



**MALIR EXPRESSWAY PROJECT
RESPONSES TO QUERIES RAISED DURING AND SUBSEQUENT TO THE
PRE-BID MEETINGS HELD ON JANUARY 17, 2019 AND JANUARY 21, 2019**

**RESPONSES TO BIDDERS' QUERIES IN RESPECT OF MALIR EXPRESSWAY
PROJECT (STAGE TWO)**



**Local Government Department
Government of Sindh**



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

MARCH 2019



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IMPORTANT NOTICE / DISCLAIMER

This 'RESPONSES TO BIDDERS' QUERIES DOCUMENT IN RESPECT OF THE MALIR EXPRESSWAY PROJECT' (the **Queries & Responses Document II**) is being issued by the Local Government, Government of Sindh (the "GoS", in association with PPP Unit, Finance Department, Government of Sindh) and is further to the 'QUERIES & RESPONSES DOCUMENT' dated March 04, 2019, 'STAGE TWO REQUEST FOR PROPOSAL' dated January 04, 2019 (the **Stage Two RFP**) and the 'STAGE TWO DRAFT CONCESSION AGREEMENT' (the **Draft Concession Agreement**, and together with the **Stage Two RFP**, the **Stage Two RFP Documents**), is being provided to the recipient solely for use in preparing and submitting its Proposal for participation in the competitive bidding process to design, build, finance, operate and transfer, on Public Private Partnership ("PPP") basis, the Project Expressway, the same being an almost 39.4 km long road, namely Malir Expressway, as more particularly described and indicated in Schedule F (*Project Site*) of the Draft Concession Agreement, 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 "**Project**").

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

None of the Government of Sindh entities (including, *inter alia*, the Local Government Department, Government of Sindh, the PPP Unit, Finance Department, Government of Sindh and the TFEC) nor, in each case, their employees, personnel, agents, consultants, advisors, legal 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 Queries & Responses Document II 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, legal 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 Queries & Responses Document II or otherwise in connection with the Project.

Any Stage Two Proposal submitted in response to this Queries & Responses Document II, Queries & Responses Document and the Stage Two RFP Documents by any of the Stage One Qualified Bidders shall be upon the full understanding and agreement of any and all terms of the Stage Two RFP Documents and this Queries & Responses Document II and such submission shall be deemed as an acceptance to all the terms and conditions stated in the Stage Two RFP Documents and this Queries & Responses Document II.

Any Bid / response to the Stage Two RFP Documents and this Queries & Responses Document II submitted by a Bidder shall be construed based on the understanding that the Bidder acknowledges that prior to the submission of the Bid/Proposal in response to the Stage Two RFP Documents, the Bidder has, after a complete and careful examination, made an independent evaluation of the Stage Two RFP Documents (including scope of the Project, the Project Requirements, the Applicable Standards, the Project site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes) and all information provided by the GoS or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations under the Draft Concession Agreement. The GoS (including its employees, personnel, agents, consultants, advisors and contractors etc.) makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Bidders shall have no claim whatsoever against the GoS in this regard.



**MALIR EXPRESSWAY PROJECT
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The Stage Two RFP Documents do not constitute a solicitation to invest, or otherwise participate, in the Project, neither shall it constitute a guarantee on the part of the GoS that a Concession will be awarded.



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RESPONSES TO BIDDERS' QUERIES IN RESPECT OF MALIR EXPRESSWAY PROJECT (STAGE TWO)

INTRODUCTION

The GoS hereby issues this Queries & Responses Document II dated March 31, 2019, in furtherance to the Queries & Responses Document dated March 04, 2019, for responding to various queries that were subject to the approval of the PPP Policy Board, raised by the Stage One Qualified Bidders in respect of the Stage Two RFP Documents. Notwithstanding anything to the contrary and unless notified otherwise by the GoS, all relevant provisions of the Stage Two RFP Documents shall stand clarified and amended to the extent required to give effect to the response matters set out in this Queries & Responses Document II.

The following information is being provided to the Stage One Qualified Bidders, for the purposes of clarity:

- In relation to Annexure L, the interchange at approximately the 25+000 km mark, there shall be a partial clover leaf (two loops on river side) which may accommodate the two right turns along with the associated left turns. The other two left turns on the city side shall remain the same.
- If any existing road, bridge or culvert comes within the right of way and becomes unserviceable due to construction of Project Expressway, then it will be the responsibility of the Concessionaire to restore the same facility by its reconstruction at its own cost and expense.



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QUERIES RAISED & RESPONSES

SR. NO.	SECTION NUMBER	SECTION	COMMENT	Responses
1.	1.1 (Definitions) - legal	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 'Toll Revenues', as the Concession Agreement has been structured as a 'tolling model' and, therefore, any risk allocated to the GoS which causes a loss of 'Toll Revenues' should result in compensation for the Concessionaire in terms of such lost Toll Revenues	<p>The PPP Policy Board has approved incorporation of loss of toll revenue mechanism in the Concession Agreement.</p> <p>Loss of toll revenue is restricted to ONLY the debt component and the O&M component (which shall be computed in accordance with the bidder's financial model updated at financial close) for the period the expressway is unavailable due to reasons attributable to the GoS for a maximum period of thirty (30) consecutive days. Such loss of toll revenues will only be available from the Commercial Operations Date till the Debt Repayment Date. The payment of loss of Toll revenue shall further be decreased by any MRG to be paid by GOS for such proportionate period.</p> <p>By way of clarification, if the loss of toll revenue is less than or equal to the Debt Servicing and the O&M amount, then</p>



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				<p>the actual loss of toll revenue shall be paid which shall further be reduced by any MRG to be paid by GOS for such proportionate period. As an illustration:</p> <p>Loss of Toll Revenue (a) = PKR 1,200</p> <p>Debt Servicing + O&M (b) = PKR 1,000</p> <p>MRG already paid/payable for the proportionate period (c) = PKR 800</p> <p>Net amount payable as Loss of Toll Revenue = PKR 200</p>
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**MALIR EXPRESSWAY PROJECT
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2/32.	3.5.2	<p>In the event:</p> <p>(a) the Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling ninety (90) days following the Scheduled Commencement Date, (including the extended time, if any) due to reasons attributable to the GoS and/or a Force Majeure Event; and/or</p> <p>(b) of occurrence of a GoS Event of Default prior to Commencement Date,</p> <p>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 Bid Security or the Construction Performance Security (as in effect at such time) to the Concessionaire without any encashments, demands or claims; 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</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>The PPP Policy Board provided approval for incorporating the concept of compensation to the Concessionaire, for cost incurred upon undertaking detailed design and environmental feasibility, in the event of termination prior to Commencement Date, due to GoS Event of Default, subject to Independent Engineer certification. Moreover, the claim amount against these studies, carried out by the Concessionaire, shall not exceed the Bid Security amount provided by the Concessionaire for the project.</p>
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**MALIR EXPRESSWAY PROJECT
RESPONSES TO QUERIES RAISED DURING AND SUBSEQUENT TO THE
PRE-BID MEETINGS HELD ON JANUARY 17, 2019 AND JANUARY 21, 2019**

		Termination of this Agreement		
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PRE-BID MEETINGS HELD ON JANUARY 17, 2019 AND JANUARY 21, 2019**

3/84			We assume concessionaire will be allowed to give additional entry and exit points or interchanges as and when required to increase toll income	The PPP Policy Board has allowed the bidders to construct an additional interchange from its own sources, in future. However, such a proposal shall be thoroughly evaluated by the Independent Engineer and shall be subject to approval of PPP Policy Board.
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4/130			To facilitate traffic movement for Education City and DHA City there may be an additional interchange will require b/w KM 35.00 to KM.36.00.	The PPP Policy Board has provided approval for incorporating a provision of an interchange at junction of Education City, Link Road and Malir Expressway in the detailed design and also decided that, if the same is needed in future, the same shall be constructed with the GoS funding.
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5			It is requested that the bid submission date is extended by a month from April 04, 2019 till May 04, 2019.	The PPP Policy Board has approved that the Bid Submission Date shall be extended till April 23, 2019.
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