**Responses To Bidders’** **Queries In Respect Of Malir Expressway Project**

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**Volume 1 :Request for Proposal (RFP)**

**Karachi Thatta Road Project**

**Volume 1 :Request for Proposal (RFP)**

 **Road Project**

**Public Private Partnership Unit**

**Finance Department**

**Government of Sindh**

**Local Government Department**

**Government of Sindh**

**Works and Services Department**

**Government of Sindh**

**September 2019**

**Important Notice / Disclaimer**

This ‘**Response To Bidders’ Queries Document**’ (this **Response Document**) is further to the ‘Request for Proposal’ (consisting of the Volume I – Request For Proposal (the **RFP**) and Volume II - Draft Concession Agreement (the **DCA**) issued in July 2019 (the **RFP Documents**) and the various queries received from the prospective Bidders (the **Bidders’ Queries**) in respect of the bidding process relating to the engineering, procurement, construction, finance, operations and maintenance of the Malir Expressway (the **Project**).This Response Document is being circulated by the Local Government Department, Government of Sindh (the **GoS**), solely for use by the recipients in preparing and submitting their Bids for participation in the competitive bidding process in relation to the Project. Upon signing of the Concession Agreement for the Project, the Concession Agreement will be the final and binding document and any responses set out in this Response Document will not have any effect or be sued for interpretation.

*Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the RFP Documents.*

This Response Document is not an agreement; its sole purpose is to provide interested parties with information that may be useful to them in making their offers (bids/proposals) pursuant to the RFP Documents. The RFP Documents and this Response Document includes statements, which reflect various assumptions and assessments arrived at by GoS in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Response Document may not be appropriate for all persons, and it is not possible for GoS, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party, that relies on, reads or uses this Response Document.

Neither the GoS nor its employees, personnel, agents, consultants, advisors and contractors etc., make any representation (expressed or implied) as to the accuracy or completeness of the information contained herein, or in any other document made available to any person in connection with the tender process for the Project and the same shall have no liability for this Response Document or for any other written or oral communication transmitted to the recipient in the course of the recipient’s evaluation of the Project. Neither these entities nor their employees, personnel, agents, consultants, advisors and contractors etc., will be liable in any manner whatsoever to reimburse or compensate the recipient for any costs, fees, damages or expenses incurred by the recipient in evaluating or acting upon this Response Document or otherwise in connection with the Project.

The assumptions, assessments, statements and information contained in the RFP Documents, may not be complete, accurate, adequate or correct for the purposes of Bidders. GoS or any of its advisors has no liability for any statements, opinions or information provided in the RFP Documents. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the RFP Documents. The Bidders are required to undertake their independent assessment and to seek independent professional advice on any or all aspects of the RFP Documents. No decision should be based solely on the basis of the information provided by the RFP Documents and this Response Document.

GoS expressly disavow any obligation or duty (whether in contract, tort or otherwise) to any Bidder. No Bidder is entitled to rely on GoS’s involvement in the preparation of this Response Document or in the solicitation process as a basis for preparing the Bid or developing the Project.

**Responses to the Bidders Queries raised by the bidders During and Subsequent to**

**The Pre- Bid Meeting held on August 20, 2019 in respect of the Request for Proposal Issued by the Local Government Department, Government of Sindh**

**in relation to the**

**Malir Expressway Project**

*Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the RFP Documents.*

**Queries Raised & Responses**

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| **SR.****NO.** | **SECTION NUMBER** | **SECTION** | **COMMENT** | **RESPONSES** |
| 1.   |  |  | As discussed in pre-bid meeting kindly lock the type and chainage of all interchanges  | Chainages of the interchanges can be marked on the given alignment very easily as their locations have been given in Schedule “A”, Scope of the Project in DCA. However, the type of interchange is to be decided by the bidder in order to bring innovation and economy in design after consideration of River hydrology. |
| 2 |  |  | As agreed in meeting kindly provide Hydraulic Data of Malir River | Hydrology is an essential part of this Project. Therefore the bidders must carry out their own analysis of Malir River discharge. However, Project reports are available on the website for reference purpose only without any contractual obligation.  |
| 3 |  |  | As discussed in pre-bid meeting kindly provide CL of complete alignment in CAD format | Centerline coordinates are already given in the Bidding Document to help generate the CL of the complete alignment. |
| 4 |  |  | As we understand that all loops, slip, roads and ramps are of car then. Kindly confirm | No, the understanding is not correct; it will also serve heavy traffic including Multi Axle trucks and Trailers. |
| 5  |  |  | What’s the basis of assumption of toll tax growth rate 15% and 12%  | For first 10 years, 15% growth in toll rate for every alternate year, remaining 15 years, 12% growth in toll rate for every alternate year. The annual average growth rate roughly comes down to 6.5% which is in line with long term growth rate. |
| 6 |  |  | Kindly lock the chainage of all underpasses and cattle crossing | Based on reconnaissance survey bidders should mark the locations of underpasses and cattle creep by its own. However, tentative Project reports, showing locations of these structures, are available on the website for reference purpose only without any contractual obligation. |
| 7 | Annexure - N (RFP) |  | Kindly provide the methodology of calculating the Benchmark Revenue Generation  | The traffic volume used in the feasibility model is based on the moderate scenario of the traffic study already shared with the Bidders. Whereby roughly 85% of the commercial traffic volume and 60% of private traffic volume will utilize the entire corridor and the remaining 15% and 40% will use the sectional corridor respectively. Moreover, toll rates are as provided in Annexure N of the RFP.Furthermore, weighbridge revenue of 5% of the Toll Revenue is also used in calculating the Benchmark Revenue. |
| 8 |  |  | What’s the basis of traffic GR as mentioned in traffic report. The traffic GR for light Vehicle is 5% from 2019 – 2020 and increase to 10% from 2021 to 2026 and again decrease to 6.0% in period 2027 to 2036 and further decrease to 3.5% in period 2037 – 2047 which seems unrealistic if we analyse the economic indicator and GDP of Pakistan of last 10 years and prediction of future 10 years. Kindly attached the detail “Traffic Demand Model” with the report | Growth in the No. of vehicles registered and the No. of vehicles on road over the last 10 years rather than indirect analyses show average growth rates of more than 5%. The figure of 10% includes the additionally attracted traffic due to new facility taking into account the incremental population growth in the northern suburbs of Karachi including the DHA city, Education City and other new real estate development projects. As a principle, diminishing growth rates are used when forecasting over a longer time horizon. |
| 9 |  |  | As per TOR the proposed facility should be 6 lane. This seems to be on very higher side if we compare with similar nature of projects. Can client ma provide the capacity analysis of M9, M1 and M2 which are constructed on exiting traffic and having capacity of B to C. Similarly Liaquatabad Flyover which have 6 lane in main CBD area have capacity of C in peak hours and B to C in off peak over. Kindly visit the number of lanes options and it may be reduce from 6 to 4 lane to make project economically viable. Kindly clarify that client will be responsible of any resettlement plan and any delay in project completion due to resettlement plan or any court stay order and will compensate to bidder. | GoS will be responsible for any resettlement and for providing Vacant Possession of the Project Site in accordance with terms of the DCA. |
| 10 |  |  | Traffic study report is without any traffic network model like SATRUN or VISSIM which is essential in such type of Toll Traffic study as its provide details analysis of all competing route and willingness to pay survey analysis along with risk analysis. In case same study/modelling is not available kindly allocate atleast 60 days to bidders for complete traffic modelling to analyse actual traffic on proposed facility which is only source of revenue generation. | It is only for reference purpose. The bidders have to conduct their own Traffic Study. However, time extension request is under consideration by the competent forum. |
| 11 |  |  | In traffic study report its mentioned that capacity analysis were carried out on four lane and six lane scenario but analysis report of both scenario is not attached. | Please refer updated traffic study report on web site where capacity analysis annexures have been added. |
| 12 |  |  | Kindly revisit the bid submission date and it will extended atleast 80 days including 60 days for detail traffic study and modelling. | Bid submission date to be extended from Tuesday, 17 September 2019 till Thursday, 17 October 2019. |
| 13 |  |  | Kindly Clarify that Client will provide NOC from railway authority for overhead railway bridge near Malir 15 and NOC from NHA for remodeling of interchange of Kathore. | The Client will provide support to the bidder in obtaining NOC from railway authority for overhead railway bridge near Malir 15. The end point of Malir expressway has been reset and now it is terminating before the toll plaza for M9 on link road. |
| 14 |  |  | Kindly Clarify that client will be responsible for any resettlement plan and any delay in project completion due to resettlement plan of any court stay order and will compensate to bidder. | Please refer to response no. 9.  |
| 15 |  |  | As mentioned in TOR bidder will carry out pavement design in two scenariosScenario 1 = All three lanes are flexible pavementScenario 2 = Extreme left lane is rigid pavement and other two lane are flexible pavement. Kindly confirm that bidders may provide cost estimates and O&M cost in both scenario. Incase bidders required to provide estimate in both scenario then there will be two financial model. Which shall be govern scenario. | There is no mandatory condition to bring two types of pavements and their financial models separately. The bidder is free to bring the most economical and reliable Asphalt pavement design for 100 Million ESAs. Please refer to the RFP Documents.  |
| 16 |  |  | We have joint venture with pronounced International Chinese Firm regarding subject work. Looking to the complexity and importance of work it is requested to please extend the date of submission of documents for a minimum period of two months enable us to submit by complete / full filling all aspects. | Please refer to response no. 12. |
| 17 |  |  | As discussed in pre-bid meeting kindly provide CL of complete alignment in CAD format | Centerline coordinates are already given in the Bidding Document to help generate the CL of the complete alignment. |
| 18 |  |  | As agreed in meeting kindly provide FSL of Malir river. | Not agreed. FSL of Malir River cannot be provided. Hydrology Report available on the web site can be referred without any contractual obligation. |
| 19 |  |  | As discussed in pre bid meeting kindly lock the type and chainage of all interchanges. | Chainages of the interchanges can be marked on the given alignment very easily as their locations have been given in Schedule “A”, Scope of Work for the Project in DCA. However, the type of interchange is to be decided by the bidder in order to bring innovation and economy in design after consideration of River hydrology. |
| 20 |  |  | Kindly Lock the chainage of all underpasses and cattle crossing. | Based on reconnaissance survey bidders should mark the locations of underpasses and cattle creep by its own. However, Project Reports, showing tentative locations of these structures, are available on the website for reference purpose only without any contractual obligation. |
| 21 | Annexure -N (RFP) |  | Kindly provide the methodology of calculating Benchmark Revenue Generation. | Please refer to response no. 7. |
| 22 |  |  | As we understand that all loops , slip roads and ramps are of earthen . Kindly confirm. | The understanding is not correct. The type of construction of loops, slip roads & ramps shall be designed according to their locations with respect to the river hydrology. |
| 23 |  |  | What’s the basis of assumption of toll tax growth rate 15% and 12 % . | Please refer to response no. 5. |
| 24 |  |  | As mentioned in TOR bidder will carry out pavement design in two scenario.Scenario-1 = All three lanes are flexible pavementScenario -2 = Extreme Left lane is rigid pavement and other two lane are flexible pavementKindly confirm that bidders may provide cost estimates and O&M cost in both scenario. In case Bidders required to provide estimate in both scenario then there will be two financial model. Which will be govern scenario. | There is no mandatory condition to bring two types of pavements and their financial models separately. The bidder is free to bring the most economical and reliable Asphalt pavement design for 100 Million ESAs. Please refer Bidding documents in this regard. |
| 25 |  |  | In traffic Study report its mentioned that capacity analysis were carried out on four lane and six lane scenario but analysis report of both scenario is not attached. | Please refer to response no. 11 |
| 26 |  |  | What’s the basis of traffic GR as mentioned in traffic report . The traffic GR for light vehicle is 5% from 2019-2020 and increase to 10% from 2021 to 2026 and again decease to 6.0% in period 2027 to 2036 and further decrease to 3.5 % in period 2037 -2047 which seems unrealistic if we analyse the economic indicator and GDP of Pakistan of last 10 years and prediction of future 10 years. Kindly attached the detail “Traffic Demand Model” with the report. | Growth in the No. of vehicles registered and the No. of vehicles on Road over the last 10 years rather than indirect analyses show average growth rates of more than 5%. The figure of 10% includes the additionally attracted traffic due to new facility taking into account the incremental population growth in the northern suburbs of Karachi including the DHA city, Education City and other new real estate development projects. As a principle, diminishing growth rates are used when forecasting over a longer time horizon. |
| 27 |  |  | Traffic sturdy report is without any traffic network model like SATRUN or VISSIM which is essential in such type of Toll Traffic study as its provide detail analysis of all competing route and willingness to pay survey analysis and provide a complete network analysis along with risk analysis. In case same study / modeling is not available kindly allocate at least 60 days to bidders for complete traffic modelling to analyze actual traffic on proposed facility which is only source of revenue generation. | It is only for reference purpose. The bidders have to conduct their own Traffic Study. However, time extension request is under consideration by the competent forum. |
| 28 |  |  | As per TOR the proposed facility should be 6 lane . This seems to be on very higher side if we compare with similar nature of other projects . Can Client may provide the capacity analysis of M9 , M1 and M2 which are constructed on existing traffic and have capacity of B to C. Similarly Liauatbad Fly over which have 6 lane in main CBD area have Capacity of C in peak hours and B to C in off peak over. Kindly revisit the # of lane option and it may be reduce from 6 to 4 lane to make project economically viable. | Not agreed. Requirements in RFP Documents to be applicable.  |
| 29 |  |  | Kindly clarify that client will be responsible of any resettlement plan and any delay in project completion due to resettlement plan or any court stay order and will compensate to bidder. | Please refer to response no. 9. |
| 30 |  |  | Kindly Clarify that Client will provide NOC from railway authority for over head railway bridge near Malir 15 and NOC from NHA for remodeling of interchange at Kathore. | The GoS will provide support to the bidder in obtaining NOC from railway authority for overhead railway bridge near Malir 15. The end point of Malir expressway has been reset and now it is terminating before the toll plaza for M9 on link road. |
| 31 |  |  | Kindly Re Visit the bid submission date and it will extended at least 80 days including 60days for detail traffic study and modelling. | Please refer to response no. 12. |
| 32 |  |  | What will be the criteria of selecting bidder | The evaluation criteria on which basis the successful bidder is to be selected has been set out in the RFP. |
| 33 |  |  | What are other source of income for project other than toll collection | The sources of income other than toll are weighbridge revenues, commercial rights limited to service stations and restaurants, and management fees on advertising revenue. |
| 34 |  |  | Date of Bid submission may be extended for 60 days | Please refer to response no. 12. |
| 35 |  |  | The bidders are preparing bid after making heavy expenses. This may be ensured that the lowest bidder will be awarded the work and bid will not be cancelled | Not agreed.Please refer to Clause 1.1.5 of the RFP. |
| 36 |  |  | After construction of new link road between N-5 and M-9, the traffic from Port Qasim and Steel Mill will not use the Malir Expressway. Whether this impact has been accounted for in benchmark revenue generation. Who will bear such shortfall in Revenue Generation from Toll Collection. | The new link road does not impact the traffic of the Malir Expressway. No change necessary.  |
| 37 |  |  | Since the expenditure on construction of Malir Expressway Project will be higher as compare to the expected Toll Generation, it will be better to launch this project on Annuity Basis and not on Toll Collection Basis | Not agreed. |
| 38 | Annexure A  |  | Net worth of the Bidder shall be PKR 6,000,000,000/-. Should it be of the most recent Financial Year or the average of three recent years shall suffice? | The net worth of the Bidder should be based on the latest audited financial statements or individual tax return for FY’19 but not earlier than FY’18. |
| 39 | Annexure B |  | The construction capability mentioned in the annexure, is it only related to the EPC Contractor or to the bidder also? | The construction capability is applicable on EPC contractor. However, in case the Bidder is also an EPC contractor then the construction capability shall also apply. |
| 40 | Annexure B (B-1) |  | For Foreign EPC contractors the construction work accomplished outside Pakistan, shall it be considered? | Yes, it will be considered. |
| 41 | Annexure B (B-2) |  | Incase of Foreign firm, is it necessary that the Personal should be registered with Pakistan Engineering Council? If yes, should these be registered with PEC at the time of Signing of CA or at Submission date? | The foreign firms need to be registered with PEC at the time of submission of Bids. |
| 42 | 3.1.1 para (d) |  | Provide Annual audited financial statements for the past five years, but the form J-3 : Financial Situation says three years. Kindly clarify | The audited financial statements for past 3 years shall suffice. |
| 43 | Form J-3 |  | Incase of Foreign Bidders, in Form J-3: Financial Situation, it is mentioned that Historic Financial Statements must be audited by the a certified accountant. Does the statement verified by Firms home country’s certified accountant shall serve the purpose?  | In case of foreign Bidder’s historical financial statements are audited by a reputable audit firm, certified by home country’s relevant Authority/ Regulator. |
| 44 | Form J-3 |  | For Foreign Bidder, having audited Historical Financial statement in currency other than PKR, kindly specify the date of exchange rate and source. | The historical financial statements shall be translated at the rate specified in SBP Interbank rate as at the date of the financial statement. |
| 45 | Annexure D  |  | Annexure D – Bid security states expiry date to be “Bid Submission Date + [120 days]” but as per 1.6.5.11 the validity or the expiry is Bid Submission Date + 148 days. In general bid validity + 28 days is validity of Bid Security. Kindly clarify which one will suffice? | Clause 1.6.5.11 shall prevail i.e. Bid Submission + 148 days. |
| 46 | Annexure D |  | For Bid Security, can foreign bank be the Issuing Bank for the foreign bidder? | Yes, Bid Security can be issued by a foreign bank. |
| 47 |  |  | Incase Bidder is the EPC contractor, does it has to fulfill the both criterion? | Yes, understanding is correct. |
| 48 |  |  | Who shall be responsible for the relocation of Utilities? Also, who shall be responsible for to get the NOC from the relevant department? | Please refer to Clause 4.10 of the Draft Concession Agreement. The Concessionaire shall be responsible for identifying existing utilities that need to be relocated. The utilities relocation will be carried out by the GoS, however, the GoS will only assist the Concessionaire in obtaining such NOCs. |
| 49 |  |  | A Foreign Firm intended to participate as Bidder registered with PEC in the FC-A category, allowed to participate as single entity or JV is compulsory? | Please refer to the PEC byelaws, whereby a foreign firm is required to form a JV with a Pakistani firm registered with PEC.  |
| 50 |  |  | A Foreign Firm intended to participate as EPC Contractor registered with PEC as FC-A, allowed to participate as single bidder or JV with Local Firm is compulsory? | Please refer to response no. 49. |
| 51 |  |  | For EPC Contractor, Valid PEC Certificate is required. Kindly specify the validity; year 2018:2019 or year 2019:2020? | Valid PEC License for year 2019-20 shall be required. |
| 52 |  |  | Kindly list down the applicable taxes and their rate for this project? | Bidders shall be responsible for ascertaining tax obligation pertaining to the Project. |
| 53 |  |  | What is the reference route of Malir Expressway for the computation of traffic? | No single route can be referred. |
| 54 |  |  | How did the department come up with the benchmark revenue number? | Please refer to response no. 7. |
| 55 |  |  | What security is Government giving to the investor in terms of competition? | Please refer to response no. 88. |
| 56 |  |  | Where will the toll be placed and what will be the method of charging toll? |  Noted. Please see Annexure L of RFP (as revised) attached hereto as Annexure A. |
| 57 |  |  | Is there any specific type of interchange Government wants us to work on? | No, Design should be innovative, economical & fulfilling the project requirements and standards. |
| 58 |  |  | When will Government give us the complete route MAP | Please refer to Annexure M of the RFP attached hereto as Annexure A. |
| 59 | Annexure L | Referring to paragraph 1 of Annexure L – “Scope of Work” (page 96) of RFP | Alignment of expressway have been provided and very minor adjustment in alignment are being expected. The study of alignment have revealed that the alignment is severing the flood plain of river particularly at Km 0 to 1 between Km 3.5 to 6.5, between Km 8 to 11.5, between Km 12 to 14 and between km 14 to 17. Other than that the alignment between Km 20 to 22 is passing though upstream area of weir as depicted in images given in Annexure A | Please refer to response no. 60 and 61. |
| 60 |  |  | Such severance of flood plain by shifting the alignment inward into riverbed will result in adverse environment impact such as fluming of waterway at certain locations (particularly at Quaidabad), increase in flood level, high afflux, altered hydrological regime, requirements of high road embankment and protection works, requirement of resettlement etc. there is a potential threat that the proposed alignment by the client may require to change due to mitigate the environmental concerns and objections. Any such potential change may result in change in length of alignment and consequently cost implication of such changes. Since EIA study and obtaining NOC from either SEPA or ADB is the concessionaire’s responsibility, therefore it is necessary to sought out the risk and responsibility of such changes. Please clarify | Any cost variation due to change in alignment length beyond 1% (Plus/Minus) shall be adjusted on the recommendation of IE. |
| 61 |  |  | The effect of shifting of alignment further into river flood plan at location of Malir River Bridge and Quaidabad Bridge (referring to Annexure A) will result in the requirement of high embankment with robust protection work. Since the number of spans of existing bridges shall become dormant and waterway of existing bridges will reduce, therefore afflux at upstream will increase, consequently will require to raise the height of embankment of expressway and protection bunds. Further since the interchanges at these location will shift towards river side therefore components of interchange including main bridge, loops and slips afflux within reasonable limits. By virtue of such type of general arrangement of interchanges cost of structures will increase significantly. It is therefore requested to allow the bidder to readjust the alignment at the please where such cost impact are likely and where more workable arrangement meeting the environment concerns are viable | In order to evaluate the bids, bidders cannot be allowed to bring different alignment other than as given in the RFP Documents.Raising of existing protection bund is not part of this Project. Moreover, the FRL of the Project Expressway must be kept three feet below the girders soffit of the nearest existing bridge over Malir River. |
| 62 |  |  | Since the waterway at location of Quaidabad interchange is restricted therefore in order to accommodate the design flood within restricted waterway, requirements of resettlement ma arise as depicted in image as under. Please specify who shall be responsible for resettlement of any such encroachment. | GoS shall be responsible for the resettlement if deemed necessary. Please refer to response no. 10. |
| 63 |  |  | It is revealed that small tract of vacant land shall be emerge between River bund and Malir expressway embankment due to shifting of alignment within river bed as depicted in images as above. Please clarify the land falling between existing river bund and Malir expressway embankment shall be included in concessionaire assets or only right of way of road shall be included in concession assest.  | It shall neither form part of the Concession Assets nor the right of way. |
| 64 |  |  | We would request to fix the bid security certain amount instead of 1% to avoid the chances of premature disclose of bid price. Since the requirement of bid security is based on the sprit to ensure that the bidder is Ernest and to recover the cost of assessment of non-Ernest bidder. The fix amount shall equally serve the purpose and sprit of bid security. | Not agreed. The bid security is in accordance with the applicable laws. |
| 65 |  |  | Please share the hydrology report of Malir River prepared by WAPDA with bidders. It is learnt that and model study of Malir river was carried out by Punjab irrigation Research institute at Nandipur. Please share if any such report is available. | No model study report is available. However, Project reports are available on the website for reference purpose only without any contractual obligation. |
| 66 |  |  | Kindly confirm that the Revenue Sharing beyond 120% will be the MRG amount or the Benchmark Revenue, whichever is higher | Please refer to Clause 4.5.5 of the RFP. In case the actual Revenue is greater than 120% of the Benchmark Revenue in an operational year, the excess revenue i.e. actual Revenue minus 120% of the Benchmark Revenue, would be shared in the following proportion:* 75% with GOS; and
* 25% with the Concessionaire.

In case the MRG required by the Bidder, in an operational year, is higher than 120% of the Benchmark Revenue, any revenue in excess of the MRG Amount would be shared between GOS and the Concessionaire as per the aforementioned proportions.Furthermore, in case the MRG Amount required by the Bidder, in an operational year, is higher than the Benchmark Revenue but is less than 120% of the Benchmark Revenue, then the following would prevail:* 120% of the Benchmark Revenue minus MRG Amount would be fully allocated to the Concessionaire;

Actual Revenue minus 120% of the Benchmark Revenue would be shared between the GOS and the Concessionaire on 75%: 25% basis (75% to GOS). Illustrations have been provided in Annexure C attached hereto. |
| 67 |  |  | Please confirm that the MRG Guarantee will be placed at or before Financial Close and this Guarantee will be in place till Debt Repayment i.e. 8 years to 10 years after COD | In order to securitize the MRG Amounts, the GOS shall provide and maintain the First GoS Financial Instrument until Debt Repayment Date. The issuance of this First GoS Financial Instrument is a GOS Condition Precedent.   |
| 68 |  |  | What is the guarantee mechanism for the remaining 50% |  Please note that there is no specific guarantee for the remaining 50 percent. However, there are obligations of the GoS under the Draft Concession Agreement including the MRG payment obligation.  |
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| RFP Pg. 47 |

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| In the prevailing economic scenario of the country it is very difficult for a foreign equity investor to take a positive view on the project. Being a greenfield project, the traffic estimation is pivotal for the success and failure of this project and these traffic estimates usually change significantly over time, as seen in other projects. We appreciate the fact that govt. is providing MRG to safeguard the interest of the lenders but for equity there is no cover as such. Also, the bidder must make a reserve for the Major overlays. We would like to suggest that Govt. should extend the MRG tenure by at least an additional 10 years and use the base case financial model traffic estimates submitted by the bidder as benchmark revenue and provide the differential, if the traffic revenue number falls below 80%. |

 | Not agreed. |
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| DCA Pg. 332 |

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| when computing the Termination dividend in an EOD scenario, the return provided to the bidder should be as per the base case financial model submitted by the bidder rather than mere 17%, which in the prevailing interest rate scenarios seems very low.  |

 | Not agreed.Please note that in case the GoS EOD scenario arises, the GoS is paying IRR of 17% on Termination Equity for 3 accounting years. Please refer to Termination Dividend Amount calculation in Schedule V – Illustration in the DCA. |
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| RFP Pg. 38 & Pg. 48 |

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| Financial evaluation criteria mentioned at one place in the RFP States that the higher of the two will be considered for financial evaluation i.e. a) Total debt servicing as per the Financial Model; or b) MRG Amount related to debt servicing. In another instance the financial evaluation criteria are the lowest bid price i.e. GOS Equity Contribution + Present Value (PV) of MRG Amount discounted @ 14%. Clarity is needed in this regard.  |

 | For the sake of clarity, financial evaluation criteria is: GoS Equity Contribution + Present Value (PV) of MRG Amount discounted @ 14%.The bidder with the lowest amount (based on the aforementioned) would be the Preferred Bidder. The MRG Amount quoted by the Bidder shall be a maximum of:* Debt servicing;
* O&M costs; and
* Taxes.

In the event where the Bidder requires debt servicing component of the MRG Amount which is less than the debt servicing based on the Pre-Estimated Project Cost as per the Base Case Financial Model, then the debt servicing amount for the purpose of bid evaluation would be the sum of following:* Debt servicing component of the MRG Amount; and
* 50% of the difference between the debt servicing based on the Pre-Estimated Project Cost as per the Base Case Financial Model and debt servicing component of the MRG Amount.
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| RFP Pg. 47 |

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| The Limit on the variation in MRG should only be linked to the Benchmark revenue and the condition that states that variations/difference in yearly MRG amount between any two years must not be more than 10%, should be removed.  |

 | The upwards / increase variation / difference in MRG Amount from last year must not be more than 10%. However, the debt repayment period shall be a minimum of 8 years and a maximum of 10 years based on straight-line or mortgage style amortization only. |
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| RFP Pg. 47 |

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| Whenever in any year the MRG demanded by the bidder is not fully utilized, the remaining balance should be carried forward to the subsequent year.  |

 | Not agreed. |
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| DCA Pg. 332  |

 |  | The equity of the bidder should not be depreciated when computing the Termination Equity.  | Not agreed. |
| 75 | Project Study |  | Commercial Feasibility Study or at least Traffic Study/Count, upon which benchmark Revenue is determined, may be shared. | Reports are shared on the website for reference only without any contractual obligation. |
| 76 | Bid Submission Date |  | In favour of providing sufficient time for preparing comprehensive & competitive bid, the Bid Submission Date may be extended for sixty (60) days. | Please refer to response no. 12. |
| 77 | Project connection with Port |  | Is there any plan of GoS to link Malir Expressway with the Port Traffic? | Query is not relevant for the submission of the bid. |
| 78 | RFP – Cover Letter, Annexure-N and Draft Concession Agreement Schedule-Q |  | The Malir Expressway Project is an access controlled facility and a closed tolling system is to be applied, but applicable Toll Rates are given as lump sum (per car unit (PCU)) basis.Please confirm there will be open tolling system or closed (Toll Rate per kilometer basis)?In case there will be closed tolling system then per km toll rate are to be defined. | The Toll shall be charged from the users at their exit locations as per the distance travelled by the user, however it is expected that bidders shall come with segmental toll collection approach in order to keep the operational cost minimal. Please refer to Clause 13 of Annexure L of the RFP attached as Annexure A hereto. |
| 79 | RFP – Cover Letter |  | Two modifications are required:1. The exiting portion of the link road between N-5 and M-9 will need modification to meet the requirements of expressway typical cross-section.

2- Similarly, the existing trumpet interchange on M-9 will also be modified to meet the design requirements of the expressway. | The six lane typical cross section of Malir Expressway will continue till the end point.The end point of Malir expressway has been reset and now it is terminating before the toll plaza for M9 on link road. |
| 80 | Bench Mark Revenue |  | Benchmark Revenue applicable on Segment-1 Substantial Completion Date is not shared in RFP? | Benchmark Revenue is only relevant post Commercial Operations Date to measure excess revenue and revenue shortfall based on substantial completion of the Project. Revenue during Segment Substantial Completion and Commercial Operations Date shall be utilized for the purposes of construction of the Project Expressway and shall be set-off from the funding requirements as per the debt to equity ratio and shareholding ratios in accordance with the Escrow Agreement. |
| 81 | RFP – Schedule of Key Tentative Dates |  | Only 15 days are allocated for negotiations / finalization of Concession Agreement before signing.It may be reconsidered for allowing about 60 days time for the same. | The dates provided under the RFP are tentative and may be extended by the GoS at its discretion. Please refer to Clause 1.16 of the RFP.  |
| 82 | RFP – Important Notice / Disclaimer –Scope of Work |  | There is conflict between RFP and DCA with respect to Scope of Work. For example in RFP it is mentioned that total 07 interchanges are to be constructed, whereas, DCA suggests 09 interchanges. Also it is mentioned that last 2.5 kms shall be confirmed later.Please indicate firmed up Scope of Work, so that construction cost could be calculated accordingly. | As per revised scope of work there are now five interchanges.Please refer to the updated scope of work set out in Annexure L of RFP and schedule A of DCA attached hereto as Annexure A and B respectively. |
| 83 | RFP – Minimum Revenue Guarantee (MRG) |  | MRG should be extended to the occurrence of First Major Maintenance and the profits & First Major Maintenance Cost should also become part of MRG.Further O&M is also included in MRG by the Third (3rd) Operational Year. O&M Costs may be made part of the MRG from the first Operational Year.It is further requested that the proposed MRG may be made available throughout the Concession Period. | Not agreed.Please note that the bidder shall only include operations cost as part of the MRG Amounts for the first three operational years. |
| 84 | RFP – Class B Equity |  | Please confirm that the newly incorporated / formed Project SPV will be allowed to issue Class-B shares without bearing any corporate taxes, because in 2018 it was circulated that a company without 03 years profit history can’t issue such financial instruments without bearing tax liability.In case of any tax levy such tax burden should be borne by GoS? | Please refer to response no. 131. |
| 85 | RFP - Equity |  | What is the difference between Total Project Cost and Pre-estimated Project Cost? | Total Project Cost means the **actual** capital cost of the Project upon completion of the Project.Pre-Estimated Project Cost means the **estimated** cost of the Project, as specified in the Base Case Financial Model. |
| 86 | RFP – GoS Support  |  | RFP stipulations reveal that schedule of release of GoS Support is to be defined under the Equity Funding & Utilization Agreement.It is requested that Draft Equity Funding & Utilization Agreement may be shared, so that GoS Support as Class B Equity may be incorporated in the bid Financial Model accordingly. | The draft Equity Funding & Utilization Agreement would not be required at this stage and will be finalized with the successful bidder with input from the financiers of the Concessionaire. For the purpose of bidding, the Bidders are required to state upfront GOS support which shall be capped at PKR 10 bn. |
| 87 | Escalable Items |  | Human resource (labour) cost should also be the part of the escalable items – it is a substantial part of the Project Cost. | Not agreed. |
| 88 | Competing Route |  | The concept of Competing Route is missing in RFP as well as DCA. Please include this concept and ensure that there will be no competing route and in case any competing route is developed during the currency of the Concession the Concessionaire shall be compensated accordingly.It is considered as a basic requirement to safeguard the private investment. Please confirm? | Not Agreed. The Malir river is the widest and longest river which traverses through the city of Karachi. Its major length passes through the densely populated areas as well as from the largest industrial zone (Korangi) of Karachi. The proposed route of Malir Expressway is the shortest in length and provides quickest link from one point to other, therefore, we do not conceive any new route which will compete with the Project within the city limits. |
| 89 | Utilization of Segment-1 Completion Revenue |  | The bidder should be privileged to use toll revenue generating post completion of Segment-1 to meet requisite Capital Expenditures of the Project not limited to Construction Cost only? | Not agreed.  |
| 90 | Separate disclosure of Taxes in Pre-estimated Project Cost Financial Bid form |  | Please confirm that this disclosure of taxes in the bid form includes only withholding tax/input taxes which bidder will bear on procurement of Plant, Machinery, Equipment, Materials and Supplies, and Vehicles, etc or there is any specific provincial tax like GST or else which can substantially increase Project Cost and in return effect Project Viability? | Bidders shall be responsible for ascertaining tax obligation pertaining to the Project. |
| 91 | RFP - 3.6 List of Standard Bid Technical Forms |  | The List of Financial Bid Form (J-12) should be separately ascribed in the RFP, Otherwise it’s confusing?  | Financial Bid Form (J-12) is separately ascribed on page 92 of the RFP. |
| 92 | RFP – 4.3.1 c Financing Plan |  | The upfront support of the GoS in terms of Class-B Equity may not be capped as up to maximum PKR 10.0 billion. It should be fixed for all. Such a support is inevitable for the completion of the project like Malir Expressway which can cause substantial enhancement in economic activities and developments all along the Project and connected areas. | Not agreed.Please note that GOS Equity Contribution (upfront support) is one of the financial bidding criteria. For the purpose of bidding, the Bidders are required to state upfront GOS support (based on their assessment of project viability), which shall be capped at PKR 10 bn. |
| 93 | RFP – 4.5 Compensation of Private Partner |  | The wind fall revenue sharing mechanism may be revised and it should be fairly equal basis at least. Although the surplus revenue should be the privilege of the Concessionaire, who is ultimately bearing maximum Risks? | Not agreed. As GOS shall be providing upfront support through equity contribution and shall also cover downside risk till the Debt Repayment Date, post Commercial Operation Date, through MRG, GOS shall be protecting substantial downside risk of the Concessionaire and hence this windfall sharing mechanism is appropriate. |
| 94 | RFP – 4.6 2 GoS proposed guarantee to securitize the MRG Payments |  | To enhance the bankability of the Project Financial Structure and Financing Plan it is requested that such guarantee may be increased up to 100% of the principal amount of the commercial loan instead of 50%. | Not agreed. |
| 95 | RFP – 4.10 Land Acquisition |  | What is the status of land acquisition and how much time shall be required for GoS to hand over the Project Area free of encumbrances?Project Completion shall largely depend on timely handing over of site free of encumbrances.  | Land acquisition is under process and Vacant Possession shall be provided to the Concessionaire in accordance with the RFP Documents. |
| 96 | RFP – 4.14 Advertising Rights |  | Since Concession Area shall be handed over to the Concessionaire, Advertising Rights and Advertising Proceeds should be the right of the Concessionaire.It is requested that RFP may be amended accordingly. This will help improve the bankability of the Project. | Not agreed. |
| 97 | RFP –Construction Performance Security |  | For clarity purpose it is proposed that Construction Performance Security for the period commencing from the Effective Date till the Commencement Date may be called “Financial Close Security”, which gives more logical understanding as this security is to ensure Financial Closure.We understand that upon submission of Construction Performance Security commencing from the Commencement Date, the Construction Performance Security commencing from Effective Date shall be released by the GoS. Please confirm? | Not agreed. |
| 98 | DCA – Major Maintenance Cost Funding Date |  | It should be revisited keeping in mind the financial constraints of the Project. It should be maximum 3 months prior to execution of the Major Maintenance for both first and second instead of 18 months which is unnecessary burden on Cash Flows of the Project. | Not agreed.Major Maintenance require substantial outlay hence 3 months, prior to execution of the overlay, may not be sufficient time to fund the required amount. |
| 99 | DCA – O&M Performance Security |  | This concept should be relaxed and 05% of the O&M component of the related operational year should be the O&M Performance Security. Please consider. | Not agreed. |
| 100 | DCA – Termination Payment |  | The Bidder should receive targeted IRR as per Base Case Financial Model at any stage of termination, Instead of 17% Equity IRR for next three Accounting Years? | Not agreed. |
| 101 | DCA - 31.8 No Partnership |  | Plain reading of this class of DCA reveals that there will be no partnership between the Parties (i.e. GoS and Concessionaire), whereas, it is understood that the whole procurement process is based on DBFOT under Public Private Partnership (PPP) mechanism through which partnership is to be established.Please clarify? | No partnership under the Partnership Act is contemplated as part of this arrangement.  |
| 102 |  |  | Considering the complexity, time required for detailed traffic study and/or detailed design, it is suggested that bid submission date be extended by at least 2 months. | Please refer to response no. 12. |
| 103 |  |  | Additionally, in light of the above and other transactional complexities, it is requested that another Pre-bid Meeting be scheduled after receipt of GoS response to queries/clarifications raised during the first Pre-bid Meeting. | Noted.  |
| 104 |  |  | It is suggested that the time provided for concession negotiations i.e. 15 days be extended given that the activity may practically need more time in case of any agreed revisions. Considering FWO’s past experiences of negotiations, it is requested that the same be extended up to at least 45 days | Please refer to response no. 81. |
| 105 |  |  | Design and construction of road safety barriers include Vision and Sound barriers. Is it proposed throughout the facility or only where it warrants the requirement? | Barriers (Vision, Sound & Road safety) shall be placed only where it warrants. |
| 106 |  |  | The financial evaluation criteria states PV of MRG amount as part of Bid Price and then it is separately stated under the Minimum Revenue Guarantee section (clause 4.6.1 (2)) that for the purpose of financial evaluation, higher of the following would be considered: (a) Total debt servicing as per the Financial Model; or b) MRG Amount related to debt servicing. The two criteria do not match and so the latter part requires clarity. | Please refer to response no. 71. |
| 107 |  |  | * 1. The concept of wind fall sharing should be eliminated to encourage investment in a green-field project especially during loan repayment period. This concept would have been applicable if government had 100% visibility of traffic and traffic count could have resulted in extraordinary profits for investor, which is not the case here.
 | Not agreed. Since GOS shall be covering the downside risk till the Debt Repayment Date and is taking on significant risk, the windfall sharing mechanism and proportion is appropriate.   |
|  | * 1. Especially in the case where actual revenue is greater than MRG (and MRG is greater than BMR), wind fall sharing mechanism needs to be eliminated, as the concessionaire will only make 25% of total return on equity. This will significantly reduce IRR and concessionaire may not bid due to low returns.
 | Please understand that this is not an annuity-based project whereby government takes on the demand risk and guarantees payments to the Concessionaire based on debt servicing, O&M, taxes and ROE. For this Project, the Bidders are required to take a view on the traffic and henceforth demand risk on the Project. However, to ensure viability, GOS is offering to protect the downside risk of the Concessionaire by providing MRG. |
|  | * 1. Furthermore, with respect to Clause 4.5.5 of RFP, a clarification is required on the windfall sharing mechanism under different probable scenarios where;
1. Actual revenues are greater than 120% of BMR but less then MRG;
2. Actual revenues are greater than MRG and MRG is greater than 120% of BMR;
3. Actual revenues are greater than MRG and 120% of BMR is greater than MRG; and
4. Actual revenues are less than 120% of BMR but greater than MRG and 120% of BMR is greater than MRG.
 | Please refer to response no. 66 |
|  | * 1. MRG should be allowed for loan tenor and not to be linked with 10 years to provide comfort to the lender(s) so they can provide loan for longer tenor. Longer loan tenor will help GoS to ease out MRG commitment in early years and will be cheaper option in PV terms.
 | Not agreed.  |
| 108 | Clause 4.6.1 (2): |  | a) Clause states that “In order to reduce the demand risk of the Malir Expressway Project, the GoS has agreed to guarantee the MRG Amount up to a maximum of: (a) debt servicing; (b) O&M costs; and (c) taxes, in accordance with the Financial Model.” Clause further states that “The Bidders are instructed to distinctly provide, under a separate head, the required MRG Amount in the Financial Model which shall constitute the debt servicing, operations and maintenance cost and taxes as applicable.” Clarification required on whether bidder has a choice to include debt servicing, O&M and/or taxes in MRG payments or all these components have to be made part of the MRG quoted. | The bidders are required to provide the MRG Amount for each component individually, i.e. debt servicing, O&M and taxes. |
|  |  |  | b) Clause further states that “variations/difference in yearly MRG amount between any two years must not be more than 10%”. Suggested to remove this as variations may be greater than 10% if applicable taxation regime changes from one year to next or due to an increase in principal instalments between any 2 years. | Not agreed.  |
|  |  |  | c) Lastly it has been mentioned that “Bidders are required to quote operations and maintenance cost, as part of the MRG Amount, for the period starting from Construction Performance Security Expiry Date (i.e. starting from and including 3rd Operational Year) till the Debt Repayment Date.” Clarification required as this seems to be a typing error. O&M should be included in MRG starting from the 1st Operational Year. | Please refer to response no. 83. |
|  |  |  | d) It states that “The MRG Amount will be available for a maximum period of ten (10) years or till the end of Debt Repayment Date, whichever is earlier.” This should be “whichever is later”, as concessionaire should be incentivized to undertake loans with longer tenors as this will improve bankability in current climate of high interest rates. For a longer tenor loan to be provided by Financial Institutions, MRG and SBLC for principal amount will both be required as security instruments, beyond the mentioned period of 10 years. | Not agreed.  |
| 109 |  |  | As per clause 13 of RFP commuters will be charged the applicable toll for the distance travelled but in Annexure N the toll rates are apparently entry toll rates rather than per KM toll rates. If per KM toll rate is applicable than GoS is requested to provide the aforesaid rates. | Please refer to response no. 78. |
| 110 |  |  | If toll is on entry then it is not rational to charge a vehicle Rs.100 per trip, if they need to travel small distances. This will discourage short trips on the Malir Expressway, so toll should be based on per km with a minimum starting toll rate of at least Rs. 30 – 40 to incentivize the commuters for short trips. | Please refer to response no. 78. |
| 111 |  |  | The practice of increasing toll rate to 100% from segment completion to COD seems over optimistic because the commuters, especially with shorter trips, might not be willing to accept this hike in toll rates (i.e first year by 100% and after first year by 15%). | The view on percentage increase on toll rates is not accurate. Toll rate applicable from Segmental Substantial Completion Date till Commercial Operations Date are based on operations of segment with length of 18 km. Post Commercial Operations Date, the whole corridor of 38.75 km would be available and hence toll rate of PKR 100 (for private vehicle) would be charged. Furthermore, for short trips i.e. partial use, toll rate of PKR 50 (for private vehicle) would be charged. |
| 112 |  |  | The toll growth rate as explained in Annex N, kindly clarify as to what will be the first year for toll escalation? | 2nd operational year would be the first year for toll escalation. |
| 113 |  |  | Clarity required on Toll applicable for partial use and segment completion. | From Segmental Substantial Completion Date till Commercial Operations Date, toll rates presented in the 4th column of the table on page number 120 of the RFP would be applicable. For short trips / partial use post Commercial Operations Date, toll rates presented in the 3rd column of the table on page number 120 of the RFP would be applicable. |
| 114 |  |  | The bid security must be one block figure and not to be linked with project cost (1% of Project Cost) to ensure financial proposal secrecy and convenience for the bidder. Another rationale for a block figure is that it will prevent bidders who may bid with unreasonably low project cost assumptions which requires a low bid security. | Please refer to response no. 64. |
| 115 |  |  | As per RFP, O&M costs will be actualized based on the prevailing CPI rates at the time of payment of the MRG amount. In this regard, our concerns are mentioned below;* 1. The major chunk of O&M cost belongs to salaries & wages, which in past has a fixed annual increment of 10% or more. We suggest that the HR component of O&M be carved out and allowed a minimum 10% increase every year.
	2. As for the remaining portion of O&M, we suggest indexing its components to both WPI and CPI as appropriate.
	3. It is requested that details of actualization mechanism be shared including, but not limited to, calculation method, determination of base index and **funding timelines** after actualization etc.
 | 1. 20% of the O&M cost shall be indexed to a fixed rate of 10%. Rest of the Operations cost would be indexed to CPI and the Maintenance cost would be indexed to WPI.
2. Please refer to the above response in (a)
3. This will be addressed in the Escrow Agreement
 |
| 116 |  |  | In order to incentivize investors, Advertising Proceeds or any other income earned by the Concessionaire should become part of Concessionaire revenue with no sharing with GoS especially if the plan emanated from the Concessionaire. In case plan is initiated from GoS, sharing of proceeds to be done in 50:50 ratio. | Not agreed. |
| 117 |  |  | Clause 3.4.4. Interest savings that resulted from purely an effort on part of the Concessionaire should remain with the Concessionaire. | Not agreed. Furthermore, at the time of Financial Close, debt servicing component of the MRG Amounts would be adjusted for the spread as per the final term sheet. |
| 118 |  |  | Clause 4.16 of RFP states that “In the event the Actual Cost of Escalable Items (in aggregate) exceeds the Escalation Cost, the GoS shall bear and fund such portion of the Escalation Cost (as duly verified by the Independent Engineer and the Independent Auditor), provided that such Escalation Cost is duly verified by the Independent Engineer and the Independent Auditor, in accordance with the Draft Concession Agreement.” In case selected bidder has already proposed utilization of maximum support of PKR 10 BN by GoS, will GoS still fund the escalable cost? | Yes. Escalation Cost funding has no bearing on the GOS Equity Contribution as Escalation Cost would be funded outside of the equity contribution. |
| 119 |  |  | Clause 4.17.1 states that “List of major KPIs and corresponding penalties / liquidated damages amount will be shared with Bidders during the Pre-Bid Meeting and will form part of the bidding documents.” List to be provided by GoS during or after Pre-Bid Meeting. | To be provided on or after the second Pre-Bid Meeting. |
| 120 |  |  | Transaction Advisory Fee of 0.15% is not reasonable. A lump-sum fee can be disclosed to all bidders for incorporation in the financial model and it is requested that the same be payable by the Concessionaire upon financial close and not in 45 days from signing of CA. | Not agreed. |
| 121 |  |  | We understand the development will have serious implications on environment, as it is anticipated that 25,000 trees will be cut, so concessionaire must not be made responsible for obtaining environmental approvals. The responsibility of obtaining all relevant approvals must be on GoS. | Not agreed. |
| 122 |  |  | It should be allowed that Class B Equity may be injected first before drawdown of debt and equity. | The appropriate mechanism will be worked out to give comfort to the lenders regarding Class B Equity. |
| 123 |  |  | Clause 3.4.3 states “This information must be provided on a term sheet for each Financing Instrument that is used for the Initial Financing. This term sheet shall be submitted by the Concessionaire to the GoS and the Independent Auditor prior to the Financial Close, in terms of the Draft Concession Agreement.” Please elaborate on structure of term sheet (i.e. do we require a term sheet from a bank, or will general terms suffice?) | Term sheet from a bank is required. |
| 124 |  |  | As Concessionaire would be required to complete detailed design, obtain necessary environmental and regulatory approvals, procure project insurances, get encumbrance free land from GoS etc. in order to achieve financial close, it is requested that the time given for this activity be increased from 180 days to minimum 210 days. | Not Agreed. |
| 125  | 1.1 (*Definitions*) | **Additional Costs** means the additional capital expenditure and/or the additional operating cost and/or, any adverse financial impact on the Concessionaire and/or additional taxes and/or all of the above as the case may be, which the Concessionaire has or would be required to incur and which has/have arisen as a consequence of Change of Scope or Change in Law; provided, that the Additional Costs shall be paid directly to the Concessionaire by the GoS in terms of this Agreement and shall not form part of Total Project Cost | Additional costs and similar concepts such as Relief Costs and Force Majeure Costs should also explicitly include lost ‘Revenues’, as the Concession Agreement has been structured as a ‘tolling model’ and also contemplates Revenues other than the Toll Revenue. Therefore, any risk allocated to the GoS which causes a loss of ‘Revenues’ should result in compensation for the Concessionaire in terms of such lost Revenues. However, compensation should in any event be the higher of the MRG Amount or the actual Revenues loss | Not agreed.  |
| 126 | 1.1 (*Definitions*) | **Additional Development Rights** means such additional rights, property or assets that are not part of and are not anticipated to be part of the Project as on the Effective Date but are available to the GoS in accordance with Section 29.2 (Commercial Rights & Additional Facilities) and may include, without in any manner limited to, provision of Additional Facilities | All commercial rights in relation to the Project (including advertising) should be provided solely to the Concessionaire to enhance the viability of the Project. However, such rights need to be structured upfront in a manner that no procurement risk is faced by any Project stakeholder once such rights are eventually exercised | Not agreed.  |
| 127 | 1.1 (*Definitions*) | Additional Facilities means the facilities including, but not limited to, service stations, restaurants, provided or procured to be provided for the benefit of the Users, and that are in addition to (and not part of) the Concession Assets | The definition needs to be tweaked to make it more generic so as to enable the GoS and the Concessionaire to indulge in commercial activities that cannot be contemplated at this stage | Not agreed. |
| 128 | 1.1 (*Definitions*) | Approved Major Maintenance Contract(s) shall have the meaning ascribed thereto in Section 19.13(b) | The Major Maintenance Contracts, the EPC Contract and the O&M Contract should not be subject to the approval of the Independent Engineer and/or the GoS. So long as the bid of the lowest evaluated bidder is accepted and the Project awarded to the Concessionaire, the Concessionaire should have freedom in relation to its contractual arrangements with its counterparts, without micromanagement by the GoS. However, critical objective criteria regarding such contracts may be discussed and set out in the Concession Agreement | Not agreed. |
| 129 | 1.1 (*Definitions*) | Base Price means the price of the Escalable Items at the rate prevailing twenty-eight (28) days prior to the Bid Submission Date, as confirmed and notified by the Independent Engineer in accordance with the Price Escalation Agreement | Technical teams to discuss and advise whether price escalation should be linked with the bid submission date or the date of execution of the Concession Agreement | No query raised. |
| 130 |  | Change in Law means the occurrence of any of the following events on or after the Bid Submission Date: 1. the enactment of any new federal, provincial or local government law, as applicable in the Province of Sindh;
2. the repeal, modification or reenactment of any existing federal, provincial or local government law, as applicable in the Province of Sindh;
3. the imposition by a Government Authority of any additional Concessionaire Permit;
4. change in the list of Exempted Vehicles as set-out in this Agreement; provided, that any:

(i) coming into effect, on or after the Bid Submission Date, of any provision of a statute which is already gazetted in accordance with the Applicable Laws prior to the Bid Submission Date; or (ii) any new Applicable Law or any change in the existing Applicable Law under the active consideration of or in the contemplation of the GoS or the Government of Pakistan as of the Bid Submission Date, which is already gazetted in accordance with the Applicable Laws prior the Bid Submission Date,  shall not constitute a ‘Change in Law’ | The following events that are conventionally treated as Change in Law have not been included in the definition: 1. the commencement of any federal, provincial or local government law, which has not entered into effect until the Bid Submission Date;
2. a change in the interpretation or application of any Applicable Law (as applicable in the Province of Sindh) by a court of record as compared to such interpretation or application by a court of record prior to the Bid Submission Date
 |  Not agreed. |
| 131 | 1.1 (*Definitions*) | **Class A Share(s)** means share capital held by the shareholders of the Concessionaire (excluding the GoS), from time to time, in accordance with the Equity Funding & Utilization Agreement and this Agreement;  **Class B Share(s)** means share capital held by the GoS (in case the GoS Funding Amount (or any part thereof) is funded, from time to time, as equity pursuant to Equity Funding & Utilization Agreement) and this Agreement | We note that the Sponsors are to be issued Class A Shares against the Sponsor Base Equity Amount and the GoS will be entitled to Class B Shares against the GoS Base Funding Amount. In this regard, it is noteworthy that Regulations 8 and 9 of the Companies (Further Issue of Shares) Regulations, 2018 contemplate compliance with certain conditions before the Securities & Exchange Commission of Pakistan will permit a company to issue shares with differential rights under Section 58 of the Companies Act, 2017. One such pre-condition is “the company having consistent track record of distributable profits for the last three years”. That being so, how is it contemplated that the Concessionaire will be able to issue Class A Share and Class B Shares during the Construction Period?  You will appreciate that this is a critical issue not only in terms of the Companies Act, 2017 and delegated legislation but also from a tax and overall project cost perspective | Regulation 21 of the Companies(Further Issue of Shares) Regulations, 2018 provides that where the SECP is satisfied that it is not practicable to comply with any of the requirements of Regulation 3-19, it may, for reasons to be recorded, based on the application of the company along with prescribed fee, relax the same subject to such conditions as it may deem fit.Therefore, an application under Regulation 21 may be made by the Concessionaire for issues of shares with differential rights and the same shall be included as Concessionaire conditions precedent.In the event the application is refused then the parties shall agree to an alternative mechanism. |
| 132 | 1.1 (*Definitions*) | Concessionaire Permits means all such approvals, consents, authorizations, notifications, concessions, acknowledgements, Licences, permits, decisions or similar items that relate to the Project and its implementation including all such consents and authorisations issued by a Government Authority and which the Concessionaire is or its Contractors are required to obtain from any Governmental Authority and thereafter to maintain to fulfill its obligations under the GoS Agreements, including the Specified Concessionaire Permits; provided, however, that in no event shall the Concessionaire Permits include any concessions or exemptions from the Applicable Laws unless they are expressly granted pursuant to the terms of the GoS Agreements | All permits in respect of relocation of Utilities and matters related to the Project Site (including NoCs from Governmental Authorities) must be obtained/provided by the GoS |  Please refer to response no. 48. |
| 133 | 1.1 (*Definitions*) | Construction Performance Security means:  (a) for the period commencing from the Effective Date till the Commencement Date, in the form of a bank guarantee or a standby letter of credit issued by a scheduled bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS, of an amount, in Pakistani Rupee, equal to the bid security or PKR 250,000,000/- (Pakistani Rupees Two Hundred and Fifty Million), whichever is higher;  (b) for the period commencing from the Commencement Date till the Construction Performance Security Expiry Date, in the form of a bank guarantee or a standby letter of credit, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS, of an amount, in Pakistani Rupee, equal to two per cent (2%) of Pre- estimated Project Cost | The Construction Performance Security should be required to be provided as a Condition Precedent. Also, the Construction Performance Security should be released from time to time. The milestones against which the Construction Performance Security shall be released need further discussion. Finally, the GoS should reconsider the quantum of the Construction Performance Security | Not agreed. |
| 134 | 1.1 (*Definitions*) | Debt Repayment Date means the earlier of (a) the date falling on the tenth anniversary of the Substantial Completion Date; and (b) the date on which the financing availed pursuant to the Financing Term Sheet is scheduled to be fully repaid which shall in any event not be earlier than eight (08) years commencing from Scheduled Substantial Completion Date | Principally, the GoS should financially support the funding of both the Financiers and the Sponsors in the Project, given there are serious viability issues in the Project. The GoS should consider extending its Minimum Revenue Guarantee support beyond the Debt Repayment Date as well.  In addition, finance teams to discuss the appropriateness of the time-lines fixed for the debt servicing period | Not agreed. |
| 135 | 1.1 (*Definitions*) | **De-escalation Amount** has the meaning given to that term in Section 10.5.2 | The De-escalation Amount should be utilized to fund any increase in other nonEPC related elements of the project cost | Not agreed. |
| 136 | 1.1 (*Definitions*) | **Detailed Engineering Design** means the detailed engineering design for the Project Expressway prepared by the Concessionaire in accordance with Applicable Standards | Given that the design and construction risks lie with the Concessionaire, the Construction Drawings and the Detailed Engineering Design should stand deemed approved in the event the same are not approved within a pre-agreed time period | Deemed approval concept has already been included in Clause 12.5.3. |
| 137 | 1.1 (*Definitions*) | Escrow Agreement means the agreement entered into by and between, inter alios, the GoS, the Financiers, the Escrow Agent and the Concessionaire, prior to the Scheduled Commencement Date, in relation to, inter alia, the obligations of the Concessionaire to deposit in and utilize from the Escrow Account, all Revenues; | Given that the Concessionaire will, at its own risk, raise financing from the private sector to undertake the Project and be entirely responsible for the Project for a significantly long tenure, such tools of micro-management are likely to discourage private sector participation in PPP projects.  GoS’ concerns regarding transparency in relation to the Revenues have already been amply covered under the Concession Agreement. Any further controls are likely to stifle efficiency of the Concessionaire and progress of the Project. In addition, such escrow arrangements are extremely rare in road sector PPP projects and should, therefore, be done away with.  Alternative mechanisms to address genuine concerns of the GoS may be discussed | Not agreed |
| 138 | 1.1 (*Definitions*) | **Financing Due** means the aggregate of the following sums expressed in Pakistani Rupees outstanding and payable to the Financiers up to the date immediately preceding the Termination Payment Date pursuant to the Financing Documents:  1. the principal amount of the debt provided and disbursed by the Financiers under the Financing Documents for financing the Project (the Principal) in accordance with the Financing Terms Sheet and Financing Amendment Term Sheets (if any) delivered to and not objected to by GoS and the Independent Auditor in accordance with Section 27.3 (Financing Term Sheet & the Financing Amendment Term Sheets);
2. the interest or mark-up (or any other term connoting the return paid to the Financiers on debt) accruing on the Principal in accordance with the Financing Term Sheet and the Financing Amendment Term Sheets delivered to and not objected to by GoS and the Independent Auditor in accordance with Section 27.3 (Financing Term Sheet & the Financing Amendment Term Sheets);
3. only in the event of Termination due to GoS Event of Default, penal interest or charges payable under the Financing Documents to the Financiers, provided further that in case the Concessionaire continues to collect Revenues until the Transfer Date the Concessionaire shall be required to make payments to the Financiers in relation to any penal interest or charges payable to the Financiers in accordance with Financial Model
 | With respect to the definition of the term ‘Financing Due’ please note the following:  1. There should be no need to have the Financing Term Sheet approved from the GoS and/or the Independent Auditor, so long as the GoS’ financial liability is expressly limited/capped in the Concession Agreement, and acknowledged by the Financiers in the Concession Direct Agreement;  2. Under paragraph (c), ‘Political Event’ should be inserted as an event where penal interest shall be payable as part of the Termination Payment, since such risk is allocated to the GoS;  3. In case of Termination, if the Sponsors or the Concessionaire make payments on behalf of the GoS to the Financiers towards discharge of the Financing Due (or part thereof), the GoS should reimburse such amounts to the Concessionaire. | (1) Not agreed. (2) Not agreed.(3) If GoS has given its prior written approval of such payment being made to the financier, then the same may be reimbursable to the Concessionaire. |
| 139 | 1.1 (*Definitions*) | **Financing Termination Date** means the date on which no part of the Debt Due is outstanding and all amounts due and payable by the Concessionaire to the Financiers are paid in accordance with the Financing Documents, as c o n firmed in writing by the Independent Auditor | Such date should be confirmed by the Independent Auditor, based on the information/calculations provided by the Financiers, which (in the absence of manifest error), should be binding on the Parties | Not agreed. |
| 140 | 1.1 (*Definitions*) | First GoS Financial Instrument means an irrevocable and unconditional guarantee from the GoS in a form and substance acceptable to the Financiers as a stand-by letter of credit or a debit authority from the GoS authorizing the State Bank of Pakistan to debit the relevant account of the GoS with the State Bank of Pakistan on demand from the security trustee acting on behalf of the Financiers | Finance teams to comment on the bankability of this arrangement | No query raised. |
| 141 | 1.1 (*Definitions*) | **GoS Financial Instrument Issuing Bank** means a scheduled bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) | As opposed to setting in stone the rating of the GoS Financial Instrument Issuing Bank, the rating should be acceptable to the Financiers | This is minimum rating and such bank will be selected in consultation with the lenders. |
| 142 | 1.1 (*Definitions*) | **GoS Funding Amount** means an amount not exceeding PKR 10,000,000,000/- (Pakistani Rupees Ten Billion only), as requested by the Concessionaire from GoS, in its Bid, as set out in the Financial Model and to be funded through Equity Funding & Utilization Agreement | The GoS Funding Amount should not be capped. The quantum of the GoS Funding Amount should be a function of the successful bidder’s financial forecast of the Project | Not agreed. |
| 143 | 1.1 (*Definitions*) | **Lead Cost** means the cost incurred by the Concessionaire in procuring sand, for the purposes of construction of the Malir Expressway Project, from an alternate source (as approved by the Independent Engineer) other than the Designated Specific Malir Material Site | Technical teams to comment on the appropriateness of this definition | Query is unclear. |
| 144 | 1.1 (*Definitions*) | **Major Maintenance Costs Funding Date** means in respect of the First Major Maintenance Period and the Second Major Maintenance Period, the date falling eighteen (18) months prior to the First Major Maintenance Commencement Date and the Second Major Maintenance Commencement Date, respectively | In precedent transactions, the requirement to accumulate funds for each Major Maintenance has been three (3) months prior to the relevant Major Maintenance Commencement Date. The revision in the funding timelines is extremely onerous | Not agreed. Major Maintenance require substantial outlay hence 3 months, prior to execution of the overlay, may not be sufficient time to fund the required amount. |
| 145 | 1.1 (*Definitions*) | **Major Maintenance Milestone Payment** means the payment to be made by the Concessionaire upon achievement of a Major Maintenance Milestone and achievement of the corresponding Major Maintenance Milestone Date | As highlighted above, the Concessionaire should have freedom in respect of its contractual arrangements. The Concessionaire should be under a general obligation to undertake timely Major Maintenance, and failure to ensure the same should be a Concessionaire Event of Default. All controls (such as opening of the Major Maintenance Payment Account, accumulation of funds, entering into contracts for Major Maintenance, having the same approved, having payments under such contracts being certified from the Independent Engineer etc.) in respect of the Major Maintenances should, therefore, be removed | Not agreed. |
| 146 | 1.1 (*Definitions*) | **Major Maintenance Payment Account Bank** shall mean the bank mutually agreed between the Concessionaire and the GoS for the purposes of establishing the Major Maintenance Payment Account | First, there should be no requirement to open such bank account, as discussed above. Second, the financial institution with which such account is proposed to be opened should not be subject to the consent of the GoS. All such stringent controls are counter-productive, bureaucratic and run counter to the spirit of PPP transactions | Not agreed. |
| 147 | 1.1 (*Definitions*) | **Minimum Revenue Guarantee Amounts** means the amount, that the GoS guarantees to provide to the Concessionaire from Substantial Completion Date until the Debt Repayment Date up to a maximum of: (a) Financing Due; (b) O&M Cost; and (c) taxes provided by the Concessionaire in the Financial Model, provided, however, the Financing Due will be actualised based on the prevailing KIBOR rates and O&M Cost will be actualized based on the prevailing CPI rates for each MRG Payment Date in accordance with the mechanism set out in the Escrow Agreement; **MRG Funding Account** means the account established by the GoS for the purposes of funding the Minimum Revenue Guarantee Amounts on the MRG Funding Date in accordance with the Escrow Agreement; **MRG Funding Date** means, for the purposes of the first year, the Minimum Revenue Guarantee Amount shall be funded into the MRG Funding Account six (6) months prior to the Substantial Completion Date, as further detailed in the Escrow Agreement;**MRG Payment Date** means the relevant date(s) on which the GoS is required to make payment of the Minimum Revenue Guarantee Amounts into the Escrow Account as outlined in the Financial Model and pursuant to the terms of the Escrow Agreement | The proposition that the Minimum Revenue Guarantee Amounts will only secure (a) Financing Due; (b) O&M Cost; and (c) taxes provided by the Concessionaire in the Financial Model, is simply not workable. Why would a Sponsor invest in the Project if it neither has any wriggle room to build a reasonable cushion in its project cost to cater for Project risks nor any security or assurance for making a return on its equity? In addition, how are Major Maintenances proposed to be undertaken if the funding amounts therefor are not being secured through the Minimum Revenue Guarantee Amounts? Also, is actualizing O&M Costs by indexing the same to CPI appropriate? Is CPI a representative inflationary index for the construction sector?  The Project is simply not bankable with the present MRG structure | Please note that Malir Expressway Project is primarily a traffic risk driven project. However, considering it’s a greenfield project, the MRG is being provided so that the Concessionaire has comfort that its cash expenditures will be met regardless.Please refer to Clause 19.15 of the Draft Concession Agreement.For CPI actualization, please refer to our response no. 115. |
| 148 |  | **O&M Performance Security** means the performance security, in the form of a bank guarantee or a standby letter of credit, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS, being in an amount equal to fifteen percent (15%) of the O&M Costs for the Operational Year or an amount equal to PKR 50,000,000/- (Pakistani Rupees Fifty Million only) escalated at 7.5% per annum whichever is higher, to which it pertains, furnished from time to time by the Concessionaire to the GoS in accordance with Section 11.3 (O&M Performance Security), in case of a bank guarantee, the same shall be in form and substance as attached hereto as **SCHEDULE M** (Form of O&M Performance Security) | Technical teams to comments on the quantum of the O&M Performance Security. It is significantly higher than precedent transactions  | Not agreed. |
| 149 | 1.1 (*Definitions*) | **Permitted Events** means: 1. Force Majeure Events;

 1. GoS Events of Default;

 1. Emergency Decommissioning, to the extent the same does not result from reasons attributable to the Concessionaire;
2. Material Adverse Impediment, to the extent the same does not result from reasons attributable to the Concessionaire;

 1. a Change in Law causing a delay in the performance of the Concessionaire’s obligations under this Agreement;
2. (f) the occurrence of the circumstances set out in Section 4.9 (Geological and Archeological Finds) causing a delay in the performance of the Concessionaire’s obligations under this Agreement; and
3. the occurrence of the GoS Overriding Power Event, to the extent the same does not result from reasons attributable to the Concessionaire
 | The list of Permitted Events need to be discussed in light of the overall transaction structure. For instance, delayed delivery of the Project Site, delayed relocation of utilities etc. should be Permitted Events | No change required. The RFP Documents already contemplate a compensation mechanism for all major GoS condition precedents. |
| 150 | 1.1 (*Definitions*) | **Project Expressway** means almost approximately 39.90 km long road, namely Malir Expressway as more particularly described and indicated in the **SCHEDULE F** (Project Site) including bridges, culverts and other appurtenances thereto, which shall form part of the Concession Assets and shall be developed in accordance with the Applicable Standards | The length of the Project Expressway needs to be set in stone. Given that the Base Case Financial Model of the Concessionaire will be locked and the funding arrangements will be undertaken on the basis of the assumptions therein, the length of the Project Expressway needs to be defined with certainty prior to bid submission  | Please refer to Schedule-A (first page para 2) of the DCA. The centerline coordinates of the expressway have been provided in Table-1 of Schedule-A of DCA. |
| 151 | 1.1 (*Definitions*) | **Project Expressway Segment** means the area starting from the Creek Avenue and ending on Quaidabad | The commercial/technical teams are requested to review the matters relating to the Project Expressway Segment including its scheduled time for completion. | No query raised. |
| 152 | 1.1 (*Definitions*) | **Revenue** means (as applicable) the amount of money collected by the Concessionaire as: (i) Toll; (ii) fee from the Users of any weigh bridges; and (iii) Advertising Proceeds and any other revenue generated from any other advertising and/or commercial rights (including any Additional Development Rights) granted to the Concessionaire in accordance with this Agreement | This definition should include traffic police fines as well. Mechanism to enforce traffic rules also needs discussion | Not agreed. |
| 153 | 1.1 (*Definitions*) | Scheduled Segment Substantial Completion Date means the date falling eighteen (18) months after the Commencement Date, as such date as may be extended from time to time in accordance with the terms of this Agreement solely pursuant to a Relief Order | Commercial/technical teams to comment on the timing  | No query raised. |
| 154 | 1.1 (*Definitions*) | **Scheduled Substantial Completion Date** means the date falling thirty (30) months after the Commencement Date, as such date as may be extended from time to time in accordance with the terms of this Agreement solely pursuant to a Relief Order | Commercial/technical teams to comment on the timing | No query raised. |
| 155 | 1.1 (*Definitions*) | **Specific Malir Construction Material** means the material available for excavation on the Designated Specific Malir Material Site | If by the ScheduledCommencement Date, the Specific Malir Construction Material Utilization Decision is not obtained, the Concessionaire should have freedom to procure sand from any quarry site without this issue being subsequentlyrevisited | Since the Lead Cost incurred by the Concessionaire in procuring sand shall be funded by the GoS the alternate source/site must be a designated site, as approved by the Independent Engineer.  |
| 156 | 1.1 (*Definitions*) | **Termination Dividend Amount** means the aggregate return on Equity for Shares for each of the three (3) Accounting Years of the Concessionaire falling immediately after the Termination Date, the same being an amount equal to the aggregate of Termination Equity IRR applied to the Equity for each of the three (3) Accounting Years falling after the Termination Date; provided however, that in case the time period between the Termination Date and Final Expiry Date is less than three (3) Accounting Years, the Termination Dividend Amount shall be the aggregate of Termination Equity IRR applied to the Equity for each of the Accounting Years falling after the Termination Date | In the interest of proportionality and fairness and in light of the no-equity compensation model in case of a Concessionaire Event of Default, if the Concession Agreement is Terminated due to a GoS Event of Default or a Political Event, the Concessionaire should be paid its target Equity IRR as set out in the Base Case Financial Model, for the remaining Concession Period. | Not agreed. |
| 157 | 1.1 (*Definitions*) | **Termination Notice** means a notice to be issued in writing, following the expiry of the relevant Cure Period, by a Party notifying the other Party of the Termination in accordance with the applicable provisions of this Agreement | Deemed issuance of the Preliminary Notice and the Termination Notice requires discussion. This issue is important from a bankability perspective and has been a bone of contention with financiers in various precedent transactions | This may be dealt with in the Concession Direct Agreement. |
| 158 |  | **Termination Payment Date** means the date falling ninety (90) days following the Termination Date | The Termination Payment Date should not be longer than thirty (30) days following the Termination Date, as the date of discharge of the Financing Due to the Financiers cannot be inordinate from the date of occurrence of an Event of Default |  Not agreed. |
| 159 | 1.1 (*Definitions*) | **Toll Commencement End Date** means the date on which the Concessionaire’s right to collect Toll in terms of this Agreement shall stand cancelled and shall cease to exist, such date being the earlier of:  (a) Final Expiry Date; or  (b) in case the Concession is Terminated prior to the Final Expiry Date (other than due to a Concessionaire Event of Default), such date shall be the Transfer Date; or  (c) in case the Concession is Terminated prior to the Final Expiry Date due to a Concessionaire Event of Default, such date as set out in Section 23.1.4 | In case of Termination, the Toll Commencement End Date should only be achieved subject to payment of the Termination Payment, as the Toll Revenue will be the Financiers primary security for payment/repayment of their financing facility. To be discussed | Please revisit the definition of Transfer Date in the DCA. |
| 160 | 1.1 (*Definitions*) | **Vacant Possession** means delivery to the Concessionaire by the GoS of possession of the Concession Assets Project Site in accordance with this Agreement, in accordance with Applicable Laws, and in accordance with the Project Site License Agreement free from all Encumbrances, encroachments, existing trees, existing structures and utilities etc.; and the grant of all Easementary Rights and all other rights appurtenant thereto, so that the Concessionaire enjoys complete uninterrupted and quiet possession and control of the Concession Assets Project Site throughout the Concession Period | Such Vacant Possession should include relocation of obstructing Public Utilities |  Please refer to response no. 48. |
| 161 |  | **DELAY IN ACHIEVEMENT OF CONDITIONS PRECEDENT AND COMMENCEMENT DATE** | If there is any delay in the fulfillment of the GoS Conditions Precedent due to which the Concessionaire suffers Additional Cost or requires an extension of time, the Concessionaire shall be provided relief as certified in accordance with Article 15 (Relief Extensions and Relief Events) | Delay by GoS in providing Vacant Possession of the Project Site is listed as Relief Event under Clause 15.2.1(h) of the DCA. For consequences of delay in fulfillment of other GoS Condition Precedents, please refer to Clause 3 of the DCA.  |
| 162 | 3.1.4(b) | Subject to Section 12.5, the GoS has handed over Vacant Possession of the Concession Assets Project Site to the Concessionaire in accordance with Article 4 (Project Site) and the Project Site License Agreement | The Vacant Possession of the Concession Assets Project Site should be delivered to the Concessionaire prior to the Scheduled Commencement Date in its entirety and not on a piece-meal basis | In accordance with the DCA, the GoS shall provide Vacant Possession to the Concessionaire prior to the Commencement Date as a condition precedent. |
| 163 | 3.2.1(a) | Ninety (90) days prior to the Scheduled Substantial Completion Date, the Concessionaire shall provide the GoS (with copies to the Independent Engineer and the Independent Auditor) with evidence of appointment of the O&M Contractor | Given that Toll collection will commence from the Segment Substantial Completion Date, the O&M Contractor will required to be engaged before such date |  Noted. |
| 164 | 3.2.2(b)  | The GoS shall nominate two (2) non-voting directors on the board of directors of the Concessionaire | It is recommended that the term ‘board observers’ be used as opposed to ‘non-voting directors’ | Noted. |
| 165 | 3.5.2(b) | Of occurrence of a GoS Event of Default prior to Commencement Date, the Concessionaire shall have the right (to be exercised in its sole discretion) to Terminate this Agreement by issuance of a written Termination Notice to the GoS. In such case, the GoS shall (within fifteen (15) days of its receipt of the Termination Notice) return the Construction Performance Security, as applicable, to the Concessionaire without any encashment, demands or claims, provided further in case the Concessionaire has incurred any cost for obtaining EIA and/or undertaking detailed engineering design and such works have been approved by the Independent Engineer, the GoS shall make payment for the actual cost incurred which under no circumstances shall exceed the amount of the Construction Performance Security. Except as may be contemplated in this Agreement and the Equity Funding & Utilization Agreement, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Agreement | In the event of Termination due to a GoS Event of Default, a Political Event or a Change in Law, the Concessionaire should be paid the Termination Equity and the Termination Dividend Amount | Please see Schedule T of the DCA. |
| 166 | 4.10.1 | Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Project Site are enabled by the Concessionaire to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the GoS shall, upon written request from the Concessionaire (as certified by the Independent Engineer), initiate and undertake, at the GoS’s cost, legal proceedings for acquisition of any right of way necessary for such diversion. The Concessionaire shall be responsible for identifying the existing utilities and roads through a detailed design submitted by the Concessionaire to the Independent Engineer and during the activity of relocation of Existing Utilities their supervision in relation to the agreed alignment (for excavation, laying, backfilling, erection of utility, poles and etc.) by seeking assistance from the design consultant with respect to the survey points without damaging the existing utilities and roads. In the event of any breach by the Concessionaire of its obligations under this Section 4.10.1, the Concessionaire shall be responsible for rectification of the same at its own cost, risk and expense | The GoS should relocate the Public Utilities to an appropriate location outside the Project Site as a Condition Precedent |  Please refer to response no. 48. |
| 167 | 4.14.1 | The GoS shall indemnify and shall hold the Concessionaire harmless from any costs, claims expenses or charges incurred (in respect of the time period falling prior to delivery o f Vacant Possession of Project Site to the Concessionaire) in relocating, rehabilitating or resettling persons in connection with making available the Project Site to the Concessionaire for implementation of the Project and for delivery of Vacant Possession of the Project Site to the Concessionaire | The underscored language should be deleted or perhaps amended to clarify that the GoS’ indemnification obligations should extend to any liabilities that persist despite handing over of the Vacant Possession of the Project Site to the Concessionaire |  No change. Indemnity is already provided in Clause 4.14.1 in respect of any matters that arose prior to handing over of Vacant Possession. |
| 168 | 5.1.4 | Failure by the Concessionaire to execute the Independent Engineer Contract by the Independent Engineer Appointment Date shall constitute a Material Breach of this Agreement | Execution of the Independent Engineer Agreement and the Independent Auditor Agreement is not only the responsibility of the Concessionaire but also the GoS. Reciprocity is missing from the proposed Material Breach provision. This comment also applies to Section 6.1.4 in relation to the Independent Auditor | Signing of the Independent Engineer/Auditor Agreement by the GoS is already included as a GoS Condition Precedent under Clause 3.1.4(c) & (d) of the Draft Concession Agreement. |
| 169 | 5.6.1 | The Concessionaire shall establish and maintain the Independent Engineer Payment Account from the Commencement Date and until the Trigger Date. Subject to the rights of the Financiers in terms of the Financing Term Sheet , the GoS may create a lien over the funds standing to the credit of the Independent Engineer Payment Account | The GoS should not have the right to create a lien over the Independent Engineer Payment Account. This comment is also reiterated for the Independent Auditor Payment Account.  In addition, reference to the Financing Term Sheet is not appropriate. The Financing Term Sheet is not a binding contract and the Financiers do not have any ‘rights’ thereunder. This should be replaced with Financing Documents. This comment is reiterated for the entire Concession Agreement | Not agreed. |
| 170 | 7.1.1(l) | the Concessionaire has the ability to achieve Financial Close | The ability of the Concessionaire to achieve Financial Close will depend on the bankability of the Concession Agreement.   | No query raised. |
| 171 | 7.1.1(q)  | The Concessionaire has furnished the Construction Performance Security to the GoS prior to the Effective Date | The Concessionaire’s obligation to provide the Construction Performance Security should trigger after the Effective Date and should be a Concessionaire Condition Precedent. The provision of the Construction Performance Security by the Concessionaire should be contemporaneous with the critical GoS Condition Precedent of providing the First GoS Financial Instrument and the delivery of the Concession Assets Project Site to the Concessionaire | Not agreed. |
| 172 | 10.3 | **CHANGE IN COMPLETE CONTROL, CHANGE IN CONTROL AND CHANGE IN SHAREHOLDING** | Various changes made in Section 10.3 (in comparison to the previous bidding process for the Project) require deliberation | No query has been raised. |
| 173 | 11.3.4 | The O&M Performance Security:  (a) shall be issued and maintained without any recourse on the Concessionaire, its assets or properties;  (b) shall not be secured through any Concession Assets and no Encumbrance of any nature shall be created on the assets and properties of the Concessionaire in respect of the same.  All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the O&M Performance Security are solely on account of the Sponsors | The Concessionaire should be afforded the flexibility to have the O&M Performance Security provided through the O&M Contractor | Not agreed. |
| 174 | 12.3 (Review and Approval of Construction Drawings) |  | Discussion is required as to why prior approval is necessary for the Construction Drawings in view of existing Section 12.5 which pertains to approval of Detailed Engineering Design | Construction drawings form a part of the detailed design and these provisions are for the convenience of the Concessionaire. |
| 175 | 12.5 (Approval of Detailed Engineering Design) |  | A provision needs to be added which enables (a) the Concessionaire to submit the Detailed Engineering Design in batches, and (b) the Independent Engineer to approve each batch within a specified period of time, failing which the same shall be deemed approved | Please refer to Clause 12.5.3 of the Draft Concession Agreement. |
| 176 | 12.5.1 | Notwithstanding anything to the contrary, the Concessionaire shall within one hundred and twenty (120) days of the Effective Date, procure issuance of the Approved Detailed Engineering Design, which shall set out, in addition to any other matters determined by the Independent Engineer, the exact location of the Project Site, the relocation of existing utilities etc. and all other matters in relation to any relocations/impediments in connection with the Project Site | Technical teams to confirm if the one hundred and twenty (120) day period is realistic and acceptable | No query raised. |
| 177 | 13.8.8 | In the event, the Concessionaire violates the Excavation Plan by excavating Specific Malir Construction Material more than the approved quantity from the approved sites or excavates any quantity of Specific Malir Construction Material from other than the approved sites or is not in compliance with the Specific Malir Construction Material Utilization Conditions, the Concessionaire shall be liable to the following penalties:  (a) On occurrence of such event for the first time, an amount of PKR 50,000,000/- (Pakistani Rupees Fifty Million only) and cancellation of the respective approved site or the most recent approved site;  (b) On occurrence of such event for the second time, an amount of PKR 100,000,000/- (Pakistani Rupees One Hundred Million only) and cancellation of the respective approved site or the most recent approved site;  (c) On occurrence of such event for the third time, a Concessionaire Event of Default | The proposed penalties are unreasonably high | Not agreed. |
| 178 | 13.8.10 | In the event, the Specified Malir Construction Material Utilization Decision is procured and effective, after the Commencement Date (the **Decision Date**), then the Concessionaire shall be entitled to the Lead Cost (as determined by the Independent Engineer) for the period commencing from the Commencement Date and until the the Decision Date | Technical and financial teams to comment on the practicability of this provision | No query raised. |
| 179 | 14.4.1 | The Completion Tests shall be conducted in accordance with the provisions of Section 14.1 (Completion Tests) and **SCHEDULE G** (List of Tests & Completion Tests). | Some difference should be set out between the treatment of the Substantially Completed Project Expressway Segment and the remainder Project Expressway. Once the Project Expressway Segment has been tested and Substantially Completed, the entire Project Expressway should not necessitate testing for the declaration of Substantial Completion of the Project Expressway | Noted, testing requirements will be updated accordingly. |
| 180 | 14.4.2 | The Independent Engineer shall (in consultation with the GoS), at the request of the Concessionaire, issue a Substantial Completion Certificate if the Completion Tests applicable to the Substantial Completion are successful though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the Project Construction Completion Check List); provided, that the Independent Engineer shall not withhold the Substantial Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the GoS. The Independent Engineer shall set out the date in the Substantial Completion Certificate on which the Completion Tests are successfully passed (the Substantial Completion Date) and Substantial Completion is achieved | Highlighted language to be deleted. The GoS should have no role in issuance of the Substantial Completion Certificate, the Final Project Construction Completion Certificate and all other similar certificates. All such certificates should be issued by the Independent Engineer against predetermined objective criteria, without any interference from either Party. |  Not Agreed. |
| 181 | 14.5.1 | Notwithstanding that the Substantial Completion Certificate or the Segment Substantial Completion Certificate (as applicable) shall be signed by the Independent Engineer (in consultation with the GoS) , the Project Construction Completion Check List shall be jointly signed by the Independent Engineer and the Concessionaire as a confirmation of the outstanding works, actions and things required to be completed by the Concessionaire in line with the relevant Project Requirements (the Project Construction Completion Check List Items) | Highlighted language to be deleted for reasons stated above | Please refer to response no. 180. |
| 182 | 14.5.3 | The Concessionaire shall be liable for payment of Construction Period Damages to the GoS in the event the Concessionaire fails to achieve Segment Substantial Completion on or prior to the Scheduled Segment Substantial Completion Date. In the event the Concessionaire fails to achieve Segment Substantial Completion within a period of one hundred and twenty (120) days from the Scheduled Segment Substantial Completion Date, then such failure of the Concessionaire shall constitute a Concessionaire Event of Default, and the GoS may, at its sole discretion and without prejudice to its other rights and remedies available under the GoS Agreements, terminate this Agreement in accordance with Article 23 (Termination) | This period should be two hundred and forty (240) days, as set out in Section 22.1.1(c) | Not agreed. |
| 183 | 14.6 | CONSTRUCTION PERIOD DAMAGES  (a) in case of delay in achieving Segment Substantial Completion, amounting to PKR 2,000,000/- (Pakistani Rupees Two Million Only) per day of delay in achievement of Segment Substantial Completion;  (b) in case of delay in achieving Substantial Completion, amounting to PKR 3,000,000/- (Pakistani Rupees Three Million Only) per day of delay in achievement of Substantial Completion (the Construction Period Damages);  provided that such Construction Period Damages shall not exceed, in aggregate, PKR 600,000,000/- (Pakistani Rupees Six Hundred Million Only). | The quantum of the Construction Period Damages need review. The per day delay damages rate seems arbitrary and exorbitant and should be calculated on the basis of a certain percentage of the Construction Performance Security | Not Agreed. |
| 184 | 14.7.1 | Within ninety (90) days from the date of issuance of the Substantial Completion Certificate, the Independent Engineer shall issue a certificate certifying that the Project has achieved Project Construction Completion (the Final Project Construction Completion Certificate); provided, however, the Final Project Construction Completion Certificate may be issued only upon the confirmation by the Independent Engineer (in consultation with GoS) that the Completion Check List Items have been completed in accordance with the Applicable Standards | Highlighted language to be deleted for reasons stated above | Please refer to response no. 180. |
| 185 | 14.7.2 | For avoidance of doubt, the Parties hereby agree that in the event the Substantial Completion Certificate is issued prior to the Scheduled Substantial Completion Date, the Concession Period shall remain the same | The intent behind this addition needs clarification. The Final Expiry Date is not linked with the Substantial Completion Date in any event | Correct reference is Clause 14.8.2The referenced provision has been included for clarity. The concession period is fixed to 27.5 years (see definition of *“Final Expiry Date”*) from Commencement Date till Final Expiry Date. In case the Concessionaire achieves Substantial Completion Date prior to the Scheduled Substantial Completion Date, the operational period would be extended by the same hence the concession period of 27.5 years will remain unchanged. |
| 186 | 15.2.4 | Notwithstanding anything to the contrary, the Parties agree that the Concessionaire shall not be entitled to any extensions of Time For Completion and/or Relief Costs, as applicable, due to occurrence of a Relief Event, until such time the same is determined by the Independent Engineer and the Independent Auditor and set out in the Relief Order issued by the same in accordance with this Agreement provided further that the Independent Engineer certifies that the Concessionaire has no space for parallel or alternate sequencing of works available for carrying out its obligations within the prescribed timelines and until the Concessionaire has proved to have m a d e all its efforts to avoid such Relief Event according to Good Industry Practices | Proviso to be deleted. The Concessionaire should not be cornered into a situation where it has to compromise on its scheduled activities in accordance with the Construction Programme, just to facilitate the GoS. The Concessionaire cannot be expected to function with such uncertainty 63 |  Not agreed. |
| 187 | 15.4.4 | …provided, further, that any Relief Costs shall be paid by the GoS to the Concessionaire within ninety (90) days of receipt of the Relief Order by the GoS | The Relief Costs should be paid by the GoS to the Concessionaire within fifteen (15) days, as opposed to ninety (90) days | Not agreed. |
| 188 | 17.3 (Toll Progress Report) |  | Necessity and frequency of the Toll Progress Report requires further discussion | Frequency of Toll progress report shall be every month. |
| 189 | 17.4.1 | Following the Segment Substantial Completion Date and until the Commercial Operations Date, the actual Revenues shall be deposited in an Escrow Account as per the Escrow Agreement. Proceeds from such Revenues shall be utilized for the purposes of construction of the Project Expressway and shall be set off from the funding requirements as per the debt to equity ratio and shareholding ratios in accordance with the Escrow Agreement | Such funds will be utilized for implementation of the Project, not merely for construction of the Project Expressway | Not agreed. |
| 190 | 17.4.2 and 17.4.4 | 17.4.2 Following the Commercial Operations Date, in the event the actual Revenues during an Operational Year are greater than 120% of the Benchmark Revenues for such Operational Year (as set out in the Financial Model and determined by the Independent Auditor) (the Excess Revenues), such Excess Revenues shall be shared between the GoS and the Concessionaire on a 75:25 basis, where 75% of the Excess Revenues shall be payable to the GoS and 25% of the Excess Revenues shall be retained by the Concessionaire, in accordance with the Escrow Agreement. The GoS’s share of the Excess Revenues and the Concessionaire’s share of the Excess Revenues shall be utilized by the GoS and the Concessionaire respectively in their sole and absolute discretion.  17.4.4 If during the first ten (10) years following the Commercial Operations Date, if the Minimum Revenue Guarantee Amount for the relevant Operating Year is higher than the Benchmark Revenue for that particular Operating Year than the excess amount beyond the Minimum Revenue Guarantee Amount for the relevant Operating Year will be shared between the GoS and Concessionaire on a 75:25 basis | Given the viability issues with the Project, the concept of windfall sharing should be done away with. Windfall sharing should be relevant for project that are likely to consistently hit a purple patch in terms of profitability.  In any case, Sections 17.4.2 and 17.4.4 appear to be in conflict. To be discussed | Please refer to Clause 4.5.5 of the RFP. In case the actual Revenue is greater than 120% of the Benchmark Revenue in an operational year, the excess revenue i.e. actual Revenue minus 120% of the Benchmark Revenue, would be shared in the following proportion:* 75% with GOS; and
* 25% with the Concessionaire.

In case the MRG required by the Bidder, in an operational year, is higher than 120% of the Benchmark Revenue, any revenue in excess of the MRG Amount would be shared between GOS and the Concessionaire as per the aforementioned proportions.Furthermore, in case the MRG Amount required by the Bidder, in an operational year, is higher than the Benchmark Revenue but is less than 120% of the Benchmark Revenue, then the following would prevail:* 120% of the Benchmark Revenue minus MRG Amount would be fully allocated to the Concessionaire;

Actual Revenue minus 120% of the Benchmark Revenue would be shared between the GOS and the Concessionaire on 75%: 25% basis (75% to GOS) |
| 191 | 17.5.2 | The GoS shall ensure that the Toll Notification is issued throughout the Concession Period (including, as may be applicable, uptil the Toll Commencement End Date) in accordance with this Agreement. In the event the GoS fails to issue the Toll Notification in accordance with the Toll Notification Structure (the Toll Notification Event) and provided that the Toll Notification Event does not directly result from breach by the Concessionaire of its relevant obligations under this Agreement and provided further that the actual Toll Revenues are, in each case, adversely affected (as determined by the Independent Auditor) due to the Toll Notification Event, then such Toll Notification Event shall constitute a relief event (the Toll Notification Relief Event) and the same shall entitle the Concessionaire to issuance of a relief order request (the Toll Notification Relief Order Request) | The Concessionaire should be compensated for the the higher of MRG Amount or all lost Revenues that would have accrued to the Concessionaire b u t f o r the occurrence of the Toll Notification Event.  Additionally, the underlined language needs to be deleted as it is extremely ambiguous | Not agreed. |
| 192 |  | 17.5.3 The Toll Notification Relief Order Request submitted by the Concessionaire to the Independent Engineer and the Independent Auditor (with a copy to the GoS) pursuant to Section 17.5.2 shall be accompanied with a detailed proposal (the Toll Notification Relief Order Proposal) containing:  (a) the length of time the Toll Notification Relief Event subsisted (the Toll Notification Relief Period);  (b) actual daily traffic count during the Toll Notification Relief Period (the Toll Notification Relief Event Traffic Count);(c) the loss incurred by the Concessionaire computed as the Toll Notification Relief Event Traffic Count multiplied by the Toll applicable during the Toll Notification Relief Period as set out in the Toll Notification Structure (the Potential Toll Revenue), less the actual Toll Revenue received during the Toll Notification Relief Period (the Toll Notification Relief Compensation);  (d) Minimum Revenue Guarantee Amount applicable and apportioned for the Toll Notification Relief Period.17.5.4 The Concessionaire may submit the Toll Notification Relief Order Request at any time after the Toll Notification Relief Period. Provided, however, in the event the Toll Notification Relief Period is continuing, then the Toll Notification Relief Order Request may be submitted at any time after forty-five (45) days of commencement of the Toll Notification Relief Period.  17.5.5 The Concessionaire shall only be entitled to submit a Toll Notification Relief Order Request in the event the Potential Toll Revenue is greater than the applicable Minimum Revenue Guarantee Amount.  17.5.6 The Independent Auditor shall ascertain if the Toll Notification Relief Event Traffic Count corresponds with the actual Toll Revenue collected during the Toll Notification Relief Period.  17.5.7 Within thirty (30) days from receipt of the Toll Notification Relief Order Request and the Toll Notification Relief Order Proposal, the Independent Auditor and the Independent Engineer shall issue a Toll Notification Relief Order. Furthermore, the Concessionaire hereby undertakes and agrees to provide any such additional information as the GoS, the Independent Engineer and/or the Independent Auditor may reasonably request or require for issuing the Toll Notification Relief Order.  17.5.8 Notwithstanding anything to the contrary, the Parties agree that the Concessionaire shall not be entitled to receive any payment of Toll Notification Relief Compensation until the issuance of the Toll Notification Relief Order. Thereafter, the GoS shall make payment of the Toll Notification Relief Compensation within ninety (90) days of the issuance of the Toll Notification Relief Order | First, all costs in relation to this exercise should be borne by the GoS as the same will be necessitated on account of the GoS.  Second, the GoS should only be entitled to not issue the Toll Notification if the forecast Revenues loss is deposited upfront and actualized after a pre-agreed period.  Third, the Concessionaire should be compensated for the the higher of MRG Amount or all lost Revenues that would have accrued to the Concessionaire b u t f o r the occurrence of the Toll Notification Event. | As these parameters would be addressed by IA, IE and the Concessionaire, there would be no extra cost as such.The GoS does not want to foresee scenario and provisions have been kept for the comfort of Bidders.Not agreed. |
| 193 | 17.8.3(a)(i) | The GoS shall issue the First GoS Financial Instrument in the form and manner set out in Section 17.8.1 above for an amount equal to 50% of the Principal as set out in the Base Case Financial Model updated on the basis of Financing Term Sheet (the First GoS Financial Instrument Amount) as a Condition Precedent to the Commencement Date in accordance with Section 3.1.4(g) above; | Financial analysts to confirm if the amount of the First GoS Financial Instrument is commercially acceptable. In any case, the quantum and funding mechanism of the Minimum Revenue Guarantee and the quantum, timing etc. of any backstop thereof should be based on the successful bidder’s assessment of the financial health of the Project | No query raised.Bid parameters as provided in the RFP are final. |
| 194 | 17.8.4 | Following the Substantial Completion Date, the GoS shall be obliged to maintain and keep valid the First GoS Financial Instrument until Debt Repayment Date (the First GoS Financial Instrument Expiry Date). | Language of this provision is not clear. The obligation to ensure that the First GoS Financial Instrument is valid will be triggered as a Condition Precedent | Please refer to Clause 17.8.3(a)(i), which states that the First GoS Financial Instrument shall be issued as a Condition Precedent to the Commencement Date in accordance with Clause 3.1.4(g). |
| 195 | 18.1.1(c) | the Project Expressway, following Substantial Completion, shall meet the assured availability.  | The concept of ‘assured availability’ is relevant to annuity based projects. This provision should be deleted | No change required.  |
| 196 |

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| 19.14(b) |

 | The Concessionaire shall issue irrevocable standing instructions to the Major Maintenance Payment Account Bank (in form and substance agreed between the Parties) (the Major Maintenance Payment Account Standing Instructions) containing, inter alia, instructions to the Major Maintenance Payment Account Bank to debit the Major Maintenance Payment Account on each Major Maintenance Milestone Date (upon receipt of a Major Maintenance Milestone Certificate relating to such Major Maintenance Milestone Date) in an amount equal to the Major Maintenance Milestone Payment and credit the same to the Escrow Account |

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| Comment against Rows 20 and 21 above is reiterated |

 | Please refer to response no. 144. |
| 197 |

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| 19.15 (a) (Funding and Payment) |

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| Comment against Rows 20 and 21 above is reiterated |

 | Please refer to response no. 145. |
| 198 |

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| 20 (Insurances) |

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| All references to ‘Financing Term Sheet’ should be replaced with ‘Financing Documents’ |

 | Not agreed.  |
| 199 |

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| 22.1.1(b)(i) |

 | lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado, which has, in each case, affected the work or operations for more than fifteen (15) consecutive days |

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| The time period of fifteen (15) days should be deleted. The Concessionaire may suffer significant financial loss in fifteen (15) days |

 |  Not agreed. |
| 200 |

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| 22.1.1(b)(iii) |

 | any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide and that shall have existed for thirty (30) consecutive days or more |

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| Comment against Row 75 above is reiterated. |

 |  Not agreed. |
| 201 |

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| 21.1.1(c) |

 | Force Majeure Events shall expressly not include the following conditions, events or circumstances:  (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;  (ii) a delay in the performance of any Contractor;  (iii) a breakdown in machinery and/or equipment; and  (iv) normal wear and tear or random flaws in materials and equipment,  (v) A delay caused by rain and monsoons; | Gravity of rains and monsoons needs to be spelt out. Moreover, the Concessionaire should be entitled to relief in such event where carrying out works is impracticable and/or impossible |  Not agreed. |
| 202 | 22.2 | **GoS Events of Default**  | The list of GoS Events of Default to be discussed in light of the overall transaction structure. Failure to issue a GoS Financial Instrument or any replacement instrument and failure to timely fund the Minimum Revenue Guarantee Amounts should specifically be GoS Events of Default.  In addition, for purposes of Termination Payments, in case a default under the Finance Documents is triggered by a GoS Event of Default, the same should not be deemed a Concessionaire Event of Default under the Concession Agreement for purposes of calculation of Termination Payments  | Subject to any available cure periods, a material breach by the GoS (Clause 22.2.1(a)) of its obligation under the Concession Agreement including non-payment of due amounts (Clause 22.2.1(h)) is listed as a GoS Event of Default.Concessionaire is responsible for defaults and consequences thereof under the Financing Documents. All reliefs which are acceptable to the GoS are already in-built in the Concession Agreement and no further concessions will be provided. |
| 203 | 28.1.1 | If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or any other financial liability beyond that contemplated in the Financial Model , the aggregate financial effect of which exceeds of PKR 5,000,000/- (Pakistani Rupees Five Million only) in any Accounting Year (as determined by the Independent Auditor and the Independent Engineer), the Concessionaire may so Notify the GoS and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement; provided, that if no agreement is reached within sixty (60) days of the aforesaid notice, the Concessionaire may by Notice to GoS (as certified by the Independent Engineer and the Independent Auditor) require the GoS to pay the Additional Costs (as determined and certified by the Independent Engineer and the Independent Auditor), and within thirty (30) days of receipt of such Notice, along with particulars thereof, the GoS shall pay the amount specified therein. | Any increase or decrease in costs, net after-tax return or any other financial liability should be at actuals | Any such difference would be evaluated against the Base Case Financial Model and in case the aggregate amount is more than PKR 5 million in an accounting year, the GOS would compensate the Concessionaire for the same. |
| 204 | - | **ADDITIONAL PROVISIONS AND ISSUES** | Additional provisions and issues required to be discussed and addressed include:  1. The RFP states that the variations/difference in yearly MRG amount between any two (2) years must not be more than 10%. It needs to be clarified that such limitation is only applicable for bidding purposes, since the real-time quantum of the MRG Amount will be actualized;  | Not agreed. |
|  |  |  | 2. The RFP also provides that bidders are required to quote operations and maintenance cost, as part of the MRG Amount, for the period starting from Construction Performance Security Expiry Date (i.e. starting from and including 3rd Operational Year) till the Debt Repayment Date. This provision needs to be amended as MRG Amounts will be assumed from the Commercial Operations Date; | Only operations costs will be permitted as part of the two years following the Commercial Operations Date. |
|  |  |  | 3. The RFP further provides that the GoS may, in its discretion, decide to utilise the interest accrued on the Class B Equity account to fund the first MRG payment. Perhaps, this was meant to be a reference to the GoS Equity Account. Even such interest income should be utilized for funding the Total Project Cost. GoS to clarify;  | GOS would fund upfront equity contribution capped to the amount as requested by the Preferred Bidder. Any interest yielded to the GOS on equity contribution account could be utilized by the GOS to fund the initial MRG Amount. |
|  |  |  | 4. Clause 4.17.1 of the RFP states that “List of major KPIs and corresponding penalties / liquidated damages amount will be shared with Bidders during the Pre-Bid Meeting and will form part of the bidding documents.” Such concept is a novelty in the context of PPPs in the road sector in Pakistan and needs further discussion; | Please refer to response no. 119. |
|  |  |  | 5. Compensation for establishment of Alternative Routes and Competing Routes;  | Please refer to response no. 88. |
|  |  |  | 6. The number of interchanges need to be fixed at the outset. Further, the mechanism for establishment of new interchanges should be detailed in the Concession Agreement and such interchanges should be exclusively operated by the Concessionaire; | There are five (5) interchanges now (please see revised annexure). New interchange, as requested by the Concessionaire, duly recommended by the IE, shall be subject to the GoS approval. |
|  |  |  | 7. For purposes of bidding, all bidders should take the same assumption regarding the quarry site from which material will be procured, which should be the Malir river bed;  | For the purposes of bidding, all bidders shall assume Malir riverbed will be available for utilization in the project. In the event the decision is not procured, the lead cost will be provided to the Concessionaire. |
|  |  |  | 8. Hyperinflation/undue economic hardship;  | No query raised. |
|  |  |  | 9. Disputed termination; | No query raised. |
|  |  |  | 10. Delayed payment interest on all delayed payments; and | Not agreed. |
|  |  |  | 11. Concessionaire’s right to set-off and increase toll rates to self compensate if GoS fails to pay any compensation due under the Concession Agreement.  | Not agreed. It is the right of GoS to set the toll rates and not the Concessionaire. |

**Annexure A**

*[Included in Email as Attachment]*

**Annexure B**

*[Included in Email as Attachment]*

**Annexure C**

*[Included in Email as Attachment]*