

Part 2 – Accessing the Bidding Documents (contd.)

In order to gain access to the Project Data Room (PDR), Bidders must fulfill the following condition in addition to payment of access fee as spelt out in the additional information.

The Prospective Bidder shall Sign a Confidentiality Undertaking in the form of Non-Disclosure Agreement attached in next page and submit to CMRL.

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on 2012

BETWEEN

1. Chennai Metro Rail Limited (the "Disclosing Party");
and
2. (the "Receiving Party"),

collectively referred to as the "Parties".

RECITALS

- A. The Receiving Party understands that the Disclosing Party has disclosed or may disclose information relating to Chennai Metro Rail Project, for the purpose of facilitating submission of [Expressions Of Interest and/or Bids for the proposed Operations and Maintenance Service Contract], which to the extent previously, presently, or subsequently disclosed to the Receiving Party, in the data room (for the Project) or otherwise, is hereinafter referred to as "Proprietary Information" of the Disclosing Party.

OPERATIVE PROVISIONS

1. In consideration of the disclosure of Proprietary Information by the Disclosing Party, the Receiving Party hereby agrees: (i) to hold the Proprietary Information in strict confidence and to take all reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials), (ii) not to disclose any such Proprietary Information or any information derived there from to any third person, and (iii) not to make any use whatsoever at any time of such Proprietary Information except for the purpose of facilitating submission of Expressions Of Interest and/or Bids for the proposed Operations and Maintenance Service Contract. The Receiving Party shall procure that its employees, agents, consortium members and sub-contractors to whom Proprietary Information is disclosed or who have access to Proprietary Information sign a nondisclosure or similar agreement or abide by any existing forms of confidentiality obligations in content substantially similar to this Agreement.
2. This Agreement imposes no obligation on Receiving Party with respect to any portion of the information received from Disclosing Party which
 - a. was known to Receiving Party prior to disclosure by Disclosing Party,
 - b. is lawfully obtained by Receiving Party from a third party under no obligation of confidentiality,
 - c. is or becomes generally known or publicly available other than by unauthorized disclosure,
 - d. is independently developed by Receiving Party or
 - e. is disclosed by Disclosing Party to a third party without a duty of confidentiality on the third party.

f. is required by law or decree, and in such case, the Receiving Party will inform the purpose and nature of the disclosure to the Disclosing Party prior to any such disclosure.

3. Immediately upon the written request by the Disclosing Party at any time, the Receiving Party will return to the Disclosing Party all Proprietary Information and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof, save that where such Proprietary Information is a form incapable of return or has been copied or transcribed into another document, it shall be destroyed or erased, as appropriate.
4. The Receiving Party understands that nothing herein (i) requires the disclosure of any Proprietary Information or (ii) requires the Disclosing Party to proceed with any transaction or relationship.
5. The Receiving Party further acknowledges and agrees that no representation or warranty, express or implied, is or will be made, and no responsibility or liability is or will be accepted by the Disclosing Party, or by any of its respective directors, officers, staff, faculty or researchers, as to, or in relation to, the accuracy of completeness of any Proprietary Information made available to the Receiving Party or its advisers; it is responsible for making its own evaluation of such Proprietary Information.
6. Any failure or delay by either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
7. If any part, term or provision of this Agreement is held to be illegal or unenforceable neither the validity, nor enforceability of the remainder of this Agreement shall be affected.
8. Neither Party shall assign or transfer all or any part of its rights under this Agreement without the consent of the other Party.
9. This Agreement may not be amended for any other reason without the prior written agreement of both Parties.
10. This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto.
11. This Agreement shall be governed by and construed in accordance with the laws of India and courts in Chennai shall have the exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.
12. The Agreement shall be valid for a period of two (2) years from signing by the Receiving Party.

[Disclosing Party]

[Receiving Party]

By:

By:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Date: _____

Date: _____