	Yes, The Business License here refers to the license issued for current operation The "equivalent document" refers to another document issued by the Government Authorities, such as a "power plant concession contract".  The Agreement /work order to substantiate clause no 5.1 of the tender document .
15	Volume 2 of 4, Clause 4.4	Negotiating, entering into and signing of Power Purchase Agreement / term sheet with Electricity Authorities of Mozambique (EDM) and the power off-taker for sale of power.	<input checked="" type="checkbox"/> ICVL would help the Bidder in negotiations and having the PPA signed with EDM. <input checked="" type="checkbox"/> Project execution window will only commence once the PPA is in place.	ICVL will co ordinate as far as arranging meeting is concerned. However , the sole responsibility will lie with the successful Bidder  ICVL would give orientation to the Bidder in negotiations and having the PPA signed with EDM as well as documents to be entered into with other entities.

				However, the Bidder is liable for finding its own legal, financial and other advisors to assist.
16.	Volume 2 of 4, Clause 4.8	Negotiating, entering into and signing of the contract with the Power Transmission Company (for grid connection);	<p>☐ ICVL would help the Bidder in having the Transmission Agreement signed.</p> <p>☐ Project execution window will only commence once the Power Transmission Agreement is in place.</p>	<p>ICVL will co ordinate as far as arranging meeting is concerned . However , the sole responsibility will lie with the successful Bidder</p> <p>ICVL would give orientations to the Bidder on how to have the Transmission Agreement signed the soonest. However, the Bidder is liable for finding its own legal, financial and other advisors to assist.</p>
17.	Volume 2 of 4, Clause 4.11	Obtaining all applicable operating licences, labour and immigration authorisation and any investment project authorisation or other investment related authorisations, generation, transport and sale of electricity authorizations, as per the applicable Mozambican legal requirements	<p>☐ ICVL would help the Bidder in obtaining required licenses from government authorities.</p> <p>☐ Project execution window will only commence</p> <ul style="list-style-type: none"> <li>- once investment, generation, transmission and other related approvals are in place</li> <li>- Clearances/covenants required to setup and operate the power plant on the land identified and provided by ICVL to the bidder are in place.</li> </ul>	<p>ICVL will co ordinate as far as arranging meeting is concerned . However , the sole responsibility will lie with the successful Bidder</p> <p>ICVL would give orientations to the Bidder to obtain the required licenses from government authorities. However, the Bidder is liable for finding its own legal, financial and other advisors to assist.</p>
18.	Volume 2 of 4, Clause 7.1	The Successful Bidder shall ensure that after the installation of the Production Facility within the aforesaid period of 36 (thirty six) months they shall declare the same in writing to MBL.	<p>☐ As highlighted, project commissioning window should be considered to commence only after PPA and other consents and approvals are in place.</p> <p>☐ Execution window should be kept at 48 months.</p>	The original clause is ok

19.	Volume 3 of 4, Overall contract	General observations	<p>This contract appears to be between a Principal and an EPC/Services contractor, whereas this project is envisaged on BOO basis.</p> <p>It is not clear who the parties for this contract are (volume 3 of 4). Please clarify. In addition, following clauses may not be acceptable even if the bidder were to be the contractor:</p> <ul style="list-style-type: none"> <li>☐ 12.3 Termination for convenience</li> <li>☐ 29.1.a. Suspension for convenience</li> <li>☐ 29.1.b.i.a. Suspension due to act, default or omission of company's personnel</li> <li>☐ 29.4 Termination resulting from prolonged suspension</li> <li>☐ 29.5.i. Not entitling contractor to the claim in certain scenarios</li> <li>☐ 36.1 Compulsion to buy from certain <u>supplier</u></li> </ul>	<p>Please note that the Bidder will enter with ICVL into a:</p> <ul style="list-style-type: none"> <li>a) <b>Contract for setting-up of a Thermal Coal Power Plant on a BOO basis</b> whereby the bidder will be provided with the "basic setting" to develop a power plant project. The bidder itself has to prepare the BOO model for the power plant and obtain the required license/approvals/concessions. This is in the definition of "Agreement/Contract" in Vol. 1.</li> <li>b) <b>Any other Agreement</b> which may be entered into between MBL and Successful Bidder</li> <li>c) <b>Coal Purchase Agreement</b> to be entered into between the Successful Bidder and MBL.</li> </ul> <p>ICVL will facilitate the granting of land use rights where the construction of the power plant is to take place, transfer the Framework Agreement and the Environmental license which are subject to Government approval. All this will be based on a Services Contract which General Conditions (Vol. 3) was shared with the Bidders.</p>
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