

	<b>कोल इंडिया लिमिटेड</b> (भारत सरकार का उपक्रम) <b>Coal India Limited</b> (A Government of India Enterprise)	<b>संविदा प्रबंधन प्रकोष्ठ</b> <b>Contract Management Cell (CMC)</b> Coal Bhawan, Premises No. 04 MAR, Plot No. AF-III Action Area – 1A, New Town, Rajarhat, Kolkata: 700156
	CIN: L23109WB1973GOI028844 Website: www.coalindia.in	Phone: 033-71104198 e-mail: gmcmc.cil@coalindia.in

Ref. No: CIL/GM (CMC)/2022/ 1803

Date: 27.08.2022

The General Manager (CMC)  
 ECL/BCCL/CCL/NCL/WCL/SECL/MCL/CMPDI  
 The General Manager, NEC.

**Sub: Amendments approved in Model MDO Document for Opencast Mines**

Dear Sir(s),

A proposal on the subject mentioned above submitted by CMPDI, Ranchi with regards to the suggestions received from stakeholders in Pre-Bid Meetings for MDO Tenders for Opencast mines & at Bidder's meet held on 04.06.2022 and Study of 1 BT program of CIL by Expert Committee etc. was approved by Chairman, CIL and was subsequently placed for ratification in the 289<sup>th</sup> & 290<sup>th</sup> meetings of CFDs, CIL held on 11<sup>th</sup> Aug. 2022 & 19<sup>th</sup> Aug. 2022 respectively.

As communicated by Company Secretary, CIL vide his letters No. CIL:XI(D):04135:2022:29098 dated 22<sup>nd</sup> Aug. 2022 and CIL:XI(D):04135:2022:29241 dated 26<sup>th</sup> Aug. 2022, the amendments attached as **Annexure-A** have been approved by CFDs, CIL for Model MDO document for Opencast Mines.

This is for your information and further necessary action.

Yours faithfully,

Encl: As above

  
 27/08/2022  
 GM CMC  
 CIL

Copy to:

1. ED (Co-ordination), CIL / TS to Chairman, CIL
2. Company Secretary, CIL
3. GM UMD, CMPDI
4. TS to D(T), CIL
5. Office file



**Amendments in Model MDO document of Opencast Mines approved by CFDs, CIL in their 289<sup>th</sup> & 290<sup>th</sup> meetings of CFDs, CIL held on 11th Aug. 2022 & 19th Aug. 2022 respectively**

Sl. No	Clause	Existing provision	Provision approved by CFDs, CIL
1	<b>RFB</b>  <b>Clause 2.2.3</b>  <b>Financial Capacity</b>	<p>The Bidder shall have a minimum average Total Income during the 3 (three) financial years as chosen by the Bidder from the 4 (four) immediately preceding completed consecutive financial years as on date of invitation of Bids, of Rs. [*****]<sup>7</sup> and a minimum Net Worth of [Rs. *** crore (Rs. *****)]<sup>8</sup> at the close of the latest financial year among the 3 (three) financial years chosen by the Bidder (the “<b>Financial Capacity</b>”).</p> <p><i><sup>7</sup> This amount should be 30% (thirty per cent) of the Estimated Project Cost</i></p> <p><i><sup>8</sup> This amount should be a minimum of Rs. 200,00,00,000 or 10% (ten per cent) of the Estimated Project Cost (capped at Rs. 500,00,00,000), whichever is higher.</i></p> <p>It is hereby clarified that the 3 (three) financial years chosen by the Bidder shall be the same for each Member (where the Bidder is a Consortium) and the Associate(s), whose Financial Capacity is furnished and relied upon by the Bidder.</p> <p>It is further clarified that the Bidder (or each Member of the Consortium where the Bidder is a Consortium) and its Associate, whose Technical Capacity and/ or Financial</p>	<p>The Bidder shall have a minimum average Total Income during the 3 (three) financial years as chosen by the Bidder from the 4 (four) immediately preceding completed consecutive financial years as on date of invitation of Bids, of Rs. [*****]<sup>7</sup> and a minimum Net Worth of [Rs. *** crore (Rs. *****)]<sup>8</sup> at the close of the latest financial year among the 3 (three) financial years chosen by the Bidder (the “<b>Financial Capacity</b>”).</p> <p><i><sup>7</sup> This amount should be 30% (thirty per cent) of the Estimated Project Cost</i></p> <p><i><sup>8</sup> This amount should be a <del>minimum of Rs. 200,00,00,000 or 10% (ten per cent) of the Estimated Project Cost or Rs. 500,00,00,000, whichever is higher</del> lower.</i></p> <p>It is hereby clarified that the 3 (three) financial years chosen by the Bidder shall be the same for each Member (where the Bidder is a Consortium) and the Associate(s), whose Financial Capacity is furnished and relied upon by the Bidder.</p> <p>It is further clarified that the Bidder (or each Member of the Consortium where the Bidder is a Consortium) and its Associate, whose Technical Capacity and/ or Financial</p>

		Capacity is furnished and relied upon by the Bidder, shall have positive Net Worth.	Capacity is furnished and relied upon by the Bidder, shall have positive Net Worth.
2	<b>RFB</b>  <b>Clause 2.2.6</b>  <b>Eligibility and Qualification Criteria</b>	<b>RFB Clause 2.2.6</b> The Successful Bidder (whether a single entity or a Consortium) shall be required to promote and incorporate a company limited by shares under the provisions of the (Indian) Companies Act, 2013 as a special purpose vehicle (the “SPV”) to execute the Contract Agreement with the Authority for development and operation of the Project. The subscribed and paid up equity share capital of the SPV shall be at least 15% (fifteen per cent) of the Assessed Project Cost. The board of directors of the SPV so incorporated shall have at least 1 (one) director representing: (a) the Bidder (where the Bidder is a single entity); or (b) each Member of the Consortium (where the Bidder is a Consortium).	<b>RFB Clause 2.2.6</b> The Successful Bidder (whether a single entity or a Consortium) shall be required to promote and incorporate a company limited by shares under the provisions of the (Indian) Companies Act, 2013 as a special purpose vehicle (the “SPV”) to execute the Contract Agreement with the Authority for development and operation of the Project. The subscribed and paid up equity share capital of the SPV shall be at least <del>15% (fifteen per cent)</del> <b>10% (ten percent)</b> of the Assessed Project Cost. The board of directors of the SPV so incorporated shall have at least 1 (one) director representing: (a) the Bidder (where the Bidder is a single entity); or (b) each Member of the Consortium (where the Bidder is a Consortium).
3	<b>MCA</b>  <b>Clause 4.1.3</b>  <b>Conditions Precedent</b>	4.1.3 The Mine Operator shall satisfy the following Conditions Precedent within [240 (two hundred and forty)] days from the date of this Agreement:  (a) provide Performance Security to the Authority in accordance with Article 9; (b) execute and procure execution of the Substitution Agreement, if applicable; (c) procure all the Applicable Permits, including as specified in Part-I of Schedule-E, unconditionally such that all such Applicable Permits are in full force and effect, or if the effectiveness of such Applicable Permits is subject to fulfilment of any conditions, then the Mine Operator shall procure that all such conditions required to be fulfilled by the date specified therein have been fulfilled in full such that all such Applicable Permits are in full force and effect;	4.1.3 The Mine Operator shall satisfy the following Conditions Precedent within [ <del>240 (two hundred and forty)</del> <b>360 (three hundred and sixty)</b> ] days from the date of this Agreement:  (a) provide Performance Security to the Authority in accordance with Article 9; (b) execute and procure execution of the Substitution Agreement, if applicable; (c) procure all the Applicable Permits, including as specified in Part-I of Schedule-E, unconditionally such that all such Applicable Permits are in full force and effect, or if the effectiveness of such Applicable Permits is subject to fulfilment of any conditions, then the Mine Operator shall procure that all such conditions required to be fulfilled by the date specified therein have been fulfilled in full such that all such Applicable Permits are in full force and effect;

		<p>(d) execute the Financing Agreements and deliver to the Authority, 3 (three) true copies thereof, duly attested by a director of the Mine Operator, if applicable;</p> <p>(e) deliver to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Mine Operator, along with 3 (three) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which is acceptable to the Senior Lenders, if applicable;</p> <p>(f) deliver to the Authority, a confirmation {from the selected Bidder/ each Consortium Member} on the correctness of the representations and warranties set forth in sub-clauses (k), (1) and (m) of Clause 7.1;</p> <p>(g) deliver to the Authority, a legal opinion from its legal counsel with respect to the authority of the Mine Operator to enter into this Agreement and the enforceability of the provisions thereof;</p> <p>(h) procure issuance the environmental clearance from the Ministry of Environment, Forests and Climate Change, Government of India;</p> <p>(i) procure issuance of the forest clearance from the Ministry of Environment, Forests and Climate Change, Government of India; and</p> <p>(j) procure all the Applicable Permits relating to environmental protection and conservation of the Site.</p>	<p>(d) execute the Financing Agreements and deliver to the Authority, 3 (three) true copies thereof, duly attested by a director of the Mine Operator, if applicable;</p> <p>(e) deliver to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Mine Operator, along with 3 (three) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which is acceptable to the Senior Lenders, if applicable;</p> <p>(f) deliver to the Authority, a confirmation {from the selected Bidder/ each Consortium Member} on the correctness of the representations and warranties set forth in sub-clauses (k), (1) and (m) of Clause 7.1;</p> <p>(g) deliver to the Authority, a legal opinion from its legal counsel with respect to the authority of the Mine Operator to enter into this Agreement and the enforceability of the provisions thereof;</p> <p>(h) procure issuance the environmental clearance from the Ministry of Environment, Forests and Climate Change, Government of India;</p> <p>(i) procure issuance of the forest clearance from the Ministry of Environment, Forests and Climate Change, Government of India; and</p> <p>(j) procure all the Applicable Permits relating to environmental protection and conservation of the Site.</p>
4	<p><b>MCA</b></p> <p><b>Clause 4.3</b></p> <p><b>Damages for delay by Mine Operator</b></p>	<p>In the event that (a) the Mine Operator does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof (including any extension of time granted); and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Mine Operator shall pay to the</p>	<p>In the event that (a) the Mine Operator does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof (including any extension of time granted); and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Mine Operator shall pay to the</p>

		<p>Authority, Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each week, or part of a week, of delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to a maximum amount of 30% (thirty per cent) of the Performance Security and upon reaching such maximum amount of Damages payable by the Mine Operator hereunder, the Authority may terminate the Agreement.</p>	<p>Authority, Damages in an amount calculated at the rate of <del>0.5% (zero point five per cent)</del> <b>0.25% (zero point two five percent)</b> of the Performance Security for each week, or part of a week, of delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to a maximum amount of 30% (thirty per cent) of the Performance Security and upon reaching such maximum amount of Damages payable by the Mine Operator hereunder, the Authority may terminate the Agreement.</p>
5	<p><b>MCA</b></p> <p><b>Clause 5.12</b></p> <p><b>Obligations relating to Mining Plan</b></p>	<p>The Mine Operator shall at all times conform to the provisions of the Mining Plan as specified in Schedule-D, or any modification thereof, as may be approved in accordance with Applicable Laws.</p> <p><b>Annex – II – (Schedule-D)</b></p> <p><b>Specifications and Standards for Equipment</b></p> <p><b>1 Standards and Specifications</b>  Subject to the provisions of Paragraph 2 &amp; 3 of this Annex-II, the installation of Equipment at the Mines shall conform with the provisions of the Mining Plan which shall be deemed to be the minimum Specifications and Standards. An authenticated copy of the same is provided to the Mine Operator as part of the bidding documents. However, if the efficiency of the Equipment increases or on deployment of Equipment of higher size than that specified in the Mining Plan, the Mine Operator may reduce the population of the Equipment.</p>	<p>The Mine Operator shall at all times conform to the provisions of the Mining Plan as specified in Schedule-D, or any modification thereof, as may be approved in accordance with Applicable Laws.</p> <p><b>Annex – II – (Schedule-D)</b></p> <p><b>Specifications and Standards for Equipment</b></p> <p><b>1 Standards and Specifications</b>  Subject to the provisions of Paragraph 2 &amp; 3 of this Annex-II, the installation of Equipment at the Mines shall conform with the provisions of the Mining Plan which shall be deemed to be the minimum Specifications and Standards. An authenticated copy of the same is provided to the Mine Operator as part of the bidding documents. However, if the efficiency of the Equipment increases or on deployment of Equipment of higher size than that specified in the Mining Plan, the Mine Operator may reduce the population of the Equipment.</p>

		<p><b>2 Flexibility in Standards and Specifications<sup>31</sup></b>  Subject to provisions of Paragraph 3, the Mine Operator, with the [prior] written permission of the Authority, may deploy the smaller size equipment than that is provided in the Mining Plan, but the minimum size of excavator shall be <b><u>5 m<sup>3</sup> with matching capacity 35 Tonne dumper/ tipper</u></b> or higher combination size. However, deployment must be in accordance with Applicable Law, Standard Industry Practice, provisions for mine safety and permission of the relevant Government Instrumentality. Consequential implications due to deviation (if any) shall be the sole responsibility of the Mine Operator.</p> <p><b>3 Additional Specifications and Standards</b>  Notwithstanding anything to the contrary contained in Paragraph 1 &amp; 2 of this Annex - II, the following additional Specifications and Standards<sup>32</sup> shall apply to the installation of Equipment at the Mines, and for purposes of this Agreement, the Specifications and Standards referred to in Paragraph 1 &amp; 2 shall be deemed to be amended to the extent set forth below in this Paragraph 3.  <sup>31</sup> <i>Some flexibility may be given for other ancillary equipment/ machinery also which may be provided in the Mining Plan itself.</i>  <sup>32</sup> <i>These additions may be in compliance to conditions of DGMS or other such regulatory authorities.</i></p>	<p><b>2 Flexibility in Standards and Specifications<sup>31</sup></b>  Subject to provisions of Paragraph 3, the Mine Operator, with the [prior] written permission of the Authority, may deploy the smaller size equipment than that is provided in the Mining Plan, but the minimum size of excavator shall be <b><u>5 3 m<sup>3</sup> with matching capacity 35 Tonne dumper/ tipper</u></b> or higher combination size. However, deployment must be in accordance with Applicable Law, Standard Industry Practice, provisions for mine safety and permission of the relevant Government Instrumentality. Consequential implications due to deviation (if any) shall be the sole responsibility of the Mine Operator.</p> <p><b>3 Additional Specifications and Standards</b>  Notwithstanding anything to the contrary contained in Paragraph 1 &amp; 2 of this Annex - II, the following additional Specifications and Standards<sup>32</sup> shall apply to the installation of Equipment at the Mines, and for purposes of this Agreement, the Specifications and Standards referred to in Paragraph 1 &amp; 2 shall be deemed to be amended to the extent set forth below in this Paragraph 3.  <sup>31</sup> <i>Some flexibility may be given for other ancillary equipment/ machinery also which may be provided in the Mining Plan itself.</i>  <sup>32</sup> <i>These additions may be in compliance to conditions of DGMS or other such regulatory authorities.</i></p>
6	<b>MCA:</b>  <b>Clause 5.13</b>  <b>Obligations relating to</b>	The Mine Operator shall, in accordance with the provisions of this Agreement and Annex-VI of Schedule B, undertake the activity of obtaining physical possession of the Site. Any failure or default of the Mine Operator to comply with its aforesaid obligation shall be deemed to be a Mine Operator Default for the purposes of Clause	The Mine Operator shall, in accordance with the provisions of this Agreement and Annex-VI of Schedule B, undertake the activity of obtaining physical possession of the Site. Any failure or default of the Mine Operator to comply with its aforesaid obligation shall be deemed to be a Mine Operator Default for the purposes of Clause

	<p><b>land acquisition</b></p>	<p>37.1.1 and in addition to any other rights and remedies available to the Authority under this Agreement, the Authority shall be entitled to terminate this Agreement in accordance with Article 37.</p> <p>For acquisition of land (other than a Government land and/or forest land), the cost of such land shall be paid by the Mine Operator as a Pure Agent as per Applicable Laws. All direct and documented cost of such acquisition made by the Mine Operator shall be reimbursed by the Authority to the Mine Operator in accordance with the Clause 29.1.6 of this Agreement. In case of acquisition of land which is a Government land and/or forest land, the Authority shall directly pay to the concerned Government Instrumentality, the cost or net present value of such land, as the case may be.</p>	<p>37.1.1 and in addition to any other rights and remedies available to the Authority under this Agreement, the Authority shall be entitled to terminate this Agreement in accordance with Article 37.</p> <p><del>For acquisition of land (other than a Government land and/or forest land), the cost of such land shall be paid by the Mine Operator as a Pure Agent as per Applicable Laws. All direct and documented cost of such acquisition made by the Mine Operator shall be reimbursed by the Authority to the Mine Operator in accordance with the Clause 29.1.6 of this Agreement.</del> <b>For acquisition of land (other than a Government land and/or forest land), the cost of such land shall be paid by the Authority. All direct and documented cost of such acquisition made by the Mine Operator shall be borne by Authority and shall be paid directly by the Authority.</b> In case of acquisition of land which is a Government land and/or forest land, the Authority shall directly pay to the concerned Government Instrumentality, the cost or net present value of such land, as the case may be.</p>
7	<p><b>MCA</b></p> <p><b>Clause 12.4.2</b></p> <p><b>Scheduled Completion Date</b></p>	<p>In the event that the Mine Operator fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each week, or part of the week, beyond the allowable 60 (sixty) days until such Project Milestone is achieved; provided that if any or all Project Milestones, or the Scheduled COD, or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth</p>	<p>In the event that the Mine Operator fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of <del>0.2% (zero point two per cent)</del> <b>0.1% (zero point one percent)</b> of the amount of Performance Security for delay of each week, or part of the week, beyond the allowable 60 (sixty) days until such Project Milestone is achieved; provided that if any or all Project Milestones, or the Scheduled COD, or the Scheduled Completion Date are extended in accordance with the provisions of this</p>

		<p>in Schedule- G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.</p>	<p>Agreement, the dates set forth in Schedule- G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.</p>
8	<p><b>MCA</b></p> <p><b>Clause 43.5</b></p> <p><b>Restriction on sub-contracting or novation</b></p>	<p>43.5.1 The Mine Operator shall not subcontract or novate any of its rights or obligations under this Agreement save and except as provided in Clause 43.5.2 below.</p> <p>43.5.2 The Mine Operator shall not sub-contract and/or novate its rights or obligation under this Agreement in relation to any work (in part or full) without the prior written approval of the Authority. Notwithstanding the above, under no circumstances, sub- contracting/novation of: (a) Overburden removal shall exceed 15% (fifteen per cent) of the Scheduled Overburden Quantity; and (b) Coal excavation shall exceed 15% (fifteen per cent) of the Annual Capacity for each Accounting Year.</p> <p>The Mine Operator shall ensure that such sub-contracting is not made to an entity or person which is incorporated, established or registered in any country which shares a land border with India or whose beneficial owner is situated in such a country or who otherwise complies with all the rules and regulations prescribed by the Government of India in this regard, including but not limited to General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India.</p>	<p>43.5.1 The Mine Operator shall not subcontract or novate any of its rights or obligations under this Agreement save and except as provided in Clause 43.5.2 below.</p> <p>43.5.2 The Mine Operator shall not sub-contract and/or novate its rights or obligation under this Agreement in relation to any work (in part or full) without the prior written approval of the Authority. Notwithstanding the above, under no circumstances, sub- contracting/novation of: (a) Overburden removal shall exceed <del>15% (fifteen per cent)</del> <b>25% (twenty-five per cent)</b> of the Scheduled Overburden Quantity; and (b) Coal excavation shall exceed <del>15% (fifteen per cent)</del> <b>25% (twenty-five per cent)</b> of the Annual Capacity for each Accounting Year.</p> <p>The Mine Operator shall ensure that such sub-contracting is not made to an entity or person which is incorporated, established or registered in any country which shares a land border with India or whose beneficial owner is situated in such a country or who otherwise complies with all the rules and regulations prescribed by the Government of India in this regard, including but not limited to General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India.</p>



	<p>For avoidance of doubt, it is hereby clarified that nothing contained herein shall be construed or interpreted as restricting the right of the Mine Operator to hire any Equipment/vehicles or sub-contract/novate its rights/obligations in relation to any work with prior written approval of the Authority, in accordance with this Clause 43.5, save and except work pertaining to Overburden removal and Coal excavation.</p>	<p>For avoidance of doubt, it is hereby clarified that nothing contained herein shall be construed or interpreted as restricting the right of the Mine Operator to hire any Equipment/vehicles or sub-contract/novate its rights/obligations in relation to any work with prior written approval of the Authority, in accordance with this Clause 43.5, save and except work pertaining to Overburden removal and Coal excavation.</p>
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