

Addendum – Tender for Rate contract for supply of contactless Smartcard

Tender No. CMR/OPN/RC/Ticket Media /TEN-03/2017

S. No	Clause No	Criteria	Bidder Query	Remarks of CMRL	Addendum
1	Section VI Point c Page 19	<p>During warranty period, supplier is responsible to replace the physically ok but not readable cards. The verification shall be done at CMRL premise in presence of supplier. The card will be considered physically damaged if:</p> <ul style="list-style-type: none"> (i) Card is in bent condition. (to check the same place the card on flat surface and see that all the four corners are not touching the surface). (ii) Smartcard has visible cut mark or corner is cut. (iii) Smartcard surface is badly worn out and engraved ID is not visible. <p>In addition to replacement of defective card, a penalty will also be imposed on the supplier for each case. The penalty will be equal to 3 times the cost of the card.</p>	<p>We feel that the penalty indicated is extremely on the higher side and should be capped to the cost of the card</p>	<p>The penalty will be equal to 2 times the cost of the card.</p>	<p>In addition to replacement of defective card, a penalty will also be imposed on the supplier for each case. The penalty will be equal to 2 times the cost of the card.</p>

S. No	Clause No	Criteria	Bidder Query	Remarks of CMRL	Addendum
2	Page No. 13 Sr. No.5 Page Nos.19	<p><u>SCHEDULE OF REQUIREMENT:-</u></p> <p>a. Approximate requirement for card shall be 20 lakhs ± 30%.</p> <p><u>SCOPE OF WORK:</u></p> <p>a. The card will be contactless smart card compliant to type –A Mifare Desfire (4 Kbytes) & Type C as mentioned in detailed technical specifications (Annexure –A).</p>	<p>Kindly Confirm the volume break up from 20 Lakhs CSC for :</p> <p>1. Mifare Desfire 4KB - Volume? 2. Type-C -Volume?</p>	<p>No Change in Tender conditions</p> <p>a.The card will be contactless smart card compliant to type – A Mifare Desfire (4 Kbytes) or Type C as mentioned in detailed technical specifications (Annexure –A).</p>	<p><u>SCOPE OF WORK:</u></p> <p>a. The card will be contactless smart card compliant to type –A Mifare Desfire (4 Kbytes) or Type C as mentioned in detailed technical specifications (Annexure –A).</p>
3	Page No. 13 Sr. No.5	<p><u>SCHEDULE OF REQUIREMENT:-</u></p> <p>a. Approximate requirement for card shall be 20 lakhs ± 30%.</p> <p>b. Rate contract shall be valid for one year and same may be extended further one year on mutual agreement.</p> <p><u>Delivery Schedule:</u></p> <p>(a) 2 lakhs CSC within 30 days from the date of receipt of Purchase Order.</p> <p>(b) The balance quantity shall be ordered in phased manner / in batches by CMRL with 30 days notice period for supply.</p>	<p>(i) Whether all the 2 Million cards will be procured within one year?</p> <p>(ii) Please also advise the Minimum Quantity that will be required to be delivered per batch.</p>	<p>(i) The procurement will be 20 lakhs ± 30% within one year.</p> <p>(ii) The balance quantity shall be ordered in phased manner / in batches of minimum 2 Lakhs cards by CMRL with 30 days notice period for supply.</p>	<p><u>SCHEDULE OF REQUIREMENT:-</u></p> <p>c) The procurement will be 20 lakhs ± 30% within one year.</p> <p><u>Delivery Schedule:</u></p> <p>(b) The balance quantity shall be ordered in phased manner / in batches of minimum 2 Lakhs cards by CMRL with 30 days notice period for supply.</p>

S. No	Clause No	Criteria	Bidder Query	Remarks of CMRL	Addendum
4	Page No. 18	<p>Section V – Eligibility Criteria to qualify in the Techno Commercial bid process</p> <p>Note:- i. A performance statement as mentioned in Annexure-C, giving a list of major supplies executed in India in last 5 years of the items offered by him, giving details of the Purchaser’s name and address, order no. and the date and the quantity supplied and whether the supply was made within the delivery schedule; purchase order of past performance to be enclosed. If purchase order/ letter of award is not enclosed bid would be rejected.</p>	<p>Request to kindly revise this point as follows: (In order to provide an opportunity for Global MNC to participate kindly consider Global experience in addition to Local Experience) “A performance statement as mentioned in Annexure-C. Giving a list of major supplies executed in last 5 years of the items offered by him, giving details of the Purchaser’s name and address, order no. and the date and the quantity supplied and whether the supply was made within the delivery schedule; purchase order of past performance to be enclosed. If purchase order/ letter of award is not enclosed bid would be rejected.”</p>	<p>Global experience can be accepted and other tender conditions remain the same.</p>	<p>Note:- i. A performance statement as mentioned in Annexure-C, giving a list of major supplies executed in India / Global in last 5 years of the items offered by him, giving details of the Purchaser’s name and address, order no. and the date and the quantity supplied and whether the supply was made within the delivery schedule; purchase order of past performance to be enclosed. If purchase order/ letter of award is not enclosed bid would be rejected.</p>

S. No	Clause No	Criteria	Bidder Query	Remarks of CMRL	Addendum
5.	Section V	Bidder should have at-least five years of experience in design, manufacture and supply of contactless smart cards	The supplier should be Indian manufacturer and should be into existence for at-least 10 years.	The bidder shall be individual or JV.	<p>The bidder shall be individual or JV.</p> <p>Either Individual / Lead partner (if JV) should have the experience.</p> <p>The clause for JV/ Consortium is attached at Annexure-1</p>

Eligibility Criteria of bidder for JV / Consortium

- 1) A Bidder may be a firm that is a single entity or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a JV, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- 2) Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.
- 3) In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder
- 4) Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid.

5) Average annual Turnover eligibility –

	Requirement	Single entity	JV		
			All parties combined	Each member	One member
Financial Performance	The audited balance sheets to be submitted as per tender conditions	Must meet requirement	N/A	Must meet requirement	N/A
Average Annual Turnover	Minimum average annual turnover as per tender conditions	Must meet requirement	Must meet requirement	Must meet 30% of the requirement	Must meet 50% of the requirement

6) Legal Status of the Bidder (Who can apply)

a. The Bidder shall be a legally qualified person as per Indian Contract Act 1872.

The Bidder should be either an individual or a Company incorporated under the

Companies Act 2013 or a partnership firm registered under the partnership act 1932 or a group of entities (the ‘Consortium’) coming together to render desired services under and/or in relation to the License.

b. A Bidder may be a Private Entity, Government owned Entity, or any combination of them with all members of the consortium having a prior written arrangement viz. Joint Bidding Agreement Or an existing agreement of a Joint Venture. The said arrangement of the Members of Consortium shall not be for less than six (5) years and shall subsist during the term of the License.

(ii) CONSORTIUM:-

Bids submitted by a Consortium must comply with following requirements:

- a. The number of Consortium members shall not exceed **four**.
- b. The Consortium shall furnish a Joint Bidding Agreement **Annexure-II** in non-judicial Stamp Paper of minimum **Rs.100/-** as per the format provided in this document, which shall be legally binding on all the members.
- c. The Joint Bidding Agreement for the Consortium shall state the responsibility regarding the Techno-Commercial and financial arrangements in respect of each member in the Consortium. The Joint Bidding Agreement should be valid for a minimum period of **180 days** from the last date of submission of the Bid
- d. The members of the Consortium shall nominate one member as the lead member (the “Lead Member”) to act on behalf of the others as their representative to apply/bid for the award of License. This authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the members as per format (**Annexure-III**).
- e. The Lead Member shall have an equity share with highest of the paid up and subscribed equity of the Special Purpose Vehicle.
- f. No change in the composition of a Consortium shall be permitted after submission of bid.

- g. A company or a firm can be a member in only one Consortium, if a company or a firm participates in more than one Bid, all Bids of which it is a part would be summarily rejected.
- h. All members of the Consortium shall be jointly and severally liable, for the obligations and responsibilities entailed by the License Agreement.
 - i. In the event of death of lead partner or other partner during the tenure of the contract, the legal heirs shall be permitted to continue for the unexpired period of license, with approval of CMRL. In the event of any of the partner withdrawing from the Consortium, the contract will stand terminated.
 - ii. In case of a Consortium emerging as the Selected Bidder, the Selected Bidder must incorporate a Special Purpose Vehicle (SPV) under the Indian Companies Act 1956, within 21 days of issue of the Letter of Acceptance (LOA) by CMRL to render desired services under the License. It is clarified that CMRL will execute the License Agreement only with the SPV. The Lead Member shall have the highest equity share holding of the paid up and subscribed equity of the SPV.
 - iii. In case of a SPV formed by a Consortium as mentioned above, the Lead Member and member of Consortium who claims substantial Techno-Commercial experience or substantial network in the Bidding Documents must hold the highest of the total paid up equity share capital of the SPV for at least 3 years from the date of execution of the License Agreement. Each of the other members shall compulsorily hold at least 10% of the total paid up equity share capital of the SPV for at least 5 years from the date of execution of the License Agreement. In case the Lead Member or bidding company is holding equity through Affiliate/s such restriction shall apply to such entities.
 - iv. Any one member of the Consortium should have registered in India as per Indian Laws.

JOINT BIDDING AGREEMENT

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20.... AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956 or registered under the Partnership, Act 1932} and having its registered office at..... (hereinafter referred to as the
"First Part"

which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956 or registered under the Partnership, Act 1932} and having its registered office at..... (hereinafter referred to as the
"Second Part"

Which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956 or registered under the Partnership, Act 1932} and having its registered office at..... (hereinafter referred to as the
"Third Part"

which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {..... Limited, a company incorporated under the Companies Act, 1956 or registered under the Partnership, Act 1932} and having its registered office at..... (hereinafter referred to as the

“Fourth Part”

which expression shall, unless repugnant to the context include its successors and permitted assigns)) the above mentioned parties of the FIRST, SECOND, THIRD and FOURTH PART are collectively referred to as the “Parties” and each is individually referred to as a “Party”

WHEREAS:

- (A) CMRL has invited Bids by its Bid Document dated ----- (the “Document”) for submission of bids for the award of License for “**TENDER FOR RATE CONTRACT FOR SUPPLY OF CONTACTLESS SMART CARD**”
- (B) The Parties are interested in jointly bidding for the award of License as members of a Consortium and in accordance with the terms and conditions of the Document and other bid documents in respect of the award of License.
- (C) It is a necessary condition under the Document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. **Definitions** and Interpretations In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Document.
- 2. **Consortium:** The number of Parties will be shown here, as applicable, however subject to a maximum of four.
 - 2.1.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process forward of the License.
 - 2.1.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for the award of License, either directly or indirectly or through any of their Associates.
- 3. **Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the License, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act, 1956 for entering into a

License Agreement with CMRL and for performing all its obligations as the Licensee in terms of the License Agreement for rendering the desired services desired under the License.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a. Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the appointed date under the License Agreement when all the obligations of the SPV shall become effective;
- b. Party of the Third Part maybe the {Financial Member of the Consortium} and
- c. Party of the Fourth Part maybe the {Operation and Management Member of the Consortium}
- d. The roles can be interchanged among the parties, except the first party.

5. Joint and Several Liabilities

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the award of License and the services desired under the License in accordance with the terms of the Document and the License Agreement.

6. Shareholding in the SPV

a. The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

Third Party*:

Fourth Party*:

* if available

Strike out whichever is not applicable.

b. The Parties undertake that highest subscribed and paid up equity share capital of the SPV shall, at all times till five years or till the extended tenure of the licensees the case may be from the date of commencement of the License, be held by the Parties of the First, {Second and Third} Part whose experience and net-worth have been reckoned for the purposes of qualification for the award of the License in terms of the Document.

c. The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times during the tenure of license or till the extended tenure of the license from the date of commencement of the License.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

a. Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

b. The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in

favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- i. Require any consent or approval not already obtained;
 - ii. Violate any Applicable Law presently in effect and having applicability to it;
 - iii. Violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
 - iv. violate any clearance, permit, grant, license or other Governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the expiry/termination of the License Agreement, in case the License is awarded to the Consortium. However, in case the Consortium is not awarded the License, the Agreement will stand terminated upon return of the Earnest Money by CMRL to the Bidder, as the case may be

9. Miscellaneous

a. This Joint Bidding Agreement shall be governed by laws of India.

b. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of CMRL.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN. SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of For and on behalf of

LEAD MEMBER by: SECOND PARTNER

(Signature)

(Signature)

(Name) & (Designation)

(Name) & (Designation)

(Address)

(Address)

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, lay down by the Applicable Law and the charter documents of the executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Members

POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM

WHEREAS CHENNAI METRO RAIL LIMITED (CMRL) has invited Bids from interested parties for the “TENDER FOR RATE CONTRACT FOR SUPPLY OF CONTACTLESS SMARTCARD”, Whereas, _____ and _____ (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the award of License for “**TENDER FOR RATE CONTRACT FOR SUPPLY OF CONTACTLESS SMARTCARD**”, in accordance with the terms and conditions of the Bid Document dated _____ and other connected documents in respect of the award of License, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary Power and Authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the award of the License and the execution of the License Agreement.

NOW THEREFORE KNOW ALL MEN BY THETSE PRESENTS

We, _____ having our registered Office at _____, M/s. _____ having our registered Office at _____, M/s. _____ having our registered Office at _____ and _____ having our registered Office at _____ (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s. _____ having its registered Office _____ being one of the Members of the Consortium as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorize the Attorney to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and in the event the Consortium is awarded the License, during the terms of the License and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds, or things as are necessary or required or incidental to the submission of its bid for the award of License, including but not limited to signing and submission of all Bids, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information / documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with CMRL and / or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the award of License till the License Agreement is entered into with CMRL.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us / Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 20____

For _____
(Signature)

For _____
(Signature)

(Name and Title)

(Name and Title)

Witness:

- 1.
- 2.

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, lay down by the applicable law and the charter documents of the executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a Board or shareholders' resolution / power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.