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THE NEXT LEG OF PRIVATISATION: INDIAN RAILWAY OPENS DOORS FOR THE PRIVATE SECTOR

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Background

India has the fifth largest railway network in the world which is managed and operated by the Ministry of Railways, Government of India (**MOR**). The MOR manages and operates the trains on the Indian Railway (**IR**) network. Till now, the Indian Railway Catering and Tourism Corporation Limited (**IRCTC**), a government of India owned listed entity, was the only private entity (although owned by the Government) permitted to operate passenger trains on select routes.

Despite the size of the IR network, there is a huge unmet demand due to capacity constraints which often leads to loss of passenger business to other modes of transport. There is a critical requirement of next generation technology and provision of higher service quality, ensuring use of improved coach technology and reduced journey time. Therefore, with the objective of improving user experience by introduction of modern technology rolling stock, the MOR has decided to permit private entities to undertake passenger trains operations on select routes in India on public private partnership.

In this regard, the MOR has issued request for qualification (**RFQ**) on 1 July 2020. The interested players are required to submit their bids by 8 September 2020. News reports suggest that large domestic and global players like Tata Realty and Infrastructure, Bombardier, Hyundai Rotem Company, IRCTC, CAF India, Hitachi India and South Asia, Essel Group, Adani Ports and SEZ, Talgo, Siemens and Alstom Transport have expressed interest.

In this article we have provided a high- level overview of the key features of the documents issued by MOR and certain other factors that may be relevant for interested private players.

Salient Features

Operation on IR Network

The private passenger trains will be operated on the IR network. In this regard, the MOR has identified hundred origin destination pairs which have been grouped into twelve clusters (each is referred to as a **Cluster**) such that each Cluster would require about a minimum of twelve trains. Delhi, Mumbai, Chandigarh, Howrah, Patna, Prayagraj, Secunderabad, Jaipur, Chennai and Bengaluru form part of the list. MOR has proposed to further update the list and make the final list available at the request for proposal (RFP) stage.

MOR has invited twelve RFQs, one for each Cluster, the details of which are specified in the RFQ. The costs towards the RFQ process, the bidding documents and the bid security as indicated in the respective RFQ have to be submitted separately for each RFQ.

Selection of Concessionaire

The award of concession will be on the basis of a two-stage competitive bidding process comprising of the RFQ and the RFP. The RFQ process is aimed at pre-qualification and shortlisting of bidders based on their financial capacity, who will be required to offer share in the gross revenue at the RFP stage.

Concession for Design, Build, Finance and Operate (DBFO)

The selected bidders will be responsible for designing, procurement, building, financing and operation and maintenance of private passenger trains. Each private passenger train will have a minimum of sixteen coaches and a maximum number of coaches that does not exceed the longest passenger train operating on the respective path.



Non-discriminatory Access to IR- Network

MOR will provide non-discriminatory access to private train operators to the IR track and signaling network. MOR will ensure fitness of the IR network for smooth operations of the trains in accordance with the train operation plan. It is proposed that no new similar scheduled train will depart the originating station in the same origin destination route within sixty minutes of the scheduled departure of the Concessionaire's train if the capacity utilization of the Concessionaire's train is less than 80% (eighty percent) in the previous three months.

Revenue Potential

In addition to the fare from users, the selected bidder could earn revenue from provision of value-added services including food, beverages, linen, infotainment and generate rental income from use of commercial or other spaces and advertisements on the trains.

Salient Features

Market-linked Fares

The selected bidder will have the right to determine and collect non-discriminatory fares from the users.

Concession Period

The concession to operate private passenger trains will be for a period of thirty-five years.

Estimated Project Cost

The estimated cost of each Cluster is varied and will be revised and specified on a later stage. The assessment of actual costs will have to be made by the bidders.

Sourcing Conditions

Technology agnostic procurement by the selected bidder i.e., subject to compliance with the IR standards, the selected bidder is free to procure trains either with distributed power or through powerheads. Subject to compliance with the IR standards, the selected bidder is free to procure trains from its own choice of source. However, the concession agreement for each Cluster would include provisions relating to mandatory sourcing through domestic production in India over a period of time.

For introduction of new rolling stock, validation will be done by Accredited Independent Safety Assessor (ISA) on IR track. This process will be resorted to till such time RDSO adopts testing norms defined in UIC 518/EN14363 or other internationally accepted norms.

Bid Security

A bidder will be required to deposit, along with its bid, a bid security^[1], refundable no later than sixty days from the bid due date, except in the case of the selected bidder whose bid security shall be retained till it has provided a performance security under the concession agreement.

Maximum Speed

The private passenger trains will be designed for a maximum permissible speed of 160 kmph (one hundred sixty kilometer per hour). The running time taken by a train from originating station to destination station shall be comparable to the fastest train of IR operating between same originating station and destination station on that route, with a variation of plus or minus 10% (ten percent).

Prescribed Performance Parameters

Specified penalties will be recovered from the selected bidders for failure to meet the prescribed performance standards and outcomes.

Payments to MOR

The selected bidder will have to pay to the MOR, the revenue share (i.e., a percentage of gross revenue) as per the offer made in the bid and haulage charges towards terminal, traction energy, transportation, track maintenance and signaling costs.

Operation and Maintenance

The maintenance of the trains shall be the responsibility of private entity. Operation and maintenance of the trains would be governed by the standards and specifications provided in the concession Agreement. IR will provide space to the private entity in the existing maintenance depots in a proximate area on as is where basis for up-gradation or setting up its maintenance depot and use of the same by the concessionaire for maintaining the trains. The concessionaire will be responsible for the manpower, tools and plants as may be required for undertaking the maintenance obligations.

Eligibility Conditions

A bidder may be a natural person, private entity, government-owned entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a consortium. The maximum number of members in a consortium cannot exceed six.

The bidder will, if successful, be required to incorporate special purpose vehicle (**SPV**) in form of a company to execute the concession agreement. In case of a consortium, the lead member of the consortium should have at least 26% (twenty-six percent) of the equity in the SPV.

Financial Eligibility

The bidder should

1. have a minimum net worth [2], as specified in the RFP for each Cluster, at the close of the preceding financial year;
2. in case it is an alternative investment fund or foreign investment fund, have a minimum value, as specified in the RFP for each Cluster, which it should be permitted to invest in a single investee entity, at the close of the preceding financial year.

In case of a Consortium, the combined financial capacity of those members who shall have an equity share of at least 26% (twenty-six percent) each, are required to satisfy the above conditions of eligibility.

Operation and Maintenance Experience

The bidder is required to have the requisite operation and maintenance experience of operating and maintaining the railway rolling stock including locomotives, trains, electric multiple units, diesel multiple units for discharging operation and maintenance obligations in accordance with the provisions of the concession agreement.

In case of a consortium, the members whose experience will be evaluated are required to subscribe to 26% (twenty-six percent) or more of the paid up and subscribed equity in the SPV. Further, such members for a period of two years from the date of commercial operation of the project are required to hold equity share capital not less than 26% (twenty-six percent) of the subscribed and paid up equity share capital in the SPV and 5% (five percent) of the total project cost specified in the concession agreement.

If the bidder does not have the requisite experience of maintaining the railway rolling stock including locomotives, trains, electric multiple units, diesel multiple units, it shall:

1. enter into an agreement with an entity having experience relating to the performance of the operation and maintenance obligations; or
2. engage experienced and qualified personnel for discharging its operation and maintenance obligations in accordance with the provisions of the concession agreement.

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[2] The net worth requirement varies across Clusters and is provided in the respective RFQ. For example- the net worth requirement for Cluster 1 is INR 1255 Crore (Rupees one thousand two hundred fifty-five crore) and that for Cluster 3 is INR 1165 Crore (Rupees one thousand one hundred sixty-five crore).

Selection Conditions

Selection of Highest Bidder

The highest bidder will be the selected bidder for the respective Cluster. A bidder may be awarded up to three Clusters. However, if a bidder is found to be highest bidder for more than three Cluster, such bidder will be awarded the three Clusters with the highest premiums. For the remaining Clusters, other bidders will be invited to match the bid submitted by the highest bidder.

Share in Gross Revenue

Bids are invited on the basis of premium in the form of share in gross revenue offered by the bidder to the MOR for award of the concession. The premium amount constitutes the sole criteria for evaluation of bids, and the project will be awarded to the bidder quoting the highest premium.

It is indicative that the gross revenue may include:

1. any amount accruing to the concessionaire from the passengers or any third party under the concession agreement including ticket- fare, amount from baggage, cargo, on-board services.
2. any amount accruing to the concessionaire from advertising, branding and naming rights pursuant to the concession agreement.

Station user fee and all statutory indirect taxes and levies are proposed to be excluded from the gross revenue.

