

Allotment of Coal Mines to Government Companies for the purpose of Sale of Coal

**Queries & Responses
to
Allotment Document
for
9th Tranche of Allotment**

**Nominated Authority
Ministry of Coal
Government of India
New Delhi**

August 30, 2019

A.Queries and Responses to Allotment Document

S. No.	Query	Response
1	<p>Clause 3.6 Schedule of Allotment Process Extension of timelines is requested for: i) Submission of pre-application queries – by at least 14 days. ii) Last date of bid submission – by at least 1 month. Being a PSU, approval of the competent authority is needed before committing to a large and long term investment project</p>	<p>As per Clause 3.6 of the Allotment Document.</p>
2	<p>Clause 4.12.1 – Coal Supply Agreement Are there any conditions which need to be adhered to in the Coal Supply Agreement that the allottee will enter into with its customers, apart from identifying the customers through a non-discriminatory e-auction process? Also in case of long term contracts, is there restriction on linking the price of coal with CIL notified price or restrictions on the allottee needing its prospective customers to fulfill certain minimum coal consumption qualification criteria?</p>	<p>The sale of coal shall be as per Clause 4.12 of the Allotment Document and Clause 8 of the Allotment Agreement. Other terms & conditions for such sale of coal may be stipulated by the Allottee in conformity with the Allotment Document and Allotment Agreement. As per Clause 8.1.2(c) of the Allotment Agreement, for sale of MSME share's coal to MSME sector, <i>"The Allottee shall ensure that the purchaser of coal under MSME share is a micro enterprise, or a small enterprise or a medium enterprise as defined/ covered under the Micro, Small and Medium Enterprises Development Act, 2006 and <u>is the end user of the coal purchased</u>".</i></p>
3	<p>Clause 4.12.2 – MSME share The allottee may kindly be given more flexibility with respect to the MSME share, both with respect to the 25% share and the periodic requirements.</p>	<p>As per Clause 4.12 of the Allotment Document and Clause 8 of the Allotment Agreement.</p>

4	<p>Clause 4.12.2 (g) <i>In the event that the Allottee is unable to sell the total MSME Share to MSME purchasers on pan India basis at the end of the financial year then such part of Unsold Quantity may be sold by the Allottee to any buyer including MSME buyers on pan-India and non-discriminatory basis, in the 1st quarter of the next financial year.</i></p> <p>Following modification should be considered: In the event that the Allottee is unable to sell the total MSME Share to MSME purchasers on pan India basis at the end of any financial quarter, then such part of unsold quantity may be allowed to be sold by the Allottee to any buyer including MSME buyers in the immediate next quarter of the financial year.</p> <p>Coal's Spontaneous heating nature restricts its storage for a short duration only. Storing coal inventory would be difficult process and mining of the quantum in the next financial year may result in violation of approved mining plan. Hence, parties may be allowed to sell the unsold quantum of a financial quarter in the immediate next quarter of the financial year.</p>	<p>As per the F. No. 12012/1/2015-CA-III/CBA2 from Govt. of India and as per Clause 4.12.2(f) of the Allotment Document, "<i>In the event that the actual coal sold to MSME sector is less than the MSME Share, then the shortfall shall be adjusted in the subsequent quarter. The MSME Share shall be calculated mandatorily on annual basis at the end of the financial year</i>". Sale of coal shall be as per Clause 4.12 of the Allotment Document and Clause 8 of the Allotment Agreement.</p>
5	<p>Clause 6.1.2 (b) 3rd Criteria <i>Total quantity of coal mined by the Applicant during previous 2 financial years i.e. FY 2017-18 and FY 2018-19 (A) vis-à-vis peak rated capacity of the Coal Mine as per the approved Mine Plan (B)</i></p> <p>Instead of only coal, minerals covered under 2nd schedule of MMDR Act, 1957 may kindly be considered</p>	<p>As per Clause 6.1.2(b) of the Allotment Document</p>

6	<p>Clause 6.1.2 Resolution of tie How will the score be derived from the additional parameters; may kindly be specified?</p>	<p>In case of a tie, in accordance with Clause 6.1.2(b) of the Allotment Document, the absolute values of the two parameters for the two Applicants shall be graded linearly on a relative scale to arrive at the Tie-Break score. The two parameters shall be</p> <p>a) Total Mineral production divided by Total number of employees (Average of last two financial years)</p> <p>b) Total number of fatalities per 1000 persons employed (Average of last two financial years)</p> <p>Equal weightage shall be assigned to be abovementioned parameters and the Applicant achieving the highest score shall be recommended as Preferred Applicant.</p>
7	<p>Clause 7 – Performance Security The amount may kindly be specified so that prospective allottees may include the same in their calculations</p>	<p>Amount of Performance Security shall be provided shortly.</p>
8	<p>Clause 8.2. Flexibility in Coal Production Schedule</p> <p>Given the vagaries of coal market, the allottee may be allowed greater flexibility. Apart from producing 50% in any year, allottee should be allowed to produce up to 60% in 5 year blocks, as if the allottee achieved only 50% production in one or two years, achieving 70% on overall 5 year block basis may be difficult and may even require allottee to cross the PRC.</p>	<p>As per Clause 8.2 of the Allotment Document</p>

9	<p>Annexure V –Allotment Agreement</p> <p>Clause 8.1.1 Clarification is sought on the term “non-discriminatory basis”. While conducting e-auction for long term supply of coal, the allottee, in order to protect its commercial interests, may set certain minimum criteria in terms of financial wherewithal and minimum coal demand for potential buyers to participate in the auction. Certain potential buyers may not be able to meet such criteria – we hope that this will not be construed as discrimination against such parties.</p>	As per modalities specified in the Clause 8.1.1 of the Allotment Agreement
10	<p>Annexure V –Allotment Agreement</p> <p>Clause 8.1.2 (d) For the MSME share, is it possible to engage intermediaries for the sale? In such a scenario, it may be difficult for the allottee to get such purchaser specific details</p>	As per Clause 4.12 of the Allotment Document and Clause 8 of the Allotment Agreement.
11	<p>Annexure V –Allotment Agreement</p> <p>Clause 10 Efficiency Parameters Some of the Coal blocks in 7th tranche are regionally explored too. For undertaking detailed exploration in these blocks, parties would require to obtain Forest Clearance. The Forest Clearance in general takes longer duration owing to which the time overrun can be more. Hence in such cases adhering condition of overall grace period of 15% would be more difficult. Hence, the same may please be reviewed.</p>	As per Clause 10 of the Allotment Agreement.

12	<p>Annexure V –Allotment Agreement</p> <p>Clause 10 Efficiency Parameters In case of bonafide delays in approvals related to the mines which are beyond the reasonable control of the allottee, such as any litigation, required approvals being delayed by the respective authority, insolvency or liquidation or default of contractor/ MDO/ MO, relaxation of the 30% and 15% grace period is requested.</p>	As per Clause 10.1 of the Allotment Agreement.
13	<p>Annexure V –Allotment Agreement</p> <p>Clause 12 Contractors and Sub-Contractors Is it permissible to engage a contractor under Mine Developer and Operator or Mine Operator mode and seek their assistance in financing, development, land acquisition, R&R whilst overall responsibility remains with the allottee?</p>	Yes, as per Clause 12 of the Allotment Agreement.
14	<p>Annexure V –Allotment Agreement</p> <p>Clause 13 Change in Control and Transfer Can a PSU allottee transfer its right in the coal mine to a fully owned subsidiary?</p>	Change in control and transfer shall be as per the Clause 13.1 of the Allotment Agreement

15	<p>Annexure V –Allotment Agreement</p> <p>Clause 19 Assignment, Security for Financing In case an allottee chooses to develop the mine under Mine Developer and Operator or Mine Operator mode who is responsible for financing and development of the mines, would Clause 19 be also applicable over the moveable and immoveable plant & equipment of the Mine Developer and Operator/ Mine Operator in the mine?</p>	<p>As per Applicable Law.</p>
16	<p>Annexure VI – Fixed Amount The fixed amount may kindly be specified.</p> <p>Will the fixed amount to be paid to prior allottee be subjected to escalation? If so, the details on escalation</p>	<p>Fixed Amount shall be provided shortly.</p> <p>The Fixed Amount shall not be subject to an annual escalation on the basis of Reference Index. However, in accordance with Clause 3.1(d) of the Allotment Agreement, any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Allottee on receipt of any notice to that effect from the Nominated Authority.</p>

17	Tokisud North Coal Mine Has there been any litigation pending against Tokisud Mine by previous allottees GVK / Essar Power? If so, the details thereof.	<p>Essar Power MP Ltd., previous Successful Bidder of the Tokisud North coal mine under the Coal Mines (Special Provisions) Act, 2015 had filed WP(C) No. 4555/2017 before Hon'ble Delhi High Court praying for quashing the entire tender process conducted for the coal mines and direct MoC/ NA to refund performance security and other amounts. Petitioner had submitted before Hon'ble High Court that their case is covered by the judgment dated 09.03.2017 of the Hon'ble High Court passed in WP(C) No. 3786/2015 and tagged matter.</p> <p>Vide order dated 15.04.2019 the Hon'ble Court dismissed the writ petitions with liberty to seek relief through any other proceedings, contractual or otherwise, as may be advised. The CMDPA and vesting order of Tokisud North coal mine in favour of Essar Power MP Ltd. was terminated vide termination order dated 03.05.2019.</p> <p>The petitioner has now filed SLP(C) No. 11998/2019 before Hon'ble Supreme Court of India challenging the judgment dated 15.04.2019 of the High Court. On 08.05.2019, Hon'ble Supreme Court passed an order observing that as the bank guarantee has been encashed, no interim order is called for, save and except that the encashment of the bank guarantee will naturally be subject to the result of this petition.</p>
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18	<p>Tokisud North Coal Mine</p> <p>Annexure I to letter no 110/01/2014-NA, dated 03.12.2014 (Copies of all permits, licenses, Permissions, Approvals consents relevant to mining operations)</p> <p>It has been observed that maximum approvals related to mines such as mining plan, forest, environmental clearance have been granted for a captive user. Please confirm, whether new approvals will be required for the allottee.</p>	As per Applicable Law.
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