

DRAFT OF LETTER OF ACCEPTANCE (LOA)

To,

M/s (Selected Bidder)

Address :

.....

.....

Mobile :

Email :

Kind Attention: Shri (.....)

Subject : Development and Operation on land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99(P) and 100(P) Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis

Tender No: N1PD-23/2020, Dt. 04.08.2020

Reference:

1. Tender No. - N1PD-23/2020, Dt. 04.08.2020
2. Proposal submitted by "M/s" onfor **Tender No. N1PD-23/2020.**

Dear Sir,

Maha-Metro is pleased to welcome M/s being the Successful Bidder for the project of ***"Development and Operation on land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99(P) and 100(P) Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis"***, consequent to the acceptance of your offer/bid made in the tender (Tender No. : **N1PD-23/2020** dated **04/08/2020**) issued by Maharashtra Metro Rail Corporation Ltd.. The land admeasuring 19889.90 Sqm bearing **bearing Kh. No. 98, 99(P) and 100(P) Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project** shall be provided to the Successful Bidder/ Concessionaire on long term lease of 60 years on **"as is where is basis"**.



A. The Brief Summary of Scope of Work and General Terms and Conditions is as follows –

1. Scope of Work:

Detailed scope of work shall be as provided in “Annexure – 2 Scope of Work’ of the RFP Document” and as amended in Corrigendum II.

➤ **Site Details (Point no. 1 of Annexure - 1 : Project Site, Page No. 92 of the RFP Document (Volume – I))**

The Project Site shall mean the land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) Mz. Dhantoli and bearing CTS Number 09, near Sitaburdi Interchange Station of Nagpur Metro Rail Project”.

The elevated viaduct of Nagpur Metro is passing through the project site.

➤ **Period of Lease (Point No. 2, Annexure - 2 : Scope of Work, Page No. 95 of the RFP Document (Volume – I)):**

Maha-Metro will provide encumbrance-free land for the term of concession period of 60 years inclusive of construction period of 4 Years from the Effective Date.

➤ **Construction Period (Point no. 3, Annexure - 2 : Scope of Work, Page No. 95 of the RFP Document (Volume – I)) :**

4 (Four) Years from the Effective Date.

The said construction period shall be extendable by another 365 days subject to approval of Maha-Metro and payment of an additional fees amounting to Rs. 5.00 Crores. The additional fees shall be levied on a pro-rata basis subject to a maximum of 100% (one hundred percent) of the amount of Annual Concession Fee for a delay in the completion of Project by 365 days.

➤ **Allowable Built-up Area (Point No. 5, Annexure - 2 : Scope of Work, Page No. 97 of the RFP Document (Volume – I)) :**

Permissible FSI on the project site is 2.5. The permissible FSI allowed to the successful bidder shall be on the net plot area, i.e. after deducting the mandatory open space from the total plot area. The Successful Bidder can avail maximum of FSI 4 (maximum allowable FSI) on the project site, subject to payment of additional premium as per the Transit Oriented Development Policy approved by GoM on dated 02/11/2018

➤ **Usage Allowed (Point no. 7, Annexure - 2 : Scope of Work, Page No. 98 of the RFP Document (Volume – I)):**



The Concessionaire shall be allowed to use the said land premises for the activities allowed as per by-laws considering the site falls within a "Commercial Zone" except Residential.

However, it is to be noted that even though Residential is allowed on land with Commercial Land Use, Residential use (either partly or fully) of project site shall not be permitted under any circumstances.

➤ **Consideration to Maha-Metro (Clause 2.19.1, Page No. 33 of the RFP Document (Volume – I)) –**

Combination of Upfront Premium and Annual Concession Fees is form of percentage revenue sharing.

➤ **Upfront Premium (Clause 2.19.1, Page No. 33 of the RFP Document (Volume – I)) :**

The Upfront Premium shall be paid by the Successful Bidder to Maha-Metro within 120 days from the date of issuance of LoA and shall be paid in the form of NEFT/RTGS/Online Transfer /Cheque in favour of Maharashtra Metrorail Corporation Ltd.

Failure to pay the Upfront Premium within 120 days from the date of issuance of LoA shall be treated as breach of terms and in such a case the Bid Security shall be forfeited and LOA shall be cancelled.

If the Upfront Premium remains unpaid from the due date, Maha-Metro shall impose an interest penalty @ 15% per annum from the Bid Security and/or the Performance Security submitted by the Successful Bidder.

➤ **Annual Concession Fees (Clause 2.19.1, Page No. 34 of the RFP Document (Volume – I)) :**

- The Annual Concession Fees shall be in the form of % (percentage) of Revenue sharing.
- The Successful Bidder has agreed to share the same percentage (as quoted by him the financial bid) of its revenue, throughout the lease period.
- The Annual Concession Fees shall be paid on half-yearly basis and shall be paid immediately after the completion of the half yearly tenure. It will be mandatory for the Successful Bidder/Concessionaire to submit the amount of half yearly license fees within 15 days of completion of such tenure.
- The revenue sharing shall be done on the Total "Project Revenue" accrued to the concessionaire.
- Fifty (50%) percent of the amount of the Annual Concession Fees so computed will act as "Minimum Guarantee" for the project.
- At the end of each half year of agreement year the amount of Annual Concession Fees will be reconciled based on the revenue received in the project during that tenure.
- The Annual Concession Fees shall commence immediately at the end of moratorium period (i.e. at the beginning of 48th month from the date of signing of Concession Agreement) and shall be paid thereafter till the end of lease period.



- In case of issuance of part completion certificate for the project during the initial construction period of 04 years, the Annual Concession Fees shall commence from the date of obtaining the **Part Occupancy Certificate** and the moratorium period shall be considered as officially closed/finished from the same day of issuance of Part Occupancy Certificate.
 - However, if the bidder feels that they can commence the project early and/or can share revenue/pay Annual Concession Fees from an earlier date, they are free to propose the same.
- **Deposition of Performance Security to MAHA-METRO (Clause 2.20.4 Page No. 37 of the RFP Document (Volume – I)) :**

A Bank Guarantee amounting to Rs. 10,75,00,000/- (Rs. Ten Crores Seventy Five Lakhs only) in issued from any Scheduled Bank, initially valid for a period of 54 months from the date of submission, which shall be extended if the construction completion date is extended for any reason whatsoever.

- **Deposition of Interest Free Security Deposit to MAHA-METRO (Clause 2.20.4 Page No. 37 of the RFP Document (Volume – I)) :**

Amount equivalent to the Annual Concession Fee for the 1st Year of Commercial Operations of the project as submitted/committed in the business plan of the project, which shall be paid in the form of Demand Draft/NEFT/RTGS/other modes of Online transfer etc. and shall be submitted prior to Commercial Operations of the project .

The Security Deposit shall be revised every three years.

At the end of every three years from the date of commercial operations of the project, the concessionaire shall deposit an amount equivalent to the Balance amount, i.e. difference between amount already deposited with Maha-Metro and the Annual Concession Fees due in the immediately next agreement year, as per his submitted business plan.

B. Offer made by the Successful Bidder –

The Offer made by the Successful Bidder is as follows –

1. **Upfront Premium :** an amount of Rs./- (Rupeesin words.....) to be paid within 45 days from the date of acceptance of LoA.
2. **Annual Concession Fees :**

The Annual Concession Fees quoted by the Successful Bidder is as follows –

(Amount in Crores)

Sr. No.	Agreement Year	Expected Yearly Project Revenue	% of Revenue Sharing as	Annual Concession
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		(R)	quoted in Financial Bid (P)	Fees (ACF) to be shared with Maha-Metro (ACF) = (R) x (P)
1)	Year – 1	<i>Project Revenue as per Business Plan submitted by the Successful Bidder.</i>		
2)	Year – 2	..-		
3)	Year – 3	..-		
4)	Year – 4	..-		
5)	Year – 5	..-		
6)	Year - 6	..-		
.....-		
.....-		
.....-		
58)	Year - 58	..-		
59)	Year – 59	..-		
60)	Year - 60	..-		

With reference to quoted offer, as reiterated above, Maha-Metro is pleased to inform you that your offer has been accepted by Maha-Metro. The said offer is exclusive of all applicable taxes.

C. In terms of paras of the RFP Document, noted below you are requested to complete the following formalities

1. Incorporation of a Special Purpose Company (SPC) under Companies Act, 2013 or any amendments thereto, with a minimum 5% of project cost as paid up capital within 120 Days of issuance of LoA,
2. Submission of Performance Security amounting to Rs. 10,75,000/- (Rupees Ten Crores Seventy-Five Lakhs Only) as per the Bank Guarantee format prescribed along with this LoA, The Performance Security shall be submitted within 120 Days of issuance of LoA.



3. Submit the stamp paper of Rs. 500/- (Rupees Five Hundred Only) for execution of Concession agreement shall be submitted within 120 Days of issuance of LoA.
4. Make following Payments to Maha-Metro –
 - i. Payment of Upfront Premium amounting to Rs. (as quoted in the financial bid)....., in the form of Demand Draft /Online Payment in favour of “Maharashtra Metro Rail Corporation Limited”, payable at Nagpur, within 120 Days of issuance of LoA.
 - ii. Payment of appropriate Stamp duty as applicable for of registration of Concession Agreement, within 120 Days of issuance of LoA.
 - iii. Payment of Stamp Duty amounting to Rs., as applicable for of signing of Concession Agreement, within 120 Days of issuance of LoA
 - iv. Submission of “Success Fee” of Rs. 25,00,000 (Rupees Twenty Five Lakhs only) Plus GST, to be paid within 120 Days of issuance of LoA.

D. Schedule of Activities

The Successful Bidder shall follow the following time lines:

Stage of Activity	Time Period
Issuance of Letter of Acceptance form Maha-Metro	Within 15 (fifteen) days of acceptance of proposal from the Maha-Metro.
Submission of Performance Security to Maha-Metro-NAGPUR.	Rs. 10,75,00,000/- (Rupees Ten Crores Seventy Five Lakhs only) , in form of Bank Guarantee, to be submitted within 120 days from the issuance of LoA.by the Successful Bidder
Payment of Upfront Premium to Maha-Metro	Within 120 days from the issuance of LoA.
Payment of Success Fees	Within 120 days from the issuance of LoA.
Formation of Special Purpose Company (SPC)	Within 120 days from the issuance of LoA.
Deposition of Stamp Duty and Registration Fees	Within 120 days from the issuance of LoA.
Signing of Concession Agreement	Within 120 days of issuance of LoA but only after <ul style="list-style-type: none">– formation of Special Purpose Company– Submission / deposition of Upfront Premium, Performance Security, Success Fees, Stamp Duty etc.



	- Fulfilment of any all other condition as detailed out in the LoA.
Project Site to be handed over to Successful Bidder.	Within 10 days of signing of Concession Agreement.
Commencement of Concession / Lease Period	From the date of signing of Concession Agreement or the date of handing over of the project site, whichever is later.
Deposition of Interest Free Security Deposit to MAHA-METRO	Amount equivalent to 02 (Two) times of Annual Concession Fee (for first year of commercial operations of the project) which shall be paid in the form of Demand Draft/ NEFT/RTGS/ other modes of Online transfer etc., and shall be submitted prior to 30 (Thirty) Days before expiry of 4 th Year reckoned from the date of signing of Concession Agreement.

E. Other Terms and Conditions : -

- The Concession Agreement, in terms of this Bid Document, shall be executed in 2 (Two) copies. The original Concession Agreement(s) shall remain in the custody of Maha-Metro till such time it is presented for registration by the Successful Bidder at the relevant Sub Registrar's office. The original duly registered Concession Agreement will be then retained by Maha-Metro and handed over to the Successful Bidder/Concessionaire once the Successful Bidder/Concessionaire provides to Maha-Metro a certified true copy of the duly registered Concession Agreement. The Concession Agreement shall be executed by the Bidder as per specimen specified in Volume - II of this Bid Document.
- In case of delay in signing the Concession Agreement either on account of delay in fulfilling the above conditions including incorporation of SPC within the specified time limit or otherwise, Authority may extend the period specified above, for a maximum period cumulatively not exceeding 180 (One Hundred and Eighty) days from the LOA.
- Failure to fulfil any of the conditions specified hereinabove shall constitute a breach of the contract submitted by the Bidder in which case the full value of the Bid Security shall stand forfeited without prejudice to any other rights or remedies & the LOA shall be treated as cancelled.
- In the event the Successful Bidder refuses to execute the Concession Agreement as hereinabove provided, Authority may at its sole discretion, conclude that such Bidder has abandoned the contract and thereupon its Bid, LOA and acceptance thereof shall be treated as cancelled and Authority shall be entitled to forfeit the full amount of the Bid



Security and/or performance security or any other payments made by the Concessionaire, as damages for such default.

- As per the provision of the RFP Document all the compliance should be made within time stipulated therein, failing which Bid Security is liable to be forfeited.

F. Penalties /Damages for Delay by the Successful Bidder

i. Damages for delay by Concessionaire in fulfilment of Conditions Precedent (Clause 2.20.6 of the RFP Document/ Refer Corrigendum No. – II)

In the event that the Successful Bidder does not procure the fulfilment of any or all of the Conditions Precedent as stated in the LoA on or before 120 days from date of issuance of LOA, and the delay has not occurred on account of a Force Majeure Event, then the Concessionaire shall pay, forthwith, to Maha-Metro liquidated damages of an amount equivalent to 0.5% of the Bid Security for each day of delay in fulfilment of the Conditions Precedent. Upon non-fulfilment of the Conditions Precedent within 180 days from the date of issuance of LOA, Maha-Metro shall, in its sole discretion, be entitled to terminate the LOA.

ii. Genuine Pre-estimate (Clause 2.20.7 of the RFP Document/ Refer Corrigendum No. – II)

The Parties agree and acknowledge that the time and amounts specified in Clause 4.4 of Draft Concession Agreement and Clause 2.20.6 of the RFP Document constitute a genuine pre-estimate of the loss and damage occurring to the non-defaulting Party, on account of a delay and/ or default of the defaulting Party in duly satisfying the Conditions Precedent, and are not by way of penalty.

iii. Termination at Long Stop Date (Clause 2.20.8 of the RFP Document/ Refer Corrigendum No. – II)

- a. Without prejudice to the provisions of Clause 2.20.6 and 2.20.7 of the RFP Document, in the event the Conditions Precedent as specified hereinabove are not fulfilled by the Concessionaire for any reason whatsoever on or prior to the expiry of 180 (One Hundred and Eighty) days from the date of issuance of LoA, then unless waived by Maha-Metro, the LoA shall be terminated by mutual consent of the Parties.



- b. In the event the termination of the LoA is due to non-fulfilment of Conditions Precedent of Concessionaire within a period stated in Clause 2.20.8 sub point 'a', the Bid Security/Performance Security deposited by the Concessionaire shall be forfeited by Maharashtra Metro as liquidated damages thereof.

Thanking You,

With Regards,

Executive Director (Procurement)
Maharashtra Metro Rail Corporation Ltd.

We-hereby confirm our unconditional acceptance of this Letter of Acceptance for Contract N1PD-23/2020 received from Maharashtra Metro Rail Corporation Ltd.

Mr.

(Authorized Signatory)

For and on behalf of Successful Bidder

Documents Attached:

- i. Proforma of Performance Bank Guarantee



Performance Security

(Demand Guarantee)

Beneficiary: _____
Date: _____
PERFORMANCE GUARANTEE No.: _____
Guarantor: _____

We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's first demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of, 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

¹ The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

² Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."