



**MALIR EXPRESSWAY PROJECT
RESPONSES TO QUERIES RAISED DURING AND SUBSEQUENT TO THE
PRE-BID MEETINGS HELD ON AUGUST 20, 2019 & OCTOBER 03, 2019**

RESPONSES TO BIDDERS' QUERIES 2 IN RESPECT OF MALIR EXPRESSWAY PROJECT



**Local Government Department
Government of Sindh**



**Public Private Partnership Unit
Finance Department
Government of Sindh**

OCTOBER 2019



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IMPORTANT NOTICE / DISCLAIMER

This '**RESPONSE TO BIDDERS' QUERIES DOCUMENT 2**' (this **Response Document 2**) is further to the Response to Bidders' Queries Document dated September 17, 2019 (**Response Document 1**), '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 2 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 the Response Document 1 and in this Response Document 2 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 2 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, Response Document 1 and this Response Document 2 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 2 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 2.

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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



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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, Response Document 1 and this Response Document 2.

GoS expressly disavows 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 2 or in the solicitation process as a basis for preparing the Bid or developing the Project.



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**RESPONSES TO THE BIDDERS QUERIES RAISED BY THE BIDDERS DURING AND SUBSEQUENT TO
THE PRE-BID MEETINGS HELD ON AUGUST 20, 2019 AND OCTOBER 03, 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.

Note: All prospective Bidders are informed that a partial clover leaf interchange at EBM causeway has been provisioned by the GoS. Please refer to response no. 15 of this Response Document 2 for specifications.

QUERIES RAISED & RESPONSES

SR. NO.	SECTION NUMBER	SECTION	COMMENT	RESPONSES
1.			<p>What will be the role of “Participant(s)” in SPV Company. It seems that the “Participant(s)” can undertake all three roles as described in the RFP, please clarify role and responsibilities of Participants(s).</p> <p>Moreover, What will be the payment mechanism to such participant(s) during construction phase O&M Phase as concession agreement is silent with regard to the payment to participants.</p>	<p>Subject to requirements of RFP Documents, “Participants” are an enterprise that is part of a Bidder on an exclusive basis but will not invest equity in the SPV.</p> <p>The Participants shall be required to fulfill the relevant criteria (as applicable to them) under the RFP and where a Participant has to undertake construction work, then such Participant will be evaluated as per the evaluation criteria set out for EPC</p>



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				<p>Contractors under the RFP. Please refer to response no. 4.</p> <p>Payment mechanism will be as per the contract between the Participant and the counter party.</p>
2.			<p>As per RFP it seems that there is no qualification criteria for participant similar to that of bidder or JV partner of the bidder. Whereas, participant(s) is allowed to execute atleast one of the following i.e. 25% Concession Design Work, 10% Construction Work 25% Operation and Maintenance Work then why not the JV partner of a bidder or EPC Contractor cannot execute such jobs with in the same limits as allowed for “Participant” without considering eligibility criteria.</p>	<p>Please refer to response no. 1.</p>
3.			<p>As mention in the RFP regarding registration with PEC that in case there is more than one EPC Contractor, all the EPC Contractor must meet the criteria.</p> <p>Almost in all projects where there are more than one EPC contractor the other members of JV are given relaxation, except the lead member. In case the lead member possess PEC registration certificate in</p>	<p>Please refer to the eligibility criteria provided for an EPC Contractor in Addendum No. 1 to the RFP Documents.</p>



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			category CA, other JV members may be allowed having CB or C-1 Category.	
4.			<p>It is mention in RFP regarding specific work experience for construction as under: “Similar work with cost and complexity three (3) similar projects i.e. Highway/Motorways including interchanges and flyovers of at least 30km length, completed in the past fifteen (15) years (submission of commencement letter and completion certificate are mandatory). In case there is more than one (1) EPC contractor, all EPC contractor must meet the criterion.”</p> <p>The condition of specific work experience maybe provided for lead member only and while other JV members may be exempted from this condition or work of less cost and complexity be allowed.</p>	Noted. For the purposes of clarity, please refer to Addendum No. 1 to the RFP Documents for the revised criteria.
5.			<p>Kindly clarify the following, please: The total length of alignment is 39.90kmz in kmz file:</p>	Please refer to Addendum No. 1 to the RFP Documents.
			<p>Alignment terminated (Ch: Km39+927 End Point) at M9-N5 link road and did not include approx. 515m length of existing trumpet connecting link road to M9. RFP</p>	Please refer to Addendum No. 1 to the RFP Documents. The trumpet interchange connecting MEW and M9 is not part of the scope.



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			depicted to modify the existing trumpet as per MEW alignment. Trumpet cost component shall be considered separately as trumpet is out of alignment.	
			Alignment (Ch: Km 0+000 to km 16+600) runs an offset distance from existing right bund at right side near river stream till Quaidabad. Alignment will create wide ditches on one or both sides of proposed road embankment and water accumulates in it.	It is the GoS responsibility to provide the required ROW free from all encumbrances to the Concessionaire before the construction work starts. At the time of detailed design if any situation forced towards realignment with the consent of IE, the cost variation of this change shall be adjusted accordingly to save the concessionaire as well as the GoS from the undue expenditure.
			Alignment runs over houses at following locations. <ul style="list-style-type: none"> - Alignment (Ch Km 17+300 to Km 18+600) After Quaidabad, Sammon Village is locate where Alignment passed near from few houses on right side of right bund or bank. The houses are in road formation width and ROW. - Alignment (Ch Km 23+925 to 24+500) houses /farm houses are in alignment. - Alignment (Ch Km 26+000) Darga Mai Niyani near Damlotti road may 	Please refer to the response above.



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			<p>fall in MEW ROW as seen from kmz. Alignment needed to be shifted at some distance of few meters right side to prevent Darga.</p> <p>- Alignment (Ch Km 34+000 to Km 34+400) some houses near Damlotti road are crossed by proposed alignment. These may be Kacha houses need to be confirmed from site.</p>	
			<p>Alignment (Ch: Km 26+175) Alignment crossed Malir Dam Road. Realignment may be required to avoid disturbing the dam approach road.</p>	<p>Please refer to the response above.</p>
			<p>Alignment (Ch Km 32+600 to Km 32+800) Malir Dam Weir will be distributed and come in MEW ROW as Alignment is passing nearby it.</p>	<p>Please refer to the response above.</p>
			<p>Note: It was stated in responses of pre bid queries No. 115 and 117 on Date 01 March, 2019 that only 100m ROW provided along one edge of river avoiding land acquisition and save urban settlement/build-up areas. All execution should be done on river side without involving the built-up and land acquisition at any part of MEW. Alignment differs from this point as it runs nearby built up area and houses come</p>	<p>Please refer to the response above.</p>



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			across in MEW ROW and road formation width.	
6.		Definition of Segment Completion	Please specify	Please refer to Clause 14.3 (<i>Segment Substantial Completion Certificate</i>) of the Draft Concession Agreement.
7.	DCA Pg. 270 – 15.0	After final approval of alignment, the concessionaire shall prepare the land acquisition folders. Details of property falling within required ROW, and additional area which may be required for interchanges shall be indicated. Details of land to be acquired for road construction shall also be updated. The Concessionaire shall prepare area estimation for ROW and additional land where required. ROW permanent markers shall also be set up by the Concessionaire. The Concessionaire shall also prepare area estimates for acquiring any additional land and removal of structures and utilities.	The Land acquisition plays an important role since the estimation of revenues during construction period depends on the segments that completes first. Land shall not be delivered in piece meals.	Pursuant to the Draft Concession Agreement, GoS shall provide Vacant Possession to the Concessionaire prior to the Commencement Date as a condition precedent.
8.	Toll Collection during construction period through segment completion.	Toll Collection during construction period through segment completion.	In case when a bidder incorporates the toll revenue collected during the construction in the financial model (as per the RFP it will compensate towards project cost). if the bidder failed to achieve the desired revenue after completion of the segment then a shortfall in the project funding is eminent. Who will take that risk and	Any revenue estimated by the Bidder from Segment Substantial Completion till Substantial Completion, netted off from the quoted Pre-Estimated Project Cost, would be considered nil for the purpose of bid evaluation. After award of the Project and post Segment Substantial Completion, any



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			whether MRG is available in that time to cover the Operations cost.	revenue actually yielded to the SPV till Substantial Completion Date would be netted off periodically from the then project cost and any excess funding commitment would be redeemed based on the financing structure committed in the Base Case Financial Model.
9.	DCA Pg. 148 - Point 14.3.3 & Queries and Responses Pg. 27 Sr. No 83	Please note that the bidder shall only include operations cost as part of the MRG Amounts for the first three operational years.	Since the concessionaire is entitled to collect toll after segment substantial completion. In such scenario the DLP period for the such segment will end earlier than the rest of the expressway. Hence, the maintenance cost of the same segment shall be allowed prior to the 3 rd operating year.	Not Agreed.
10.	Queries and Responses Pg. 25 – Sr. No 78	“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.”	We understand that the toll rates will be charged form the users of the facility will be based on Per/KM basis. -If yes, then we do not have to use the rates specify in the Schedule Q (DCA – Pg. 327 Toll Rates) - if no, then please define the term partial use , because if the user is utilizing 75% of the facility and paying only 50%, it would be unfair to the bidders and similarly if the user is utilizing 25% of the facility and	There will be two slabs for the toll rates: 1. Up to fifty percent distance travelled on the project expressway; and 2. More than fifty percent distance travelled on the project expressway.



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			paying 50% toll, then it would be unfair for the users.	
11.	Queries and Responses Pg. 5 – Sr. No 7	“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.”	Traffic composition and facility usage patterns used in the traffic study shared with us seems conflicting with the above-mentioned point. Please clarify. Further, keeping in view the restrictions on the overweight vehicles, the 5% of revenue seems too high.	It is in line with precedent projects.
12.	DCA 19.11 Pg. 184	Major Maintenance Requirement	In case if the estimated traffic is lower than expected and as per the Technical team (IE inspection team), we do not need a Major overhaul, are we still bound to do the Major Overhaul? To cover the risk the concessionaire should be allowed to create a reserve during the MRG Period.	We understand that if the recorded traffic is not reaching to the designed axles at the time of major overhaul and the condition of the road showing durability and riding quality both then the major overhaul can be deferred on the instruction of IE. The Concessionaire shall be required to fund the Major Maintenance Payment Account over a period of 18 months on an equal installment basis, at a minimum.
13.	Annexure A – Basic Eligibility Criteria	Similar work with cost and complexity three (3) similar projects i.e., Highways / Motorways including interchanges and	▪ “Similar work with Cost” needs clarification.	Noted. Please refer to the Addendum No. 1 to the RFP Documents.



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	<u>Specific Work Experience (For Construction) – (Page 55-56)</u>	flyovers of at least 30km length, completed in the past fifteen (15) years (submission of commencement letter and completion certificates are mandatory).	<ul style="list-style-type: none"> ▪ We suggest for specific work experience, I. This should be considered as an EPC contractor with a cumulative project amount of PKR 7.5 Billion as indicated in ANNEXURE B - TECHNICAL EVALUATION CRITERIA. Relevance of 30KM Highways / Motorways including interchanges and flyovers may not be relevant. 	
14.	Annexure b - technical evaluation criteria <u>B – 1) relevant construction experience (page 59)</u>	<ul style="list-style-type: none"> ▪ 10 points, for at least three (3) projects each worth of PKR 2,500,000,000/- (Pakistani Rupees Two Billion Five Hundred Million only) (or higher) or ▪ less than three (3) projects with a cumulative worth of PKR 750,000,000/- (Pakistani Rupees Seven Hundred Fifty Million only) (or higher) 	<ul style="list-style-type: none"> ▪ We understand that cumulative worth is PKR 7,500,000,000 , as it looks like a typo. ▪ Similarly the requirement for less than three projects seems a typo. 	<p>The understanding is correct.</p> <p>10 points, for at least three (3) projects each worth of PKR 2,500,000,000/- (Pakistani Rupees Two Billion Five Hundred Million only) (or higher) or less than three (3) projects with a cumulative worth of PKR 7,500,000,000/- (Pakistani Rupees Seven Billion Five Hundred Million only) (or higher)</p>
15.			In the reach from national highway to link road there are numerous constructions at the bank and removing these will be time consuming and will result in delay of work resulting higher financial charges and incidentally these cannot be estimated in	GoS has decided to provide the partial clover leaf interchange at EBM causeway with following configuration;



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			that scenario how to come to a price. The EBM causeway is an important facility if this has to be negotiated with an interchange.	<ol style="list-style-type: none"> 1. Left turn for traffic coming from M9 and going towards Korangi Industrial Area. 2. Right turn for traffic coming from M9 and going towards Baloch colony Bridge. 3. Left turn for traffic coming from Baloch colony Bridge and going towards M9. 4. Right turn for traffic coming from Korangi Industrial Area and going towards M9.
16.			As an alternative to reinforced earth tied rcc retaining wall may be used depending upon value engineering analysis and finite element modelling for cost optimization.	There is no binding for the type of retaining structure in the RFP Documents.
17.			<p>It is believed that the traffic survey given will be used for calculating MRG and or the sponsors will have to conduct their own traffic survey and ODS.</p> <p>But at this stage traffic survey cannot be conducted by the renderer. the traffic survey has to be owned by them otherwise how you can go for financial close.</p> <p>The approaches are about 30percent of the cost of interchanges.</p>	Query is unclear. However, please note that the traffic study shared by the GoS is for reference purposes only and the Bidders shall conduct their own traffic study.
18.	Clause 2.10		We understand that any changes proposed by the GoS after selection of the Preferred Bidder will not be binding on the Preferred Bidder unless mutually agreed to.	Negotiations shall be in accordance with the RFP Documents and Applicable Laws.



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19.	Annexure A- Basic Eligibility Criteria		We understand that the work experience, accounts, and turnover of the parent company can be used to satisfy the eligibility criteria of the EPC Contractor in the event the entity undertaking the EPC works is an SPV. Please clarify.	As stated in the RFP, financial statements must be provided for each Member and Participant of the Bidder, or for their parent company, if the latter is acting as the Member or Participant's guarantor. Where there is reliance on parent company then relevant requirements (including provision of a parent company guarantee) under the RFP must be complied with.
20.	Annexure L- Scope of Work		All entry and exit location shall be in accordance with the bidder's plan.	The plan will be subject to review and approval in accordance with the RFP Documents.
21.	Form J-10		It is unclear what is required under Form J-10. Please clarify	A breakdown of the steps (with timelines) proposed to be taken by Bidders for achieving Financial Close, including, provision of an indicative term sheet or consent / letter of commitment etc., from the perspective financiers/lenders.
22.	DCA		To make the concession package bankable, lenders have requested that the agreement include a specific termination event which allows the lenders to obtain their Financing Due in case the Concessionaire defaults under the Financing Documents.	Not Agreed.



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			<p>In precedent projects this has been covered in the Concession Direct Agreement, but there is little room to negotiate post-bidding. Therefore, we request that the Concession Agreement lay out this mechanism explicitly in the following terms:</p> <ol style="list-style-type: none"> 1. Financiers can request the GOS to terminate the Concession Agreement on account of a default by the Concessionaire under the Financing Documents; and, 2. If the GOS does not terminate the Concession Agreement by a certain long stop date the agreement will be deemed terminated and Termination Payments will fall due. 	
23.			<p>The Governor of Sindh is purporting to execute the Concession Agreement “on behalf of the Government of Sind”. As per Article 173 of the Constitution the Governor exercises executive authority on behalf of the “Province of Sindh”. Request that Government of Sindh be changed to “Province of Sindh in the party names.</p>	<p>Please refer to Section 24 of the Sindh Government Rules of Business, 1986, whereby, executive action of Government of Sindh, including signing contracts, shall be taken in name of the Governor.</p>
24.	Definition		<p>The definition of “Toll Commencement End Date” should be replaced with the following definition which captures the</p>	<p>Not Agreed.</p>



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			<p>fact that the right to collect Tolls should vary depending on whether Financing Due is outstanding. If Financing Due is outstanding the Concessionaire should be permitted to collect tolls until Termination Payments are actually made. In our discussions with lenders we have been informed that this is their requirement.</p> <p>Toll Commencement End Date shall mean 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:</p> <p>(a) In case this Agreement is not terminated prior to the Final Expiry Date, the Final Expiry Date;</p> <p>(b) In case this Agreement is terminated prior to the Final Expiry Date <u>and during the period when Financing Due is outstanding, the Transfer Date;</u></p> <p>(c) In case this Agreement is terminated prior to the Final Expiry Date and during the period when no Financing Due is outstanding, the Toll Collection End Date shall be: (i) in</p>	
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			case the Concession Agreement is terminated due to Authority Event of Default, the Transfer Date; or (ii) in case the Concession Agreement is terminated due to Concessionaire Event of Default, Force Majeure or Corrupt Act, the Termination Date.	
25.	4.1.1 (License)		It should be clarified in the Agreement that the entire Project Site will be handed over as a condition to Commencement Date. Partial handing over of land is not bankable as lenders require the entire site to be available prior to financial close.	Please refer to response no. 7.
26.	8.1 (GOS Representations & Warranties)		<ol style="list-style-type: none"> 1. An explicit representation of GOS should be included which states that it has good and valid title to the Project Site and is able to grant the Licence in accordance with Section 4. 2. An explicit representation of the GOS should be included stating that the GOS has the authority to collect and cause to be collected tolls. 	<ol style="list-style-type: none"> 1. Please refer to Clause 4.2 (<i>Title of Project Site & Delivery of Vacant Possession</i>) of the DCA. 2. Please refer to Clause 2.1 (<i>Grant of Concession</i>) of the DCA, the right to collect toll is being given as part of the concession by the GoS.
27.	8.2 (General Undertaking)		<p>The general undertakings of the GOS should include:</p> <ol style="list-style-type: none"> (i) an undertaking to issue the Toll Notification in accordance with Schedule P and the Applicable Laws in order to implement the Toll Notification Structure. 	<ol style="list-style-type: none"> 1. Please refer to Clause 17.5 (<i>Issuance of Toll Notification</i>). 2. Please refer to definition of “GoS Agreements” which lists the “Concession Direct Agreement” as one of the agreements to be entered into by the GoS.



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			(ii) an undertaking to enter into a Concession Direct Agreement with the Financiers which shall provide for step in rights of the Financiers and extended cure periods. Corresponding language changes should be made in the definition of “ <i>Concession Direct Agreement</i> ”.	
28.	10.3 (Change in Complete Control, Change in Control, and Change in Shareholding)		The Sponsor should be allowed to create a pledge/ security over its shares in favour of the Financiers and the Financiers should be allowed to take over the Concessionaire in the event of an enforcement of security.	Noted. Creation of security in favour of financiers is permitted subject to the terms and conditions of the RFP Documents. Appropriate clarifications may be included to Section 27.2 (<i>Permitted Assignment and Charges</i>) of the DCA in this regard.
29.	23.1.4 (Termination for Concessionaire Event of Default)		It should be clarified that the Toll can be collected by the Concessionaire until Termination Payments are not made, in the event the Financing due is outstanding. Leaving this for the direct agreement does not guarantee that this will be the case, in case the GOS does not agree to this in the direct agreement.	Please refer to response no. 24.
30.	27.2.1 (Permitted Assignment and Charges)		<ol style="list-style-type: none"> 1. Creation of security in favour of short term lenders should be allowed. 2. Pledge over shares of the Sponsor should be allowed. 3. An assignment to a modaraba SPV should be allowed. 	<ol style="list-style-type: none"> 1. Creation of security in favour of financiers is permitted subject to the terms and conditions of the RFP Documents. Please refer to Section 27.2 (<i>Permitted</i>



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				<p><i>Assignment and Charges</i>) of the DCA in this regard.</p> <p>2. Please refer to response no. 28.</p> <p>3. Please refer to response no. 32.</p>
31.			<p>The Concessionaire needs to be adequately compensated for losses in its revenue that it suffers on account of Relief Events. Currently, the Concessionaire is only entitled to “Relief Costs” for such events. Relief Costs only captures increases in Capex and Opex but does not capture losses in revenue that such events can lead to. As the GOS has already acknowledged that it carries the risk of “Relief Events”, the protection provided to the Concessionaire should be complete in this respect.</p> <p>Therefore, the definition of “<i>Relief Costs</i>” should also include “<i>Loss of Revenue</i>”.</p>	Not Agreed.
32.			Request that the agreement be amended to allow a modaraba structure for the SPV. Definitions of “Equity” and “Class A Shares” to be amended in particular.	Equity injection and issuance of Class A Shares shall be in the capital of the company and this will not prohibit Islamic financing structures for the project.
33.			Concessionaire apprehends the risk of a “competing” or “alternative” route to the Malir Expressway being constructed during the concession term. This will affect the volume of traffic that will be attracted	<p>Not Agreed.</p> <p>The Malir river is the widest and longest river which traverses through the city of Karachi. Its major length passes through the densely populated</p>



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			<p>to the road. We request protection from this risk.</p> <p>The GOS should warrant that there is no alternate/competing route as of the effective date of the Agreement and if any alternative/competing is developed during the term of the agreement, the same shall be treated as a Relief Event and shall entitle the Concessionaire to Relief Costs and compensation for loss of revenue.</p>	<p>areas as well as from the largest industrial zone (Korangi) of Karachi.</p> <p>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.</p>
34.	Definitions		<p>“<i>Additional Costs</i>”: this concept includes “additional taxes” that may be incurred by the Concessionaire as a result of a Change in Law. We request that the protection afforded for “additional taxes” be elaborated upon to include two aspects:</p> <ol style="list-style-type: none"> 1. taxes to mean any type of fee, levy, duty or tax; and, 2. It should include not just new taxes but also changes in rates of existing taxes and changes in the application of an existing tax. <p>At the time of a tax claim we want to avoid disputes as to interpretation of the term “additional taxes” as appearing in the definition of “Additional Costs”.</p>	<p>These points are already addressed under the Draft Concession Agreement.</p>



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35.	Definitions		<p>The definition of “<i>Change in Law</i>” to explicitly include pronouncement of orders/judgments by judicial for (a).</p> <p>In the definition of “<i>Change in Law</i>” all references to “<i>Effective Date</i>” to be replaced with “<i>Bid Submission Date</i>”.</p>	<p>Not Agreed.</p> <p>“<i>Effective Date</i>” is not being used in subject definition and “<i>Change in Law</i>” events are already linked to “<i>Bid Submission Date</i>”.</p>
36.	Definitions		<p>“<i>Concessionaire Permits</i>” should include the Licence to be granted by the GOS under Section 4.1.</p>	Not Agreed.
37.	Definitions		<ol style="list-style-type: none"> 1. Delayed Payment Rate should be applicable on all delayed payments and not just on Termination Amounts, including delayed payment of Relief Costs and Additional Costs by the Authority. 2. The rate is low and we suggest including KIBOR + 2% be the delayed payment rate to keep it in line with a concessionaire’s cost of funds. 	Not Agreed.
38.	Definitions		<p>Termination Dividend Amount should be in accordance with the Financial Model and not limited to just 3 years.</p> <p>There needs to be a sufficient disincentive for the GOS to terminate the Concession Agreement post repayment of the lender’s debt.</p>	Not Agreed.



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39.	Definitions		Transfer Date: to be clarified that if payment is not made by the Termination Payment Date then the Transfer Date will be the date that payment is actually made.	Please refer to definition of “ <i>Transfer Date</i> ”, whereby, in case of early Termination, “ <i>Transfer Date</i> ” shall be the Termination Payment Date subject to: (i) the GoS making payment of the relevant Termination Payment to the Concessionaire; and (ii) the Concessionaire completing the Divestment Requirements on or prior to such date.
40.	3.5.2 (Termination Prior to Commencement Date)		In the event the Agreement is terminated prior to the Commencement Date due to an GOS Event of Default or Force Majeure Event, the Concessionaire should be reimbursed for any costs and expenses incurred for any Preliminary Works and the preparation of the Detailed Engineering Design.	For compensation payable on termination prior to Commencement Date please refer to Clause 3.5.2 of DCA.
41.	4.2.2 (Title of Concession Assets Project Site & Delivery of Vacant Possession)		In this Section, the Concessionaire is protected from a delay by the GOS in handing over the Site is delayed. This protection is one that is required prior to the Commencement Date as handing over the Site is a condition precedent to Commencement Date. The risk that the Concessionaire faces is the delay in handing over the site once the Concession Agreement is executed.	Please refer to the GoS Conditions Precedent under Clause 3.1.4(a) and 3.1.4(b), whereby, the GoS is required to (as a conditions precedent), <i>inter alia</i> , (a) Licence the Project Site to the Concessionaire in accordance with Article 4 (<i>Project Site</i>) of DCA; and (b) hand over Vacant Possession of the Project Site to the Concessionaire in



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			<p>Therefore, this protection needs to be operative on execution of the Concession Agreement. Currently, the obligations of the Parties do not trigger until AFTER Commencement Date per S. 3.1.1. We request that is be clarified in the Agreement that this Section of the Agreement will be effective from the date the Concession Agreement is executed.</p> <p>Secondly, in order for this protection to be effective, the Agreement should specify the long stop date by when the GOS is required to obtain Vacant Possession of the Site. If the GOS does not hand over the Site within this time frame the Concessionaire should be entitled to the protection under this Section.</p>	<p>accordance with Article 4 (<i>Project Site</i>) of DCA.</p> <p>Except as waived, deferred, extended etc., under the terms of the DCA, the GoS is required to fulfill GoS Conditions Precedent, including handing over of Vacant Possession, on or prior to the Scheduled Commencement Date.</p>
42.	4.13 (Felling of trees)		<p>Costs in relation to felling of trees should be borne by the GOS as is the precedent in other PPP road projects. The GOS should also be responsible for seeking the necessary approvals.</p>	<p>Agreed. GoS shall fell trees at the Project Site, as determined by the Independent Engineer. In addition, the Concessionaire shall undertake to plant and maintain in accordance with the Applicable Standards, at its sole cost and expense, at least 10,000 trees at the Project Site.</p>



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				However, the Concessionaire shall be responsible for procuring any approvals in relation to the same.
43.	10.2.4 (Class A Shares and Class B Shares)		The Concessionaire should be entitled to withhold and set off payments of Advertising and Utility proceeds if the GOS fails to make any payments that are owed to the Concessionaire	Not Agreed.
44.	10.3 (Change in Complete Control, Change in Control, and Change in Shareholding)		<ol style="list-style-type: none"> 1. In relation to the concept of Change in Complete Control and Change in Shareholding, the following structure is proposed: <ol style="list-style-type: none"> (a) up to Commercial Operations Date 51% of the Class A Shares should be retained by the Sponsor; and (b) post Commercial Operations Date, the Sponsor should be permitted to divest up to 80% of Class A Shares without the approval of the GOS; 2. Section 10.3.3(c) should be deleted as it is very restrictive. This currently provides that shares cannot be transferred to a defaulter of a bank or financial institution. 	Not Agreed.
45.	10.5.2 (Price Escalation)		Escalation should be linked to industry indices rather than be left to the discretion	Not Agreed.



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			of the IE. This will ensure an objective standard and right to increased costs.	Any escalation or de-escalation shall be duly verified by the Independent Engineer and the Independent Auditor. The Escalation Cost is determined in reference to the Actual Cost and the Base Price.
46.	13.8.2 (Specific Malir Construction Material Utilization)		The Malir Construction Material Liability Amount should also be payable in the event the Specific Malir Construction Material is unavailable or unable to be utilized due to a stay or injunction (in addition to the imposition of additional conditions by the Supreme Court of Pakistan)	GoS is only responsible for the Lead Cost in the event the Specific Malir Construction Material Utilization Decision is neither procured nor effective on or prior to the Commencement Date. The suitability and the availability of the Malir construction material, in terms of its quantity and quality, is the responsibility of the concessionaire.
47.	15.2 (Relief Events)		Relief Events should include any action or omission by the GOS or any other Governmental Authority which causes a delay or disruption in the performance of the Concessionaire's obligations.	Not Agreed.
48.	15.4.4. (Relief Order Procedure)		Relief Costs should be paid in 30 days of the Relief Order as opposed to 90. Furthermore, any recurring Relief Costs should be paid to the Concessionaire on a monthly basis.	Not Agreed.
49.	17.3 (Toll Audit)		To the extent that any amounts are payable by the GOS to Concessionaire in accordance with the External Auditor's	Not Agreed.



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			determination, GOS should be obligated to pay the same to the Concessionaire.	
50.	17.5 (Issuance of Toll Notification)		<p>1. Schedule P – Toll Notification Structure has not been provided. This is a very important document and needs to be evaluated.</p> <p>2. GOS should not have the right to reduce tolls of the Concessionaire in violation of the Toll Notification Structure, as the Concessionaire will be deprived of any windfall gains which is its legitimate right.</p> <p>3. Concessionaire should be entitled to a Relief Event if the Toll is reduced by the GOS or any other public body including a court of law.</p> <p>4. Details of the contents of the Escrow Agreement to be provided.</p> <p>5. The Concessionaire should have the right to cease payment of GOS's share in the event the Concessionaire is entitled to a Relief Event, till the time the Relief Order is issued. The Concessionaire should also have a right to set off amounts due to under a Relief Order.</p>	<p>1. The Toll Notification, in respect of a year, will specify the following:</p> <ul style="list-style-type: none"> • Toll rate applicable on each Vehicle Type; • List of Exempted Vehicles; • Fines and penalties in relation to overweight vehicles <p>In case the toll rate applicable on each vehicle type deviates from the provisions of the DCA (i.e., toll rate growth or timelines of issue) and adversely affects the Concessionaire, the Concessionaire shall be entitled relief through Toll Notification Relief Event.</p> <p>2-3. The GoS shall have the right to reduce toll, however, if it does so, on its own or the court order, it shall compensate the concessionaire on account of Toll Notification Relief Event.</p> <p>4. The details of contents of Escrow Agreement shall be provided</p>



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			<p>6. The Toll should be subject escalation on account of inflation.</p>	<p>following signing of Concession Agreement when lenders become involved.</p> <p>5. Not Agreed</p> <p>6. Not Agreed, toll growth rate has already been provided in DCA.</p>
51.	21.1 (Force Majeure Event)		<p>1. A Lapse of consent which qualifies as a Political Event is currently required to persist for 30 consecutive days. This is onerous as it does not take into account the occurrence of multiple lapses of consent which may each be for a short period but accumulate to a large number of days when aggregated. Accordingly, this should be revised to include multiple lapses of consent which in the aggregate are 20 days.</p> <p>2. Force Majeure Costs: to include loss of revenue.</p>	Not Agreed.
52.	23.5 (Termination Payments)		No deduction should be made on account of taxes from the Termination Payments and the Termination Payments should be grossed up to the extent required to ensure that the Concessionaire receives an amount	In case any tax (corporate tax, minimum tax or alternate corporate tax) becomes applicable on the said amount by virtue of it being transferred through SPV, the GoS will bear the tax (as determined by the IA) and hence grossed up Termination



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			it would have received in the absence of a deduction.	Payments would be received by the Concessionaire.
53.	23.5.2 (Termination Payments)		The Delayed Payment Rate should accrue on the payments by the GOS from the Termination Payment Date and till the date of actual payment. Appropriate drafting amendments to be made in the Section.	Not Agreed.
54.	28.2 (Reduction in costs)		The financial threshold should be reduced from five million to two million.	Not Agreed.
55.	29.2 (Commercial Rights & Additional Facilities)		GOS should not have the exclusive right to establish Additional Facilities. The Concessionaire should have a first right of refusal in relation to any proposal to establish an Additional Facility.	Not Agreed.
56.			It is unclear why a distinction has been drawn in the Agreement between “Construction Assets Project Site” and “Project Site” as opposed to just using the defined term “Project Site”. Please clarify.	Query is unclear. “Construction Assets Project Site” does not appear as a defined term.
57.			It should be clarified that the GoS shall not by virtue of its Class B Shares, have the	Please refer to Clause 3.2.2(b) of DCA. Class B Shareholders/GoS shall have the right to nominate two (2)



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			right to participate in the passing of any shareholders' resolution.	board observers on the board of directors of the Concessionaire.
58.			References to Companies Ordinance, 1984 to be updated to Companies Act, 017	Query unclear. All references are to Companies Act, 2017.
59.			We suggest that there should be an early completion bonus in order to incentivize the Concessionaire to complete the construction early.	Not Agreed.
60.	Recitals		It should be mentioned in the recitals that the project is on a DFBOT basis.	Noted.
61.	Definitions		In the definition of "Cure Periods", 45 days should be replaced with 60 days.	Not Agreed.
62.	Definitions		In the definition of "Financial Close" the following should be inserted in the last line after "Financing Documents": "(other than the effectiveness of this Agreement)"	Not Agreed.
63.	Definitions		In the definition of "Additional Facilities" the following words should be inserted after "Concession Assets":	No Change required.



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			“or the rights granted to the Concessionaire hereunder”	
64.	Definitions		Definition of “Applicable Laws” to include laws brought in force by the “Province of Sindh”, and the “Islamic Republic of Pakistan”. References “GOS” and “Government of Pakistan” should be removed	Query is unclear. There are no references to “GOS” and “Government of Pakistan” in the subject definition.
65.	Definitions		Price Escalation Agreement: request that the contents of this agreement be described within the draft of the Concession Agreement in a new section in order to avoid confusion later on.	Please refer to Clause 10.5 (<i>Price Escalation & Descalation Amount</i>) of DCA. Further details will be included in the Price Escalation Agreement
66.	Definitions		In the definition of “Toll”, it should be clarified that tolls may be collected until the Toll Commencement End Date and not until the “Trigger Date”. Currently there is a conflict between this definition and Section 17.1.1 (which provides that tolls can be collected under Toll Commencement End Date).	Please revisit subject definition. It is stated that in the subject definition that toll collection shall commence from the Segment Substantial Completion Date (unless otherwise mutually agreed between the Parties) until the Toll Commencement End Date.
67.	3.1. (Conditions Precedent)		It should be a condition precedent of the GOS that a legal opinion is provided (from	Not Agreed.



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			the GOS law department or the transaction advisors) confirming that this Agreement and the GOS Agreements have been validly entered into and form the legal, valid and binding obligations of the GoS.	
68.	3.5.1 (Termination Prior to the Commencement Date)		It should be clarified that the GoS shall be entitled to terminate the Concession Agreement if the Concessionaire CPs are not satisfied due to reasons solely attributable to the Concessionaire. This is because several conditions precedent of the Concessionaire are dependent on the GoS completing its conditions precedent.	No change required.
69.	4.4.2(b) (Concessionaire's Responsibilities)		Concessionaire's indemnity should be deleted.	Not Agreed.
70.	4.6 (Protection of Site from Encroachments)		GOS to provide police protection for the Project Site.	Police protection will be available in accordance with the provisions of the Draft Concession Agreement.
71.	4.10 (Existing Utilities and Roads)		The clause to specify when the details of existing utilities are to be provided to GOS.	Relocation of utilities shall be carried out by GoS as per Clause 4.10 of the Draft Concession Agreement and, in this regard, the Concessionaire's responsibilities shall be as per the Draft Concession Agreement.



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			<p>It should be expressly stated that the removal of existing utilities shall be the responsibility of the GOS at its own cost.</p> <p>It should be clarified that the Concessionaire shall not be responsible for the rectification of any damage caused by utility companies in the process of relocation of existing utilities.</p>	GoS is providing indemnities in respect of the Project Site as per the Draft Concession Agreement.
72.	4.12 (New Utilities and Roads)		The Concessionaire should have the right to charge Utility fees to utility companies as opposed to the GOS.	Not Agreed.
73.	4.14.1 (GOS Indemnities in respect of the Project Site)		<p>The following carve-out in the indemnities should be deleted:</p> <p>(in respect of the time period falling prior to delivery of Vacant Possession of Concession Assets Project Site to the Concessionaire).</p> <p>The principle is that the indemnities for relocation, resettlement or rehabilitation of people in relation to the delivery of Vacant Possession by the GOS cannot be restricted to claims, expenses and charges incurred</p>	Not Agreed.



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			prior to the delivery of the Vacant Possession.	
74.	7.2 (hh) (Concessionaire's General Undertakings)		It should be clarified that the Concessionaire will not be liable in the event of any damage to existing utilities caused by the utility companies' acts and negligence.	Please refer to response no. 71.
75.	7.2 (m) (Concessionaire's General Undertakings)		It should be specified that the Concessionaire's obligation to keep the Project Site free from encroachments and to remove encroachments shall commence from the delivery of Vacant Possession.	Please refer to Clause 4.6 of the Draft Concession Agreement.
76.	7.13 (Emergency Decommissioning)		Under Section 7.13.1(b), the Concessionaire shall only be required to recommission the Project if the Independent Engineer certifies that the Emergency Decommissioning was not warranted. The present language creates room for the Independent Engineer to notify the Concessionaire to re-commission even if it is certified that the Emergency Decommissioning was warranted.	<ol style="list-style-type: none"> 1. In the event Emergency Decommissioning is warranted then recommissioning would be in accordance with Clause 7.13.1(b)(i). 2. Not Agreed.



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			In the carve outs under Section 7.13.4 it should be included that if the Emergency Decommissioning results from a Material Adverse Impediment, the Concessionaire will be entitled to Relief Costs/Amounts.	
77.	8.7 (Powers of GoS to charge and implement Fees & Fines)		GOS to clarify what additional fees and revenues are contemplated in this provision. This may reduce the projected flow of traffic on the Project Highway impacting the Concessionaire's cash flows.	Additional fees, revenues and fines shall be in accordance with the Applicable Laws.
78.	10.1 (Funding of Equity)		Per the RFP, the GOS Funding Amount is to be injected upfront. This should be specified in the Concession Agreement to avoid confusion later on.	Please refer to Clause 10 (<i>Funding Requirements & Shareholding Matters</i>) of the Draft Concession Agreement.
79.	10.2.5 (Class A Shares and Class B Shares)		The GOS should not be permitted to sell its shares without consent of the Concessionaire.	GoS will consider any restrictions on the sale of its Class B Shares in the Equity Funding and Utilization Agreement.
80.	15.2.1(c) (Relief Events)		The word "directly" should be deleted.	Not Agreed.
81.	15.2.4 (Relief Events)		The following should be deleted on account of being too onerous:	Not Agreed.



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			“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 made all its efforts to avoid such Relief Event according to Good Industry Practice.”	
82.	15.4.3(a) (Relief Order Procedure)		The following words should be deleted: “the occurrence and subsistence of the Relief Event and”	Not Agreed.
83.	17.2.2 (Commencement of Toll Collection)		This Section empowers both the IE and GOS to comment on the operations manual and require the Concessionaire to make changes. This power should lie with the IE alone as the purpose of having an independent entity is precisely to avoid disputes between the parties. If the GOS can unilaterally instruct the Concessionaire to make changes it makes the role of the IE redundant here.	Not Agreed.



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84.	17.9.1 (Payment of Termination Payment by debit of Escrow Account and Encashment of GoS Financial Instrument)		<ol style="list-style-type: none"> 1. This section provides that money lying in the Escrow Account will be used to pay the Termination Payment Amount. It should be clarified that this relates to such amounts in the Escrow Account which belong to the GOS. Other amounts are the Concessionaire's and are part of its revenue which cannot be used to pay the Termination Payments. 2. Second: we also request a clarification in the agreement that this payment mechanism does not detract from the fact that the GOS will remain responsible for payment of the entire Termination Payment Amount as a primary obligor. 	<p>Agreed. This will be dealt in the Escrow Agreement.</p> <p>However, in case the Escrow Account already holds MRG Amount and revenue, the Concessionaire will not be entitled to debt servicing component of that period since the debt servicing component would be funded through the MRG Amount and the revenue.</p> <p>The concessionaire would only be entitled to MRG Amount and revenue net-off debt and Termination Payment Amount.</p>
85.	18.1 (Remedying Defects & Deficiencies)		Section 18.1.1(c) to be deleted. "Assured Availability" does not appear to be a defined term and it is unclear what kind of obligation is being imposed by this provision.	No change required.
86.	19.14		<ol style="list-style-type: none"> 1. The Maintenance Account should be operated without prejudice to the rights of the Financiers. 	<ol style="list-style-type: none"> 1. Query is unclear. 2. The Concessionaire shall be allowed to invest amounts



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	(Major Maintenance Payment Account)		2. The Concessionaire should be allowed to invest amounts standing to the credit of the Major Maintenance Payment Account in financial instruments bearing a maturity date of at least three hundred and sixty five (365) days.	standing to the credit of the Major Maintenance Payment Account in financial instruments (encashable). Periodicity of such instrument, in terms of duration and amount, should match with the reserve building requirement as per the DCA. However, equity linked financial instruments will not be allowed.
87.	22.1 (Concessionaire Event of Default)		<ol style="list-style-type: none"> 1. Days under paragraph (b) to be increased to 45. 2. Under paragraph (i), the aggregate period for Concessionaire's abandonment to be increased to 180. 3. Paragraph (s) should be deleted. Otherwise, in the event that the financiers enforce a share pledge the concession agreement will be terminated which will make the share pledge and ineffective security. 	<ol style="list-style-type: none"> 1. Not Agreed. 2. Not Agreed. 3. Not Agreed.
			4. Days under paragraph (t) to be increased to 90.	4. Query is unclear
88.	23.6 (Mode of Payment)		The payments by GOS to the Concessionaire should be credited directly	Not Agreed.



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			to the account of the Concessionaire regardless of whether any Financing Due. The Financiers may be given security over such account of the Concessionaire.	
89.	24.1 (Requirements for Divestment)		Paragraph (g) in relation to training of the GOS's staff to be deleted.	Not Agreed.
90.	25 (Defects Liability During Exit Implementation Period)		The costs for remedying defects in accordance with Handover List to be: (i) Borne by Concessionaire if the Agreement expires on Final Expiry Date or terminated due to Concessionaire EOD, Corrupt Act or a Non-Political Event; and (ii) The GOS in the event the Agreement is terminated due to a GOS EOD or a Political Event.	Not Agreed.
91.	27.3.1 (Financing Term Sheet)		1. The requirement here is that the debt repayment should not be greater than the 'Financing Component' using assumptions in the Financial Model. It needs to be specified that when calculating the Financing Component, KIBOR will be	Not Agreed.



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			<p>calculated at actual and not the number used in the financial model.</p> <p>2. If I refinance my loan but do not increase the obligations of the GOS then we should not need the consent of the GOS to make such amendments in 27.3.2.</p>	
92.	28.1.1 (Increase in Costs)		<p>1. The parties should also be obligated to meet within 15 days of the notice and amendments should be reached within 30 days of the notice.</p> <p>2. Additional Costs should be required to be paid within 15 days of notice and Delayed Payment Rate should also start accruing on the payments of Additional Costs by the GOS after 15 days from the receipt of the notice till the date of actual payment.</p>	Not Agreed.
93.	28.2 (Reduction in costs)		<p>1. The financial threshold should be reduced from five million to two million.</p> <p>2. The parties should also be obligated to meet within 15 days of the notice and amendments should be reached within 30 days of the notice.</p>	Not Agreed.



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94.	Schedule J		The schedule should state: “ <i>To the extent applicable to the Concessionaire.</i> ”	The list provided is tentative. Final list will be inserted at time of signing.
95.			Please elaborate on answer 78 of Response to Bidders Queries, as to whether the exit toll rate is expected to be per-km rates, or is there another process? In answer 111 of Response to Bidders Queries, private vehicle “short trips” are to have rate of PKR 50, and PKR 100 rate to be charged for whole corridor. If answer 111 is to be used, kindly elaborate what exactly is meant by partial use (i.e. is 30 km also a partial use)?	Please refer to response no. 10.
96.			Kindly elaborate the formula to be used for the calculation of Construction escalation/ de-escalation. Moreover, the weightages of esclatable items and fixed portion is also missing.	Weightages of escalable /de-escalable items shall be calculated after the detailed design is duly vetted and approved by the Independent Engineer. The calculation consists of the difference in Base Price and actual price of the escalable items (28 days before its consumption).
97.			We again reiterate the need to remove the windfall sharing concept above 120% of Benchmark Revenues, or at the very least reduce the GoS sharing percentage to ensure project viability.	Not Agreed.



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98.	Response 83 Responses to Bidders Queries		Question 83 of Response to Bidders Queries answer might be a typo. It states "bidder shall only include operations cost as part of the MRG Amounts for the first three operational years." These goes against the principle of O&M for first 10 years.	Please refer to response no. 9.
99.	Response 111 Responses to Bidders Queries		With reference to Question 111 of Response to Bidders Queries, the ability for concessionaire to charge full toll rate should not be linked with COD, but rather with substantial completion of specific section.	Not Agreed.
100.	Response 204 Responses to Bidders Queries		With respect to Question 204 of Response to Bidders Queries, this answer merits reconsideration, since in the scenario KIBOR and inflation decreases/increases considerably, along with changes in tax regime, the associated change in MRG can easily vary more than 10% per annum. This clause can cause large losses for both concessionaire and GoS. This should be removed both for actualization, as well as during bid submission stage.	The Bidders are required to quote MRG Amounts based on pre-set inflation rate and KIBOR (as stated in the RFP). Furthermore, tax as part of the MRG Amount would be allowed to the extent of the tax applicable on the quoted MRG Amount only. Additionally, the upwards/increase variation/difference in MRG Amount from last year must not be more than 10%. It is abundantly being made clear that this is for bid evaluation purpose only. During the operational period and for the purpose of actual payment of MRG Amounts, the O&M component and debt servicing component vis-à-vis interest charge would be



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				actualized/ adjusted based on the inflation and KIBOR actualization method as stated in the RFP Documents. Similarly, tax on the then adjusted MRG Amount would be recalculated as per the Base Case Financial Model with these adjusted O&M and debt servicing amounts.
101.	Annexure E		Interchange sketches in document on website (provided in Annexure E) do conflate with the same provided in TOR of July 2019 (page no. 96-99), please clarify.	Please refer to Addendum No. 1 to the RFP Documents.
102.	Annexure E		Exact location of Interchange no. 06 needs to be confirmed as to whether on 33+000 as mentioned on page no. 11 or as in sketch in Annexure E at 29+550,	Please refer to Addendum No. 1 to the RFP Documents.
103.			It needs to be clarified if sales tax on services in relation to EPC needs to be incorporated in the financial model?	All taxes pertaining to the Project are the responsibility of the Concessionaire and should be incorporated in the Financial Bid.
104.			The terms of joint bidding agreement in the RFP state that in case of a consortium, each member shall be jointly and severally liable in relation to all obligations in relation to the project. This is simply against the spirit of incorporating an SPVC for the project. The liability of each member will be to the extent of their respective equity in the SPVC.	Not Agreed.



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105.	Project Study		Commercial Feasibility Study or at least Traffic Study/Count, upon which benchmark Revenue is determined, may be shared.	Reports are available on the website for reference purposes only without any contractual obligation.
106.	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.
107.	RFP – Cover Letter, Annexure-N and Draft Concession Agreement Schedule-Q		<p>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.</p> <p>Please confirm there will be open tolling system or closed (Toll Rate per kilometer basis)?</p> <p>In case there will be closed tolling system then per km toll rate are to be defined.</p>	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 Addendum No. 1 to the RFP Documents.
108.	RFP – Minimum Revenue Guarantee (MRG)		<p>MRG should be extended to the occurrence of First Major Maintenance and the profits & First Major Maintenance Cost should also become part of MRG.</p> <p>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.</p>	<p>Not Agreed.</p> <p>Please note that the bidder shall only include operations cost as part of the MRG Amounts for the first three operational years.</p>



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			It is further requested that the proposed MRG may be made available throughout the Concession Period.	
109.	RFP – Class B Equity		<p>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.</p> <p>In case of any tax levy such tax burden should be borne by GoS?</p>	<p>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.</p> <p>Therefore, an application under Regulation 21 may be made by the Concessionaire for issue of shares with differential rights and the same shall be included as Concessionaire conditions precedent.</p> <p>In the event the application is refused then the parties shall agree to an alternative mechanism. Any adverse financial impact, resulting directly from such refusal shall be borne by the GoS.</p>



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110.	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.
111.	Competing Route		<p>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.</p> <p>It is considered as a basic requirement to safeguard the private investment. Please confirm?</p>	Please refer to response no. 33.
112.	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.	<p>Not Agreed.</p> <p>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.</p>
113.	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	Not Agreed.



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			Concessionaire, who is ultimately bearing maximum Risks?	
114.	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.
115.	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.
116.	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.
117.	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	Not Agreed.



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			<p>called “Financial Close Security”, which gives more logical understanding as this security is to ensure Financial Closure.</p> <p>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?</p>	
118.	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.
119.	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
120.	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
121.	5.6.1	The Concessionaire shall establish and maintain the Independent Engineer Payment Account from the Commencement Date and until the	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	Not Agreed.



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		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	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.
122.			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;	Not Agreed. It is clarified that GoS may, in its discretion, decide to utilise the interest accrued on the Class B Equity- GoS Equity Account (maintained with GoS account bank) to fund the first MRG payment.
123.	1.1 (<i>Definitions</i>)	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.
124.		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)	Not Agreed.



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125.	3.5.2(b)	<p>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</p>	<p>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</p>	<p>Not Agreed.</p>



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126.	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	Not Agreed
127.	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	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.	Agreed. Appropriate changes will be made in Draft Concession Agreement.



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		Completion Date) and Substantial Completion is achieved		
128.		<p>Change in Law means the occurrence of any of the following events on or after the Bid Submission Date:</p> <ul style="list-style-type: none"> (a) the enactment of any new federal, provincial or local government law, as applicable in the Province of Sindh; (b) the repeal, modification or reenactment of any existing federal, provincial or local government law, as applicable in the Province of Sindh; (c) the imposition by a Government Authority of any additional Concessionaire Permit; (d) change in the list of Exempted Vehicles as set-out in this Agreement; provided, that any: <ul style="list-style-type: none"> (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 	<p>The following events that are conventionally treated as Change in Law have not been included in the definition:</p> <ul style="list-style-type: none"> (a) the commencement of any federal, provincial or local government law, which has not entered into effect until the Bid Submission Date; (b) 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 	<ul style="list-style-type: none"> (a) Already covered under part (a) of the current definition. (b) Agreed. Part (b) may be included as a Change in Law event.



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		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'		
129.	17.5.2	The GoS shall ensure that the Toll Notification is issued throughout the Concession Period (including, as may be applicable, upto 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 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.



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130.	20 Insurance		All references to 'Financing Term Sheet' should be replaced with 'Financing Documents'	Not Agreed. Insurances for the Project that are necessary and required to be procured by the Concessionaire in accordance with the Financing Documents (as contemplated in the Financing Term Sheet) and the Applicable Laws are to be mutually agreed between the Parties prior to the Commencement Date. Therefore, Concessionaire should ensure that all relevant Insurances for the Project are incorporated in the Financing Term Sheet.
131.	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	The time period of fifteen (15) days should be deleted. The Concessionaire may suffer significant financial loss in fifteen (15) days	Not Agreed.
132.		Design Related Issues	The practicability of ensuring that the Detailed Engineering Design is prepared and approved by the Scheduled Commencement Date was discussed. It was proposed that it would perhaps be more practical to introduce a preliminary design concept in the Draft Concession Agreement whereas preparation and approval of the	Agreed. Concept to be incorporated in the Draft Concession Agreement.



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			Detailed Engineering Design will be deferred to after the Scheduled Commencement Date.	
133.			Harmonizing the expressions ‘Additional Costs’, ‘Relief Costs’ and ‘Force Majeure Costs’	Not Agreed.
134.		Termination of right to collect tolls	<p>Section 23.1.4 of the Draft Concession Agreement provides that upon issuance of a Termination Notice by the GoS (following expiry of the Cure Period) on account of occurrence and continuation of a Concessionaire Event of Default during the Operations Period, the right of the Concessionaire to collect Revenues shall stand terminated, (unless otherwise required by the Financiers and set-out in the Concession Direct Agreement) with immediate effect and no Revenues shall accrue and/or be payable to the Concessionaire from the date of occurrence of the Concessionaire’s receipt of the Termination Notice.</p> <p>The following revision was requested in this provision: <i>“upon issuance of a Termination Notice by the GoS (following expiry of the Cure Period) on account of occurrence and continuation of a Concessionaire Event of Default during the Operations Period, (a)</i></p>	Noted.



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			<p><i>the right of the Concessionaire to collect Revenues shall stand terminated, (unless otherwise required by the Financiers and set-out in the Concession Direct Agreement) with immediate effect and (b) no Revenues shall accrue and/or be payable to the Concessionaire from the date of occurrence of the Concessionaire's receipt of the Termination Notice, <u>unless otherwise required by the Financiers and set-out in the Concession Direct Agreement, in relation to (a) and/or (b) above.</u></i></p>	
135.			<p>The definition of the term '<i>Termination Equity</i>' in the Draft Concession Agreement contemplates reduction of the Class A Shares Invested Equity on a straight-line basis for purposes of calculation of the Termination Payment. The Participants strongly contested the appropriateness of this mechanism, especially in situations where the Minimum Revenue Guarantee provisions of the Concession Agreement are triggered and no return on equity is being earned from the Project. There is an inherent contemplation of an investor earning returns from the Project in the straight-line reduction method.</p>	Not Agreed.
136.			<p>The Participants requested that, in light of bankability issues, the definition of the term '<i>Termination Payment Date</i>' be</p>	Not Agreed.



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			revised as follows: “ <i>means the date falling ninety (90) days following the Termination Date, unless otherwise agreed in the Concession Direct Agreement</i> ”	
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