



E- File. No. CL-CAB minutes/11/2020-COMMERCIAL/ 186 Dated: 30.07.2020

COMMERCIAL INSTRUCTION- 14/2020

Subject: Commercial Manual 2019- Amendment No. 04

Commercial Manual – 2019 came into force w.e.f. 01.04.2019. Subsequently, based on the comments/suggestions/proposition received from various Regions and Stations, Commercial Manual Amendments no. 01, 02 and 03 were issued vide Commercial Instruction no. 04/2019 dated 06.08.2019, Commercial Instruction no. 07/2019 dated 18.11.2019 and Commercial Instruction no. 11/2020 dated 03.02.2020.

2. In continuation to above, based upon the recommendations of CAB in its 295th meeting held on 11.07.2020, Chairman has approved the amendments no. 04 (enclosed herewith as Annexure – A, containing 08 pages), regarding various provisions of Commercial Manual - 2019.

3. This is applicable with immediate effect.

4. The Commercial Instruction is available at AAI website under the following path:

www.aai.aero/en -> Emp Login -> Circulars & Orders (Double Click) -> check Circulars only -> select Department (Commercial) -> Search.

[Radhika R.]

GM (Commercial)

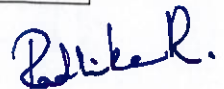
Encl: As stated

Distribution:

1. EA to Chairman, AAI, CHQ.
2. Member (HR), AAI, CHQ
3. Member (Finance), AAI, CHQ
4. Member (Ops.), AAI, CHQ
5. Member (Planning), AAI, CHQ
6. Member (ANS), AAI, CHQ
7. Chief Vigilance Officer, AAI, CHQ
8. Executive Director (Finance) – I/II, AAI, CHQ
9. Regional Executive Director, AAI, Northern Region/Western Region/Eastern Region/Southern Region/North Eastern Region
10. All APDs/APCs
11. Commercial – In – Charge, RHQ - NR/WR/ER/SR/NER/ and Chennai/Kolkata Airports
12. ED (Vigilance), AAI, CHQ
13. GM (IT), Safdarjung Airport – For-uploading the above C.I. 14 on AAI Website

Modifications/Amendments no. 4 in the Commercial Manual - 2019

S No	Page No., Para & Chapter of CM	Existing Provision	Amended provision
1	Pg. No. 1&2 of Annexure A of C.I. 11 dated 03.02.2020 Sl. No. 3 under which Para 7.3.2 of Chapter 7.3 of Commercial Manual - 2019 (Pg. 34) was amended	If the previous contract has been terminated on any ground before the 50% tenure of the contracted period , then the amount of MRLF may be considered as per the following: a) (I) If the License fee received/quoted in the tender was above 110% of the MRLF and wherein 3 or more bids were received, the MRLF shall be fixed at an amount equal to the amount quoted by the H2 bidder. (II) In case where License fee received/ quoted in the tender was above 110% of the MRLF and wherein 2 bids were received, the new MRLF shall be fixed at an amount equal to the last MRLF b) If the license fee received/quoted in the tender was less than or equal to 110% of the MRLF and wherein 2 or more bids were received, upto 15% reduction on the last license fee received/billed, may be considered to fix the new MRLF with appropriately documenting the reasons for the same. c) In case of single tender, the new MRLF shall be fixed at an amount equal to the last MRLF.	If the previous contract has been terminated on any ground on or before the 50% tenure of the contracted period , then the amount of MRLF may be considered as per the following: a) (I) If the License fee received/quoted in the tender was above 110% of the MRLF and wherein 3 or more bids were received, the MRLF shall be fixed at an amount equal to the amount quoted by the H2 bidder. (II) In case where License fee received/ quoted in the tender was above 110% of the MRLF and wherein 2 bids were received, the new MRLF shall be fixed at an amount equal to the last MRLF b) If the license fee received/quoted in the tender was less than or equal to 110% of the MRLF and wherein 2 or more bids were received, upto 15% reduction on the last license fee received/billed, may be considered to fix the new MRLF with appropriately documenting the reasons for the same. c) In case of single tender, the new MRLF shall be fixed at an amount equal to the last MRLF
2	Page no. 337 of Annexure XXXIII : Glossary - Definitions & General Explanations Definition of "Associate"	"Associate" shall mean, in relation to the Applicant, a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.	"Affiliate" means, in relation to any Bidder or Member, a person who controls, is controlled by, or is under the common control with such Bidder or Member. As used in this definition, the expression "control" means: (a) with respect to a company, corporation or limited liability partnership the ownership, directly or indirectly, of more



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		<p>Explanation: For the purposes of this clause, "significant influence" means control of at least twenty (20) per cent. of total share capital, or of business decisions under an agreement. (Company Act 2013 link: http://www.mca.gov.in/SearchableActs/Section2.htm)</p>	<p>than 50% (fifty percent) of the economic or voting rights of such person, or (b) with respect to a person which is not a company, corporation or limited liability partnership, the power to direct the management and policies of such Person.</p>
3	<p>Page 177</p> <p>Para 18 of Annexure IV A : Vehicle Parking Policy,</p> <p>and</p> <p>Page 231</p> <p>Para 10 of General Information and Guidelines of Annexure – V : Draft NIT / Tender Document</p>	<p><u>Conflict of Interest:</u></p> <p>Applicant shall not have conflict of interest (the "Conflict of Interest") that affects the Bid/selection process. Any Applicant found to have Conflict of Interest shall be disqualified. In the event of disqualification, AAI shall forfeit and appropriate the Bid Security or Performance Security, as the case maybe, as mutually agreed genuine pre-estimated compensation and damages payable to AAI for, interalia, the time, cost and effort of AAI, including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that maybe available to AAI hereunder or otherwise. Without limiting the generality of the foregoing, an Applicant shall be considered to have a Conflict of Interest that affects the Bidding/selection process, if:</p> <p>(i) Such Applicant, or any constituent thereof, and any other Applicant or any constituent thereof of having common controlling share holders or other common ownership interest by any third party, whether director indirect, or such Applicant or any constituent thereof holding paid-up capital, directly or indirectly, in other Applicant or any constituent thereof. Provided that this disqualification shall not apply (a) in case of common</p>	<p><u>Conflict of Interest:</u></p> <p>A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:</p> <p>i. the Bidder, or its Affiliate (or any constituent thereof) and any other Bidder or any Affiliate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest:</p> <p>Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Affiliate thereof (or any shareholder thereof) having a shareholding of more than 20% (twenty percent) of the aggregate issued, subscribed and paid up share capital of such Bidder, Member or Affiliate, (as the case may be) in the other Bidder, its Member or an Affiliate is less than 20% (twenty percent) of the aggregate issued, subscribed and paid up equity share capital</p>

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		<p>controlling shareholding or other common ownership interest by any third party, if such shareholding or ownership interest in one of the Applicants is less than 20% of its paid-up and subscribed capital, or (b) in case of the direct or indirect shareholding in a Applicant by the other Applicant on any constituent thereof if such shareholding is less than 20% of that other Applicant's paidup and subscribed capital; or (ii) A constituent of such Applicant is also a constituent of another Applicant; or (iii) Such Applicant receives or has received any direct or indirect subsidy from any other Applicant, or has provided any such subsidy to any other Applicant; or (iv) Such Applicant has the same legal representative for purposes of this Proposal as any other Applicant; or (v) Such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Proposal of either or each of the other Applicant.</p> <p><u>Conflict of Interest:</u></p> <p>a) The bidder should ensure that they are not falling into any conflict of interest. The bidder shall be disqualified, if there, is a conflict of interest on its part. In such an event, AAI shall forfeit and appropriate EMD, and debar the bidder from participating in future AAI tenders for a period not less than three (03) years.</p> <p>b) The bidder shall be deemed to have a conflict of interest affecting bidding process, if:</p>	<p>thereof; provided further that this disqualification shall not apply to any ownership by the Authority, a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013;</p> <p>For the purposes of this Clause, indirect shareholding held through 1 (one) or more intermediate persons shall be computed as follows:</p> <p>(A) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and</p> <p>(B) subject always to sub-clause (A) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the aggregate issued, subscribed and paid up</p>

Pallika R.

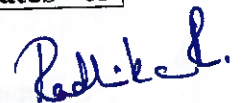
S No	Page No., Para & Chapter of CM	Existing Provision	Amended provision
		<p>i. The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder; its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder hereof having a shareholding of more than twenty(20) per cent of the paid up and subscribed share capital of Such Bidder, Member or Associate, as the case may be), in the other Bidder, its Member or Associate is less than twenty(20) per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, Insurance company, pension fund ,Airports Authority of India, Govt of India or a public financial institution referred to in the Companies Act, 1956/2013 or as amended from time to time. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows:</p> <p>(aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and</p>	<p>equity shareholding of such intermediary; or</p> <p>ii. a Bidder/ Nominated Entity has nominated the same Nominated Entity or Nominated Personnel as another Bidder; or</p> <p>iii. a constituent of such Bidder is also a constituent of another Bidder; or</p> <p>iv. such Bidder or any Affiliate thereof receives, has received, or has entered into an agreement to receive, any direct or indirect subsidy, grant, concessional loan, or subordinated debt from any other Bidder, its Member or any Affiliate thereof or has provided or has entered into an agreement to provide any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Affiliate thereof; or</p> <p>v. such Bidder has the same legal representative for purposes of a Bid as any other Bidder; or</p> <p>vi. such Bidder or any Affiliate thereof, has a relationship with another Bidder or any Affiliate thereof, directly or indirectly or through a common third party/ parties, that puts either or both of them in a position to have access to each other's information, or to influence the Bid of either or each other; or such Bidder or any Affiliate thereof, has participated as a consultant to the Authority in the preparation of any documents, design or</p>

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		<p>(bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or</p> <p>ii. A constituent of Such Bidder is also a constituent of another Bidder; or</p> <p>iii. Such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any Such subsidy, grant, concessional loan or subordinated debt to any other bidder, its Member or any Associate thereof; or</p> <p>iv. Such Bidder has the same legal representative for purposes of the Proposal as any other Bidder; or</p> <p>v. Such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other information about, or to influence the Proposal of either or each other; or</p> <p>vi. Such Bidder or any Associate thereof has participated as a</p>	<p>technical specifications of the Project.</p> <p><u>Explanation:</u> In case a Bidder is a Consortium, then the term Bidder as used in this Clause shall include each Member of such Consortium and the term Affiliate with respect to a Bidder shall include an Affiliate of each Member of that Consortium.</p> <p><u>Note:</u> Regarding conflict of interest, AAI shall place reliance upon the declaration to be submitted by the bidder/applicant in the form of acceptance of AAI's tender conditions/other documents forming part of technical bids.</p> <p>In the event, the declaration submitted by the bidder/applicant towards there being no conflict of interest, is found incorrect/false, such incorrect declaration would be treated as submission of false/incorrect document and it would amount to material misrepresentation made by the bidder/applicant. In such event, punitive actions shall be taken by AAI as per provision of tender documents/ license agreement.</p>

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		consultant to AAI in the preparation of any documents, design or technical specifications of the Concession. vii. In case of an applicant having legal relationship with any other applicant.	
4	Page no. 339 Annexure XXXIII : Glossary – Definitions & General Explanations Definition of Conflict of Interest	“Conflict of Interest” is a situation in which an Applicant is involved in multiple interests, financial or otherwise, one of which could possibly corrupt the motivation or decision making of that applicant. An applicant shall not have a conflict of interest that affects the bidding process. Any application found to have conflict of interest shall be disqualified.	Stands deleted.
5	Page no. 135 Clause C1 (iii) of 2A of Annexure IV : Selection / Eligibility Criteria	The Bidder (in case of Consortium, the Lead Member and/or its Associate(s)).....	The Bidder (in case of Consortium, the Lead Member and/or its Affiliate(s)).....
6	Page no. 178 Clause 19 (i) (d) of Annexure IV - A	The applicant or its associates or a person or entity having legal relationship with applicant.....	The applicant or its affiliates or a person or entity having legal relationship with applicant.....
7	Page no. 222 Clause 12 f of Notice Inviting E- Tender of Annexure - V	“I/ We declare that “No raid/seizure/search has been carried out and/or pending by a Regulatory Authority in respect of the license granted by AAI in any of the Airport premises either against me and/or any member of the consortium or against our/its associates or.....	“I/ We declare that “No raid/seizure/search has been carried out and/or pending by a Regulatory Authority in respect of the license granted by AAI in any of the Airport premises either against me and/or any member of the consortium or against our/its Affiliates or.....
8	Page no. 228 Clause no. 3 (h) of General Information and Guidelines of Annexure – V	Declaration to the effect that no raid/seizure/search has been carried out and/or pending by a Regulatory Authority in respect of the license granted by AAI in any of the Airport premises either against me and/or any member of the consortium or against our/its	Declaration to the effect that no raid/seizure/search has been carried out and/or pending by a Regulatory Authority in respect of the license granted by AAI in any of the Airport premises either against me and/or any member of the consortium or against our/its affiliates or



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		associates or against any of the Directors/Managers/Employees”	against any of the Directors/Managers/Employees ”
9	Page no. 231 Clause no. 9 a (vii) of General Information and Guidelines of Annexure - V	The applicant or its associates or a person or entity having legal relationship.....	The applicant or its affiliates or a person or entity having legal relationship.....
10	Page no. 257 Para 7 of Annexure G of Annexure V	I/ We declare that “No raid/seizure/search has been carried out and/or pending by a Regulatory Authority in respect of the license granted by AAI in any of the Airport premises either against me and/or any member of the consortium or against our/its associates or against any of the Directors/Managers/Employees”	I/ We declare that “No raid/seizure/search has been carried out and/or pending by a Regulatory Authority in respect of the license granted by AAI in any of the Airport premises either against me and/or any member of the consortium or against our/its affiliates or against any of the Directors/Managers/Employees ”
11	<u>Clause 7.8.13</u> <u>Page 43</u>	(i) All the tenders, unless defined otherwise, shall be floated through e-tendering platform as per the tendering guidelines issued by IT Department of AAI /Govt. of India. (ii) Wide publicity be given to attract fair competition through AAI website, press notification and circulation to other regions/airports, based on policies determined from time to time. (iii) No press notification is to be issued for a facility carrying annual MRLF/MAG value up to Rs.25,00,000/- (Rupees Twenty Five Lakh only). However, press notification for facilities carrying annual MRLF/MAG over and above Rs.25,00,000/- (Rupees Twenty Five Lakh only) shall be published in all the editions of at least one of the national dailies in Hindi and English language.	Publicity of NIT/Expression of Interest (EOI) advertisement in the newspapers for all Tenders of any amount to be discontinued and replaced with Mandatory e-publishing of Advertisement on central public procurement portal (CPPP) at www.eprocure.gov.in, uploading of tender notice on AAI website also will be done as per the norms. In exceptional cases, if press publicity is required the written permission shall be obtained from next higher authority but not below the level of Executive Director.

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12	Para (v) Clause 7.5.1 Page 37	<p>(iv) In case of Global tenders, notification/NIT to be published in atleast one Internationally renowned Trade Journals or India Trade Journal or Internationally renowned websites or in an International newspaper.</p> <p>Floating of E-Tender on e-tendering portal only unless approved by Competent Authority. Same to be uploaded on AAI website for publicity and press notification as per threshold limit.</p>	<p>Floating of E-Tender on e-tendering portal only unless approved by Competent Authority. Same to be uploaded on AAI website.</p>

Radhe K.