



Findings and Recommendations of the Judge, Judicial Preview, Guntur,
dated 10-01-2023.

In case of –

“Selection of Service Provider for Providing MMU Services (104
services) across Andhra Pradesh”



FINDINGS AND RECOMMENDATIONS OF THE JUDGE, JUDICIAL PREVIEW, A.P., DT.10-01-2023 - ON THE REQUEST FOR PROPOSAL (RFP) KEPT FOR PUBLIC VIEW TO SUBMIT ANY QUERIES, AS A PART OF THE JUDICIAL PREVIEW PROCESS BEFORE ITS FINALIZATION TO ISSUE RESPECTIVE TENDER NOTICES FROM THE TENDER DOCUMENTS INVITING ELIGIBLE BIDDERS TO SUBMIT BIDS ONLINE THROUGH THE GoAP's ONLINE PROCUREMENT PORTAL (HTTPS://APePROCUREMENT.GOV.IN) BY THE REVERSE AUCTION PROCESS IN COMPLIANCE WITH THE e-PROCUREMENT NOTICES INVITING TENDER CUM E-AUCTION (REVERSE TENDERING), Viz, NOs. – 13.2/APMSIDC/Equiomment/2019-20, Dt.23-12-2022 IN THE MATTER OF: “Selection of Service Provider for Providing MMU Services (104 services) across Andhra Pradesh” are the following with factual background and justification in nutshell:

I. JUSTIFICATION:

The Government of Andhra Pradesh has introduced the 104 non-emergency medical services in the year 2008. A doctor along with other staff like ANM, ASHA worker, Data Entry operator shall travel in a vehicle (Mobile Medical unit) from a designated place/ Base location (usually a Primary Health Center-PHC) to the nearest village, and provide non-emergency Health Care services to the people in that village. Revamped 104 services were launched by the Hon'ble CM on 1st July 2020 with a fleet of 656 new MMUs@ 1 per Mandal to provide health care services to the rural population of AP. Village Secretariat was taken as the unit for mapping and route plans were developed in such a way that, all the village secretariats (except PHC containing Village Secretariat) of the Mandal were covered by the MMU in 26 days of a month. Each MMU is manned with a Doctor, DEO and Driver. The field staff comprising of ANMs, MLHPs & ASHAs participate in the conduction of the clinic along with the MMU staff (integration with PHC). In this way the MMU serves as an outreach arm of the PHC instead of working as a separate entity. OP services in the morning and home-based visits, visits to Angan Wadi Center (AWC), Schools etc are done in the afternoon session.

The Government of AP has decided to introduce Family Physician Concept, where in all the medical officers of the Primary Health Center (PHC) in a Mandal will be allotted a fixed number of village secretariats. Each Medical Officer will be visiting his allotted village secretariats only in the MMU and render services. This will bring the Doctor close to the treating patient's families and help to build the family physician concept. Under this concept, each village secretariat will be visited by the MMU team, at least twice in a month. Proposals have been prepared to meet this requirement and it is concluded that, another 432 No's of Mobile Medical Units are required to cover each village secretariat at least twice in a month and thus the tender was planned to invite the prospective bidders for the supply of 432 Mobile Medical Units that is since finalized viz., FORCE Traveler Delivery Van, 3700mm WB, BS-VI, (Diesel Engine-Four Cylinders-2596CC) & Purchase Order was issued on Dt.30-08-2022. Providing Fabrication for the 432 Base Vehicles is also complete for Base Vehicle procurement finalization. Hence Present project under the family physician concept for identifying the service provider for field operations and delivery of the Mobile Medical Unit (104) services is to be taken-up.

As, the Mobile Medical Unit is a vehicle, built with rear cabin on a base vehicle which can be a goods carried type and the rear cabin is built by means of fabrication, which comfortably accommodates a Doctor's seat, foldable bench, 4 patient chairs, Data entry operator's seat and one examination table. Suitable wracks are also provided to keep consumables, medicines and to keep 41 types of equipment (27 medical + 14 non-medical) inside the rear cabin. B-Type oxygen cylinder is also provided with 10 liters capacity in order to meet the oxygen requirement in emergency situations. 20 types of services can be rendered utilizing the medical equipment, medicines and consumables available in the MMU. Each vehicle is provided with a laptop, internet data connection, Mobile phone with sim-card. At the end of each day, patient record along with other procedural data is uploaded to the 104 MMU applications. The data is stored



in the servers and necessary reports are developed from the (Emergency Response Center (ERC) located at 5th & 6th floors of the APIIC building, Mangalagiri. (ERC handles both 108 and 104 IT related services, 104 health information helpline (call center), situated in the 6th floor of APIIC Building (state Headquarters), staffed with 20 Information Officers, for 104 information/advisers, 4 Information Officers for grievances, 7 Doctors, 4 Counselors, 4 Quality Check executives, 4 Feedback executives and 4 Supervisors. Apart from providing medical advice, this Health Information Help Line (HIHL) also provides counseling services, information related to various health schemes of the Government, including Arogyasree information, MMU related information and registers grievances when any citizen calls to this toll-free number.

The entire project can be divided in to 5 parts. 1) Procurement of base vehicle (FORCE Traveler Delivery Van, 3700mm WB, BS-VI, (Diesel Engine-Four Cylinders-2596CC) & Purchase Order Issued on Dt.30-08-2022), 2) Fabrication to built the rear cabin (to provide a spacious rear cabin, with provision for 1.5 Ton equivalent capacity of engine driven AC unit, wracks to keep consumable medicines, doctor's chair, patients' chairs, examination table etc.), 3) Fitment of Medical equipment (41 types of equipment (27 medical + 14 non-medical) be fitted inside the rear cabin to meet various types of procedures which need to be done during conduction of clinic.), 4) The present project covering to hire service provider/s for delivery of MMU services (with uploading of all data including of the patient by the data entry operator/s in the vehicle in the 104 MMU application/s at the end of each day to the main server, situated in the state level at the headquarters for in turn integration of said data and 5) Integration of the data with call center (ERC-for 108 services and system integration for 104 services).

The objective of the Government of Andhra Pradesh in mooted the present project is to provide free non-emergency health care services at village secretariat level, under the Family Physician Concept, by each Mobile Medical Unit to cover each village secretariat, at least twice in a month, facilitating each family to cover under one doctor in achieving healthy villages within the state of Andhra Pradesh.

II. Keeping in view the above background and justification report for the request for proposal (RFP) under **Lump Sum contract system** mooted with the intention to seek Judicial Preview before the Honorable Judge, by the Managing Director, APMSIDC, Mangalagiri, A.P., as the Tender Initiating Authority (TIA), from submission in Form-I, the bid documents, which are the request for proposal (RFP) herein, as per the provisions of the A.P. Infrastructure (Transparency through Judicial Preview) Act,2019, (Act, 34 of 2019) and the Rules there under, cause uploaded/Notified on **27.12.2022** in the public domain of (JJP) i.e., www.judicialpreview.ap.gov.in., so also directed the Tender Initiating Authority to place (notify) in their official website and also cause publish news item in print media for information there from to the public and to those intending bidders-because of no pre-bid negotiations are contemplated, but for to submit by way of any objections/suggestions/queries within the seven working days ending by **04-01-2023** by 5 P.M.

III. From the above, objections/suggestions/queries are received by soft response uploading to the official website of JJP from **INTENDING BIDDERS** in the public domain of (JJP) i.e., www.judicialpreview.ap.gov.in on the bid document of the present RFP.

IV. **The (TIA)-MD, APMSIDC, Mangalagiri, through their email**, dt.10-01-2023, has submitted their detailed response/s in answer to the objections raised by the individuals/entities and these are required to be taken up first before undertaking further preview process for the findings and recommendations, hence same is taken up accordingly by mention of gist of objection/suggestion/query, gist of response of the TIA and finding of the Judge in the below Tabular form:



S.No.	Name, Date & Gist of Objection	Response of the TIA	Findings of the Judge
I).a.	<p>Mr. Gangadhar. K, M/s. Aurobindo Pharma Foundation The bidder (Sole/One of the construction members) should have minimum 3 years of experience in either providing healthcare services such as MMUs or 102 JSSK programme etc. or emergency health response services such as 108 etc. at field level through at least 50 vehicles in India or abroad. (Emergency Response/ Call Centre experience will not be considered) Suggested changes: Request you to allow the eligibility to 2 years of operations</p>	<p>Erstwhile RFP was also provided with minimum 3 years of experience and it was originally provided with five years experience reduced to three years and same was approved by the Hon'ble JJP; hence it cannot be changed.</p>	<p>The estimated cost of the project is above 182 crores. Considering it for reasonable competitive participation and competency to execute the work for its due completion and also keeping in view of the importance of the job, when it was fixed the yardstick of the bidder should have minimum 3 years of experience in either providing healthcare services such as MMUs or 102 JSSK programme etc. or emergency health response services such as 108 etc. at field level through at least 50 vehicles in India or abroad. There is no unreasonability in fixing the minimum 3 years experience and further there is no justification shown even to the request to reduce from 3 to 2 years. Hence the request is rejected.</p>
I. b	<p>The bidder (Sole/One of the consortium members) should have an annual operating income of at least INR 25 Crore from similar activities in each of the last three financial years (2021-22,2020-21 and 2019-20) Suggested changes: Request you to allow us to use Associate Firm's Turnover, where the Lead bidder is also a partner in the Associate Firm.</p>	<p>Erstwhile RFP has been approved by Hon'ble JP, hence it cannot be changed.</p>	<p>The annual operating income of atleast 25 crores shall be of each bidder to say either individual or entity and not for each member of the entity and hence the request is considered to this extent. The TIA shall carry the amendment in the RFP as per the above finding/recommendation For more details on how consortium to be formed see further findings and recommendations in another tabular format which is being given after answering all objections in this tabular format.</p>
I.c	<p>Clarification: In the wake of FPC, what is the cost of component of the Medical Officer to be excluded while budgeting only for DEO and Driver?</p>	<p>Only DEO and Driver have to be deployed. The Bidder has to calculate the cost accordingly.</p>	<p>It is for the bidder to work out and in compliance with all applicable labour laws with rules and regulations if any besides Govt. orders and circulars having the binding force to follow and comply.</p>
I.d	<p>Clarification: Whether proposed MMUs to be deployed evenly across the Districts or Districts wise number of MMUs deployed worked out?</p>	<p>All 260 MMUs will be allotted to all districts in accordance with the requirement in addition to the existing 676 MMUs so as to meet the bid requirements while submitting the bids.</p>	<p>In view of the response to the query, no more finding is required.</p>
I.e	<p>Clarification: Is there any target for OP per day?</p>	<p>This is not related to the scope of the work</p>	<p>In view of the response no more finding is required.</p>



I.f	<p>Clarification: Whether all Medical equipment including Test Kits would be provided by Govt.?</p>	Yes.	In view of the response no more finding is required.
I.g	<p>Page 24 Point 9 MMU shall be in operation in field as per schedule and shall cover all the VHCs. The Service Provider shall arrange necessary staff during the public holidays without violation of labour legislation provisions and rules. A minimum of 26 service days per month should be ensured for every MMU: Clarification: As there is a need to Operate MMUs 26 days a month. It is difficult to take care of vehicles repairs and maintenance works. Will there be any exemption on account repair and maintenance-related penalties?</p>	The vehicles should be operational for 26 Days and for non-compliance penalties will be imposed as per RFP.	Having considered the query and the response with reference to the RFP and earlier ERC, 104 & 108 findings, it is recommended with the finding that any major repairs needed to the vehicles be attended in the four out of 26/30 days per month on average and for minor repairs it is only matter of minutes or an hour and as such the apprehension is baseless and the query is rejected as untenable for no service provider under guise of repairs and vehicle break down can avoid the MMU services.
II.a	<p>M/s. V Soft Technologies Pvt. Ltd., Hyderabad: (Pg.33Cl.6.1(1)9), The Bidder can participate as a sole/ consortium. The sole bidder shall be any of the following registered in India. a. Trust b. Society Suggested Changes: The Bidder can participate as a sole bidder/ consortium. The sole bidder shall be any of the following registered in India. a. Trust b. Society c. Company</p>	Trust or society will be given priority as they are involved in charity. Hence there is no change in the clause.	Having considered the query and the response with reference to the RFP and earlier ERC, 104 & 108 findings, it is recommended with the finding that as the object of the project is to provide service by service provider effectively, rather than confining to trust and society, any individual having other eligibility and likewise any legal entity like a company or a firm or joint venture/ consortium to form as firm can when equally and efficaciously provide service, it cannot be confined to trust and society and as such the request is considered for giving eligibility to any individual having other eligibility and likewise any legal entity like a company or a firm or joint venture/ consortium to form as firm besides society or trust. It is made clear that the society or trust must be a Registered one under the AP societies Registration Act or under respective state laws in India or under the Indian Societies Registration Act, the Company under the Indian Companies Act,1956/2013, the joint venture/ consortium to form as a partnership firm with members not exceeding three and such partnership firm must be registered with Registrar of firms and the names and addresses with email IDs and cell phone and land line numbers must be provided with and shall be duly



			<p>entered with the registrar of firms and proof shall be submitted.</p> <p>The TIA shall carry the amendment in the RFP as per the above finding/recommendation.</p> <p>For more details on how consortium etc., to be formed see further findings and recommendations in another tabular format which is being given after answering all objections in this tabular format.</p>
II.b	<p>(Pg.12Cl.9)-EMD: INR 1,00,00,000 in form of Bank Guarantee (BG) or Demand Draft (DD) from any nationalized bank.</p> <p>Suggested Changes: Request to reduce the EMD amount from Rs.1,00,00,000 to 25,00,000/-</p>	<p>As the value of the tender is more than 100 crores, 1 crore EMD is justified. Hence there is no change in clause.</p>	<p>The request is rejected as baseless for the reason as per GOMS No. 94, dt.01.07.2003, the EMD is 2.5% and because of Covid a reduced EMD is accepting and presently as per G.O.Ms.No.94, dt.01-07-2003, modified by G.O. Rt.No.266F(HR-V-TFR-A & LEWF) Dept., dt.15-02-2021 that was extended by G.O.Rt.No.117, dt.17-05-2022, for the period as applicable of 1% and to give undertaking to comply G.O.Ms. No.94, dt.01-07-2003, to the extent not covered by G.O.Rt. No.266,dt.15-02-2021 & G.O.Rt. No.117, dt.17-05-2022. The security deposit and retention money are also as per the G.O.Ms.No.94, dt.01-07-2003, as amended and as applicable and after seizure of its application during pendency of contract period, the contractor has to comply GO 94 supra for the security deposit concerned, including to recover from bills proportionate amounts.</p>
II.c	<p>(Pg.32-Cl.d), The selected Service Provider must resolve all issues related to the employees who are employed in the erstwhile contract. If the selected Service Provider does not clear dues of the employees employed in the erstwhile contract, then the Client shall deduct those dues from the payment to be paid to the Service Provider. However, in respect of those employees who have not worked earlier with the selected Service Provider, then that selected Service Provider have no liability on those employees and in such case the Government shall under take the due process in settlement on case-to-case basis</p> <p>Suggested Changes: Newly</p>	<p>Keeping In view of the future of the working employees, this clause is justified.</p> <p>The selected Service Provider must resolve all issues related to the employees who are employed in the erstwhile contract. If the selected Service Provider does not clear dues of the employees employed in the erstwhile contract, then the Client shall deduct those dues from the payment to be paid to the erstwhile Service Provider.</p>	<p>The RFP clauses are very clear with no ambiguity to convey same meaning of what the suggestion made of the newly selected service provider is not responsible to make the payments of arrears related to the employees of erstwhile contract which were incurred by previous Service Provider.</p> <p>However, if earlier service provider and present one are one and same or any member of the service provider entity is same, then without clearing arrears to the workers how they can be justified to be considered, as such in those cases the amount can be deducted by the employer to pay to those workers</p>



	<p>Selected services provider is not responsible to make the payments of arrears related to the employees of erstwhile contract which were incurred by previous Service Provider. Request to remove the clause</p>		<p>In view of the above, the TIA shall add the above as a further clarification.</p>
<p>II.d</p>	<p>(Pg. No 10) Under this FPC, every MMU will cover all the village secretariats in its jurisdiction twice a month. Each MMU is manned by the PHCMO and his/her field staff comprising of CO/MLHP, ANM, ASHAs, MPHEO, MPHS etc., there by integrating MMU functions with primary health center and bringing health services nearer to the people there by realizing the family physician concept. A service provider at field level will operate and maintain the MMU along with their staff like Data Entry Operator and driver. Suggested Changes: As per the operational guidelines for Mobile Medical Units in 2015, the suggested combination of manpower is as under (Clause 8.1 Page no.19) 8.1 The suggested HR for an MMU is as under: MO (Medical Officer, preferably women) One GNM: One Lab Technician: One Pharmacist cum Administrative Assistant: One Driver cum Support Staff: One. (1) MMU Linkage with PHC could suffer the operations of PHCs. (2) There are heavy penalties for non-functioning of MMUs. As per clause 6.24.4(1) & (5) “98% for first two Years from Appointed Date and 95% post completion of two years till the Concession Period Rs.20,000/-per day for every percentage below the threshold” (3) In case of non-functioning due to the PHCMO who will be responsible for deductions? MMUD is strict supervisor can't instruct PHCMO to come on time. (4) Late movement due to PHC staff could also attract penalties. Suggestions–Agency should provide a complete set of Man</p>	<p>The operational guidelines for Mobile Medical Units in 2015, suggested combination of manpower under Clause 8.1 Page no.19, not in dispute. However, the employer is not preferring the same for own reasons and employer's convenience and cost economy. So far as penalties for deficiency of services by the service provider concerned, penalties on late movement of vehicle will be based on reason & case to case basis. Question of non-functioning due to the PHCMO does not arise and if such is the contingency, definitely it will be considered while fixing responsibility and deciding deficiency in service or not of the service provider for deductions.</p>	<p>Having considered the query and the response with reference to the RFP and earlier ERC, 104 & 108 findings, the response since clear about the operational guidelines for Mobile Medical Units in 2015 not preferred for convenience and cost economy and for the employer's own reasons, there is nothing to direct the employer to follow those since only guidelines and not mandatory operational instructions for strictly to follow. Regarding penalties for deficiency of services by the service provider concerned, the response is very clear and accepted. There is no more finding required therefrom, but for to direct the TIA to incorporate the above at the relevant portion as a note for more clarity.</p>



	power/ Staff for MMU operations so that it could be the sole responsible for any short falls/ defaults.		
II.e	<p>(Pg.20,5.1.1-5)Provides managerial staff at Regional/Zonal/District levels and Sub-District level. There shall be at least one supervisory staff (OE) for every 6 MMUs, one District Manager per district, one fleet manager per district and one Regional / Zonal Manager per region/zone. Clarification: Please provide locations including the number of MMUs with a district-wise breakup. Please provide the locations of MMUs so that agency could identify and plan their expenses accordingly.</p>	The tentative plan will be shared at the time of uploading the documents in giving the tender notice so as to work out and same can be subject to any change on field activity from necessity and convenience of all, particularly the service receiver end in priority.	In view of the clarification with modification no more finding is required but for to direct the TIA to carry the modification in the RFP by enclosing the tentative plan and with note of same can be subject to any change on field activity from necessity and convenience of all, particularly service receiver end in priority.
II.f	<p>(Pg.20, 5.1.1 – 12) Service Provider shall record attendance of the staff through Aadhaar Enabled biometric device installed inside the MMU/ Facial Recognition System. Suggested Changes: Tender inviting authority should ensure to provide the linkage of Bio-metric with Aadhaar Card (UIDAI) portal or change this clause as per request</p>	Erstwhile RFP has been approved by Hon'ble JP with such provision, hence it cannot be changed. Tender inviting authority can ensure to provide the linkage of Bio-metric with Aadhaar Card (UIDAI) portal or Facial Recognition System as the case maybe as being considered appropriate	Having considered the query and the response with reference to the RFP and earlier ERC, 104 & 108 findings, the response is accepted from the assurance of the employer to provide the linkage of Bio-metric with Aadhaar Card (UIDAI) portal or Facial Recognition System as the case maybe as being considered appropriate for adopting by the service provider and directs the TIA to append a note of the above for more clarity in the RFP
II.g	<p>(Pg.20,5.1.1-12)-Service Provider must suitably factor in are as on able yearly increment for other remuneration of other staff. 10% escalation in quoted price. Suggested Changes: There should be 10% escalation in the financial bid in the subsequent years to the preceding year</p>	The query is for Pg.21, 5.1.1- 16. The bidder has to calculate the expenses for the entire period based on the market values and comply with applicable Laws, be it 10% or more or less as the case may be and as per the applicable labour and other laws to comply.	In view of the response to the query giving clarity, no more finding is required.
II.h	<p>(Pg.34,6.1-5)-Bidders receiving international funding for under taking developmental programs in health sector must have FCRA registration and all other applicable laws/ rules in India. (Not applicable if not receiving any foreign funds). Suggested Changes: Bidders if not receiving any foreign contributions, need not comply with this clause.</p>	AGREED.	In view of the response to the query in positive, no more finding is required.



II.i	<p>(Pg.34, 6.1–6) Bidder must have GST registration within the State of Andhra Pradesh.</p> <p>Suggested Changes: As per the 74 of Notification no.12/2017 and 77 of Notificationno.9/2017 Heading 9993 ambulance and MMU services are excluded from GST so there is no need to have State GST. The state has no financial impact due to this clause so Request you please remove this clause.</p>	<p>Even though it is non-taxable the service provider must have GST registration and an office for operations in this state. Hence, they have to take GST registration in this state and they can file zero returns for non-taxable services. No change in clause.</p>	<p>It is as on date not taxable does not mean in future not chargeable with any type of tax connected to GST registration. As such there is nothing to remove the clause requiring the GST registration in AP as one of the eligibility criteria. The request to delete the clause is rejected for the above reasons.</p>
II.j	<p>(Pg.54 & 56, 6.24.4–1,5 & 7:</p> <p>(1) Availability of MMU Per day service charges x no. of non-working days, will be deducted.</p> <p>(2) Operationalization of all MMUs. 95% for first two Years from Appointed date and 90% post completion of 2 years till the Concession Period.</p> <p>(3) Rs.20,000/- per day for every percentage below the threshold.</p> <p>(4) Maintenance of MMUs If the Service Provider does not repair the fabrication related defects within 72 hours, then the service provider is liable for a penalty of INR 1,000 per day per defect. In case of major repair of fabrication, a relaxation is allowed upto 5 days. After that Rs.1,000 per day will be levied.</p> <p>Suggested Changes: All 3 clauses impart penalty due to the non-working of MMUs. Request to merge all 3 clauses as one so that repeating penalties no occur.</p>	<p>1st penalty will be levied for individual MMUs. 2nd one is based on entire fleet. The 3rd penalty is for scheduled servicing and maintenance of the MMU. All the 3 are different parameters hence no change in clause.</p>	<p>In view of the response to the query with clarity, there is no question of making all the three as one clause and as such no more finding is required, but for to reduce 5 days to 4 days for 26 working days of each month allows four days to attend major repairs and a finding already given in this regard for a query of the previous objector. Same to be incorporated by correcting the RFP.</p>
II.k	<p>(Pg.33,6.1–2)-The bidder (Sole/ One of the consortium members) should have minimum 3 years of experience in either providing health care services such as MMUs or 102 JSSK programme etc. or emergency health response services such as 108 etc. at field level through atleast 50 vehicles in India or Abroad.</p> <p>Suggested Changes: The bidder (Sole/ One of the consortium members) should have minimum 3 years of experience in either providing health care services such as MMUs or 102 JSSK programme etc. or emergency health response services such as 108 etc. at field level through at least 125 vehicles in India or abroad.</p>	<p>In order not to restrict the bidders, minimum experience with 50 vehicles is incorporated. Hence no change in clause.</p>	<p>In order to have more and reasonable competitive participation and with basic competency to execute the work for its completion effectively it was since fixed as the yardstick of the bidder should have minimum 50 vehicles in India or abroad, the query/suggestion to increase from 50 vehicles to 125 vehicles is rejected.</p>



	The required Minimum experience should be atleast 50% of the actual total operations.		
II.1	General Query: For smooth operations, total penalties should not be more than 10% of the total monthly invoice.	As the MMU services are crucial in village level, in order to provide uninterrupted services the penalties cannot be liberalised by imposing cap.	Having considered the query and the response, the query is rejected for the reason the aim is not to impose penalty, but for not to leave without penalty for deficiencies defined.
III	M/s. COMMUNITY ACTION THROUGH MOTIVATION PROGRAMME “CAMP” Corporate Office, Indore (M.P.)	The queries of “CAMP” are all covered by the queries (II d to I) of M/s. V Soft Tech. Pvt. Ltd., and same is the response herein.	Having considered the queries and the responses supra of (II d to I) of M/s. V Soft and same are the queries of “CAMP”, the findings given above have to be read as findings herein with no need of repetition, for nothing new and uncovered to specifically answer.
IV.a	M/s. Neoliva Solutions Private Limited, Bangalore. (Pg.13-2) Bid Data Sheet Changes Suggested: Year is mentioned as 2020, it should be 2022	Changes Done	In view of the clarification with modification no more finding is required but for to direct the TIA to carry the modification in the RFP for tender notice to issue.
IV.b	(Pg. 19, 5.1.1-1) Buffer Staff plan Changes Suggested: Is this mandatory to recruit buffer staff or can we use on ad-hoc basis whenever required.	Uninterrupted Services must be provided with defined staff and as such it is the duty of the service provider to have the staff to secure to provide the service without discontinuity.	Having considered the query and the response, the response is accepted for the duty of bidder to have the staff and it is also to provide the attendance with Aadhaar or face recognition of the staff as answered for a query by previous objector/s of all the required manpower to meet the RFP requirement to provide uninterrupted services.
IV.c	(Pg. 19, 5.1.1-3) General Query: Client has to provide existing manpower details if any and provide total information required for gap analysis. Please provide clarity to discontinue services of staff on whom cases are registered/ prosecuted or convicted.	Services can be discontinued for persons on whom cases are registered. If there is any existing staff with such conditions, their details will be shared at the time of agreement	In view of the response to the query in positive, no more finding is required, but for to add a note in the RFP of it.
IV.d	(Pg. 19, 5.1.1-7)-General Query: Salary increment has to be given to MMU staff for also for supervisory staff and managers.	For All Staff Members the compliance of labour laws, rules and regulations and govt. orders/ circulars and other applicable laws is necessary.	In view of the response to the query in positive, no more finding is required.
IV.e	(Pg. 19, 5.1.1 - 16) General Query: Please define about yearly increment in remuneration of staff, whether we need to follow as per minimum wages act of state Government.	The bidder might calculate the expenses for the entire period based on the market values and comply with applicable Laws.	In view of the response to the query in positive, no more finding is required as answered for similar query by previous objectors.



IV.f	<p>(Pg.44 6.1.4) General Query: Please provide clarity about bidder/ company should not been disqualified/ terminated or blacklisted or debarred or involved in criminal cases or not covered by any bankruptcy proceedings by any Central/ State Government/ PSUs in India or by any Government agencies in abroad.</p> <p>Objection/ Suggestion: The above point is for bidder/ company or by any of sister concern Companies and its Promoters/ Ex Promoters or Directors/ Ex Directors about convicted/ should not have any criminal case history/ financial frauds/ enforcement directorate cases/ pending prosecution, Prosecuted cases as on date of bid submission</p>	Applies for all who are in management of the affairs of the entity as on the date of bid submission.	In view of the response to the query in positive, no more finding is required.
IV.g	<p>(Pg.36, 6.2.1) General Query We request you to amend minimum vehicle numbers should be 50 in last one financial year instead of last three financial years and having experience in health projects for past three financial years</p>	The minimum experience is incorporated. Hence no change in the clause.	In order to have more and reasonable competitive participation and with basic competency to execute the work for its completion effectively it was since fixed as the yardstick of the bidder should have minimum 50 vehicles in India or abroad in the last three years, the query/ suggestion to reduce to one of three years is rejected equally for opposite request of II.K rejected for its increase from 50 to 125 vehicles.
IV.h	<p>General Query: As medicines have to be distributed in MMUs, do bidder/ company has to obtain drug license or not. Please clarify.</p>	Not Required.	In view of the response to the query in positive, no more finding is required.

In this background and as per the provisions of the Act, with respect to the preview process procedure, having considered thoroughly from all the above the RFP supra, the decision process is taken up, for it is not an end all to say the tender initiating department can proceed with the tender further process, as preview process doesn't confine to public objections or suggestions if any to meet and give findings with reference therewith, but for the JJP has to go through the bid documents and consider within its purview what are the defects, lacunas and gaps to rectify or fill up to proceed further in the larger public interest and for no public money be allowed to go waste. This JJP in fact after going through the bid document found some defects and cause rectified before uploading supra.

In addition to what is detailed supra and what are the instructions given already before uploading for undertaking the judicial preview process, as part of the Judicial Preview-Process, as per the provisions of the Act and the Rules, in the Request for Proposal (RFP) on hand, the following further parameters/ conditions/ instructions/ directions and recommendations are required to adopt, incorporate and implement. Thus, by



keeping all these in view the findings/ suggestions only reflected and to the extent possible by the below tabular format with Sl.No., RFP Clause and Sub-Clause if any and Gist of condition therein where relevant, to incorporate in the RFPs by the TIA & by further indicating the findings/ observations in a separate block of the tabular form to have a comprehensive idea to one and all if peeped to the public domain, leave apart for easy understanding of all.

S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
1	In the RFP at the title page it is mentioned the request for proposal is issued by the APMSIDC....., Andhra Pradesh, leave about further description if any in the (Bid data sheet-(BDS), in the description of authority inviting tender & also at the description of the definition of 'Employer' a clarification is required).	In the RFP at the title page it is mentioned the request for proposal is issued by the APMSIDC....., Andhra Pradesh, leave about further description if any in the (Bid data sheet-(BDS), in the description of authority inviting tender & also at the description of the definition of 'Employer/Client' there is no mention of the tender is invited representing the Governor of Andhra Pradesh for Govt. of A.P. and who is the Tender Inviting authority of the entity. <u>Hence in the RFP cover page and in the Bid data sheet at pg.12,cl.1-tender inviting authority and definition of employer/client and such other places the description of the officer inviting tender details it shall be mentioned as the Managing Director, Andhra Pradesh Medical Services & Infrastructure Development Corporation (APMSIDC) on behalf of "Dr. YSR Aarogyasri Health Care Trust, representing the Governor of Andhra Pradesh for the state of Andhra Pradesh is procuring services related to Operations and Maintenance of MMUs (104)."</u> Same to be carried out in the entire RFP wherever necessary including in referring as Employer/client in compliance with requirement of Article-299 of the Constitution of India.	These recommendations are made as essential.
2.	In the RFP at the (Bid data sheet-(BDS), at pg.13 clause 10 on method of evaluation of bids a clarification is required).	In the RFP at the (Bid data sheet-(BDS), at pg.13 clause 10 on method of evaluation of bids, the existing bullet point.2 to be modified as <u>"The method of selection is LCBS – Lowest Cost Bidder (L1) based Selection and same is undoubtedly subject to qualifying minimum marks criteria and also in compliance with the Reverse Tender Process as provided in G.O.Ms.No.67(WR-R), dt.16-08-2019, G.O.Ms. No.50(WR-R) dt.15.10.2020 and G.O.Ms.No.79, Finance (HR.V)-TFR Dept., dt.25. 08.2020 and any further Government orders with reference thereto."</u> Same to be carried out in the entire RFP wherever necessary.	These recommendations are made as essential.
3.	In the RFP at the (E-procurement Process), on procedure for offer submission Cls-6&7 at pg.17 regarding submission of hard copies, a clarification is required).	In the RFP at the (E-procurement Process), on procedure for offer submission Cls-6&7 at pg.17 regarding submission of hard copies, the following to be substituted: <u>"The submission of hard & duly scanned soft copies:</u> <u>The scanned copies of DD/BG towards</u>	These recommendations are made as essential.



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		<p><u>tender document fee and EMD shall be uploaded along with bid through e-Procurement portal online.</u></p> <p><u>As submission of original Hard copies of the uploaded scan copies of DD/BG towards EMD by the participating bidders to the tender Inviting authority before opening of price bid is optional as per Govt. Memo No.ICD01-COOR0MISC/ 22/2020/ REFORMS, Dt.27.03.2020 & the subsequent GO MS No.50, WR(R) Dept., dt.15.10.2020, the scanned copies of originals to be uploaded including for Bank Guarantee as EMD etc., by the bidders Same could be verified with the issuing bank before relying on it.</u></p> <p><u>Equally for security deposit by the eligible bidder from LOA.</u></p> <p><u>It is the duty of the bidder to coordinate with the employer/client and the banker to give response by banker to the letter of employer to bank on genuineness of bank guarantee.</u></p> <p><u>The banker shall be intimated that without letter of employer, the bank guarantee cannot be revoked during its validity period.</u></p> <p><u>The bidders shall also furnish a declaration online stating that the soft copies of documents etc., uploaded by them are all genuine and the original will be produced as and when required. Any incorrectness/ deviation if noticed that can be viewed seriously and apart from cancelling of the Tender and forfeiting the EMD, criminal action can be initiated including suspension from participating in the tenders / blacklisting and the like.</u></p> <p><u>If any successful bidder fails to submit the original hard copies of uploaded certificates/ documents, Online Payment receipts/BG towards EMD/Security Deposit within the stipulated time or if any variation is noticed between the uploaded documents and original hard copies submitted by the bidder, the successful bidder will be suspended from participating in the tenders on e-Procurement platform for a period of 3 years besides forfeiting the EMD and also be blacklisted.</u></p> <p><u>The e-Procurement system would deactivate the user ID of such defaulting successful bidder based on the trigger / recommendation by the tender Inviting Authority in the system. Besides this, the Department shall invoke all processes of law including criminal prosecution of such defaulting bidder as an act of extreme deterrence to avoid delays in the tender process for execution of the development schemes taken up by the Government. The information to this extent will be displayed in the e-procurement platform website.”</u></p> <p>Same to be carried out in the entire RFP</p>	



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		wherever necessary including at annexures, schedules etc.,	
4	In the RFP at the (E-procurement Process), on procedure for offer submission Cl-11c at pg.18 regarding how to apply for submission of bid (E-procurement Process), a clarification is required).	Similarly In the RFP at the (E-procurement Process), on procedure for offer submission Cl-11(c) at pg.18 regarding how to apply for submission of bid (E-procurement Process), same to be Pre-qualification, Technical bids shall be submitted online, (E-procurement Process), as detailed above at cls.6&7. Same to be carried out in the entire RFP wherever necessary including at annexures, schedules etc.,	These recommendations are made as essential.
5	In the RFP at the (detailed scope of work), at Cl-4 at pg.20 regarding deployment of adequate personnel, a clarification is required).	In the RFP at the (detailed scope of work), at Cl-4 at pg.20 regarding deployment of adequate personnel, the para to be substituted as below: <u><i>“The Service Provider will ensure deployment of adequate personnel (both skilled and unskilled) as enumerated in Form II, to keep MMUs operational and capable of providing services as mentioned in this RFP and share the details on a regular basis to the client/employer”.</i></u> Same to be carried out in the entire RFP wherever necessary including at annexures, schedules etc.,	These recommendations are made as essential.
6	In the RFP at the (detailed scope of work), at Cl-7 at pg.20 regarding salaries of staff etc., a clarification is required).	In the RFP at the (detailed scope of work), at Cl-7 at pg.20 regarding salaries of staff etc., the para to be substituted as below: <u><i>“The salaries/wages or other remuneration including by increments etc., benefits to be paid to the staff/ workers/ employees and other personnel (both skilled and unskilled) of Service Provider shall be based on market conditions and in compliance with the labour laws, rules, regulations, Govt. orders, circulars and other applicable laws and share the details on a regular basis to the client/employer”.</i></u> Same to be carried out in the entire RFP wherever necessary including at annexures, schedules etc.,	These recommendations are made as essential.
7	In the RFP at the (detailed scope of work), at Cl-16 at pg.21 regarding increments of staff etc., a clarification is required).	In the RFP at the (detailed scope of work), at Cl-16 at pg.21 regarding increments of staff etc., after the end of line 2, add the below: <u><i>and in compliance with the labour laws, rules, regulations, Govt. orders, circulars and other applicable laws</i></u> Same to be carried out in the entire RFP wherever necessary including at annexures, schedules etc.,	These recommendations are made as essential.
8	In the RFP at the (detailed scope of work), at Cl-5.1.3.7 at pg.22 regarding insurance, a clarification is required).	In the RFP at the (detailed scope of work), at Cl-5.1.3.7 at pg.22 regarding insurance, the following is to be substituted: <u><i>The employer/client is not providing anything for any insurance coverage & it is for the Service Provider/ contractor for to insure or not at his own risk (subject to compliance of compulsory statutory insurance coverage to obtain) & thereby left open if at all to insure or not where optional</i></u>	These recommendations are made as essential.



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		<p><u>and not compulsory, including for any vehicle, man power employed or engaged and machinery deployed or for any procuring storage & assembling of any components of the equipment & other devices and its operation and in use if any including for any loss or damage”.</u></p> <p><u>If the Service provider/contractor fails to take out and or maintain in effect the insurance referred to supra, the Service provider/contractor shall shoulder entire responsibility for any claim to make good for any contingency and with no liability of the employer/client, much less to share with the Service provider/contractor to the third party or the workers or employees of Service provider/contractor and the like. As it is for the Service provider/contractor to pay the compulsory insurance premiums at his cost & otherwise at his risk/s including for the workers under workmen compensation Act & the vehicles for third party insurance of persons or property and like & the Service provider/contractor is not entitled to any reimbursement of insurance premium from the employer.</u></p> <p><u>Further, if there is any claim involving the Client/ employer & pending in any court/tribunal, the client/employer can retain amount equal to the claim out of the payments to the Service provider/Contractor till the Service provider/contractor makes good & produce proof of its clearance & satisfaction.</u></p> <p>Same to be carried out in the entire RFP wherever necessary.</p>	
9	In the RFP at the (detailed scope of work), after Cl-21 at pg.23 regarding right of termination, a clause is required).	<p>In the RFP at the (detailed scope of work), after Cl-21, at pg.23 regarding right of termination, add the following as Cl.22:</p> <p><u>The failure of the Service Provider/contractor to comply with any of the above, entitles the employer/client to terminate the contract with seven days advance notice or enables the employer to attend and comply and recover/ deduct from bills payable to the service provider supra.</u></p> <p><u>However, it no way enables the service provider to ask the employer/ client to provide and recover”.</u></p> <p>Same to be carried out in the entire RFP wherever necessary.</p>	These recommendations are made as essential.
10	In the RFP at the (detailed scope of work), at Cl-5.1.6 at pg.26 regarding co-ordination with MMU Integrator/supplier at sub-cl.2 regarding failure, a clarification is required).	<p>In the RFP at the (detailed scope of work), at Cl-5.1.6 at pg.26 regarding co-ordination with MMU Integrator/supplier at sub-cl.2 regarding failure, add the following as the end of 2nd line as:</p> <p><u>“With details and reasons”.</u></p> <p>Same to be carried out in the entire RFP wherever necessary.</p>	These recommendations are made as essential.
11	In the RFP at the (detailed scope of work), at Cl-5.5 at pg.31 regarding financing model for selection of service provider, a clarification is	<p>In the RFP at the (detailed scope of work), at Cl-5.5 at pg.31 regarding financing model for selection of service provider, modify and delete the last lines shown below</p>	These recommendations are made as essential.



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
	required).	<p><u><i>“Any increase/decrease in cost with respect to staff salaries for those fixed by the Government shall be adjusted accordingly”.</i></u></p> <p>Same to be carried out in the entire RFP wherever necessary.</p>	
12	In the RFP at the (detailed scope of work), at Cl-6.1 sub.cl.3 (S.No.3 of the table) at pg.33 regarding pre-qualification of service provider, a clarification is required).	In the RFP at the (detailed scope of work), at Cl-6.1 sub.cl.3 (S.No.3 of the table) at pg.33 regarding pre-qualification of service provider, on documents required add <u><i>“And IT Returns”</i></u>	These recommendations are made as essential.
13	In the RFP at the (Conditions of eligibility)- pre-qualification criteria, at Cl-6.1 in the table at S.No.1 of pg.33 regarding pre-qualification of service provider-bidder, individual/ entity etc., a clarification is required).	<p>In the RFP at the (Conditions of eligibility)-pre-qualification criteria, at Cl-6.1 in the table at S.No.1 of pg.33 regarding pre-qualification of service provider-bidder, individual/ entity etc., same requires to modify as follows:</p> <p><u><i>i. The Bidder must be either individual or a trust or society registered under the societies Registration Act-State or Central Act, or a company registered under the Indian Companies Act,1956/2013 or other entity, including either Joint Venture or Consortium to a maximum of 3-members and among them any one can be either individual or a company or a regd. Trust or regd. Society or a registered partnership firm even and subject to the condition of the Joint Venture/ Consortium shall form into an unlimited liability registered partnership firm with names and description of all such partners should reflect with the Registrar of Firms. If by the time of submission of bid the Joint Venture/Consortium not already registered as unlimited partnership firm supra, subject to written undertaking by all partners concerned to register and furnish the particulars before entering into the contract from Letter of Acceptance, same can be accepted.</i></u></p> <p><u><i>In the written undertaking it must also be mentioned that none of them are disqualified either by black listing in any government contract within India nor involved in any criminal cases and no any insolvency or bankruptcy proceedings pending against them and none are foreign nationals and none are members or directors or partners in any other bid submitted for this RFP covered project.</i></u></p> <p><u><i>In case of non-compliance and false or wrong or misleading information, the EMD is liable to be forfeited and other Civil and Criminal legal recourse being taken.</i></u></p> <p><u><i>ii.The Bidder shall also mention that they have the capabilities to deliver the entire scope as mentioned in the RFP.</i></u></p> <p><u><i>iii. Each bidder shall submit only one bid either individually or as an entity detailed supra and no member of any entity detailed</i></u></p>	These recommendations are made as essential.



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		<p><u>supra cannot bid again as individually or member of another entity.</u></p> <p><u>iv. The bidder should have Certificate of Incorporation/ Registration under companies Act, 1956/2013/ Indian Partnership Act 1932 / or under Societies Registration Act/s with Byelaws, memorandum and articles, and the meetings proceedings to show its existence in live and not defunct and proof of who are authorised to act as president and secretary etc. with detailed address particulars and if Registered under FCRA proof of it or of not receiving any foreign funds or contributions by affidavit proof also in this regard and audit reports of the society/trust and like suitable and eligible proof of identity and its legal status.</u></p> <p><u>v.The Consortium /J.V. Agreement covered by partnership and the society/trust registered should clearly exhibit the responsibilities of each of the members. The non-lead member shall execute a Power of Attorney in favour of the Lead Member authorizing the Lead Member to conduct all business for and on behalf of the entity during (a) Tendering process and (b) execution and for successful performance of the tasks/works in case of award of work.</u></p> <p><u>vi.All the Consortium /J.V. Partners shall execute a Power of Attorney in favor of one of its officers and similarly for trust/society in favour of its secretary to be the Authorized Signatory for signing the Bid Documents and also to undertake all other acts and deeds on the behalf of the Consortium /J.V./ trust/ society in connection with the Bid and the Contract.</u></p> <p><u>vii.The Consortium /J.V. Agreement should contain a clause that in case the work is awarded, the agreement / deed is irrevocable by any one or all the members together until 3 months after completion of contract period.</u></p> <p><u>In case of Extension of time granted by the employer, the deed is also deemed to be extended for the period of such extension granted by the employer and that it is irrevocable until 3 months after the completion of the extended period/s.</u></p> <p><u>viii.The Consortium /J.V. Agreement should also include Consortium /J.V. members to agree that the above undertaking to be without any prejudice to the various liabilities of the members of the Consortium /J.V.(Contractor) including the performance security deposit (EMD) as well as all the other obligations for successful completion of the contract. The Consortium /J.V. members are jointly and severally responsible for all Contractual obligations till completion of defect liability period plus 3 months, besides operation & maintenance</u></p>	



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		<p><u>if any irrespective of the share proportions of the Consortium /J.V. partners.</u></p> <p><u>ix. In case of Consortium /J.V., in meeting the requirement of eligibility criteria the experience of each of the members of Consortium /J.V. shall be added together to arrive the combined eligibility of the Consortium /J.V. to determine the bidders compliance on financial and technical etc., eligibilities.</u></p> <p><u>Regarding available bid capacity, in case of Consortium /J.V., the bid capacity of each of the members of Consortium /J.V. shall be added together to arrive the combined Bid capacity.</u></p> <p><u>x.Change in composition of Consortium / J.V. is not permitted after submission of bids.</u></p> <p><u>xi.In case any member of a Consortium /J.V. or society or trust bids either in individual capacity or as member or as Partner of the firm / Director/ MD of a company or as a member of another Consortium /J.V. bids for same work, all such bidders will be disqualified.</u></p> <p><u>xii.Foreign Companies/ Firms/ Societies/ Trusts/ other Entities/ Individuals are not eligible for participating in the bid even as a Consortium/ J.V. partner or Director of Company.</u></p> <p><u>xiii. What is the three years experience of 2021-22,2020-21, 2019-20 of minimum 50 vehicles deployed in India or abroad concerned, it is clarified for clear understanding of at abroad by Indian national or NRI individual or Indian entity only.</u></p> <p><u>xiv.All power of attorneys referred supra and any such or similar authorisation shall be by a duly stamped and registered or notarized once under the Indian Laws and if it was executed at abroad by any NRI to be attested and processed through the office of Embassy and stamped under Indian laws.</u></p> <p>Same to be carried out in the entire RFP wherever and to what extent necessary including in making the corrections in the description.</p>	
14	In the RFP at the (Conditions of eligibility)- pre-qualification criteria, at Cl-6.1 after the table at Note: 2 of pg.34 regarding pre-qualification of service provider-bidder, individual/ entity etc., same requires to modify as follows:	<p>In the RFP at the (Conditions of eligibility)- pre-qualification criteria, at Cl-6.1 after the table at Note: 2 of pg.34 regarding pre-qualification of service provider-bidder, individual/ entity etc., same requires to modify as follows:</p> <p><u>The bidder can be individual/ entity as detailed at the (Conditions of eligibility)- pre-qualification criteria, at Cl-6.1 in the table at S.No.1 of pg.33 regarding pre-qualification of service provider-bidder, individual/ entity etc.,</u></p> <p>Same to be carried out in the entire RFP</p>	These recommendations are made as essential.



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		wherever necessary.	
15.	In the RFP at Cl.6.15 at page-42- at Clarifications on RFP by TIA, a clarification is required).	In the RFP at Cl.6.15 at page-42- at Clarifications on RFP by TIA, the following to be substituted: <u>Any pre-bid meeting shall be confined only for clarifications and not to make any modifications on the preview-process undertaken and findings given and compliance made in Form-III of the Act for the reason the prospective bidder like any public can submit objections or suggestions if any to the tender documents covered by the Request for Proposal(RFP) during the time given in the preview process.</u> Same to be carried out in the entire RFP wherever necessary.	These recommendations are made as essential.
16.	In the RFP at Cl.6.21.2&3 at page-47 and in the special conditions of contract Cl.6.24.1-at pg.53 on performance security, a clarification is required).	In the RFP at Cl.6.21.2&3 at page-47 and in the special conditions of contract Cl.6.24.1- at pg.53 on performance security, the following to be substituted: <u>EMD amount since refundable after bid validity period, which is 1% on ECV is as per the G.O.Rt.No.117, dt.17-05-2022 during the concession period (extension of G.O.RT. No:266, Finance (HR-V-TFR-A&L- EWF) Dept., dt.15.02.2021), which is since modification to GOMS No.94, dt.01.07.2003; the bidder declared eligible with LOA shall furnish security deposit as performance guarantee which shall be paid in the form of Bank Guarantee in favour of the TIA for Employer/client which is to be obtained from any Government owned Public Sector Bank or any Scheduled Commercial Bank or to be paid through Net banking/ RTGS/ NEFT from the Registered Bank Account. As the contract period is till 30th June, 2027, the contractor shall undertake to pay or furnish the Deficit Bank Guarantee Amount as Performance Security during continuation of the contract period, after expiry of the concession period of G.O.Rt.No.117, dt.17-05-2022 to comply the original 7.5% performance security balance besides other amounts to recover from bills as per GOMS No.94.</u> <u>The BG to be furnished is at a time for entire contract period and to furnish for any deficit sum as above after cessation of concession of G.O.Rt.No.117, dt.17-05-2022 from the undertaking supra. Otherwise the BG to be furnished is initially for two years and to extend or furnish fresh one during the contract period for every two years or balance period of less than two years if any, subject to the written request of service provider and written order so permitting by the TIA.</u> <u>Any non-renewal as supra of the performance security in advance by the</u>	These recommendations are made as essential.



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		<p><u>service provider, the Bank Guarantee shall be treated as non-furnished as a mandatory conditional default from which there is automatic termination of the contract without prejudice to take other legal recourse by imposing penalty, compensation, blacklisting etc. as the case may be.</u></p> <p><u>The BG shall not be encashed by the contractor without written permission after satisfactory completion of the contract and from certification of no dues only and the Bank has to be intimated not to release the BG without written order of TIA for its release.</u></p> <p><u>No any mobilization advance can be provided to the contractor/s pursuant to the State Government's norms vide G.O.Ms.No.83, Water Resources (Reforms) Dept., dt. 17-12-2019.</u></p> <p>Same to be carried out in the entire RFP wherever necessary.</p>	
17.	In the RFP at Cl.6.23 at page-48- at General Conditions of Contract-definition of client, a clarification is required).	<p>In the RFP at Cl.6.23 at page-48- at General Conditions of Contract-definition of client, the following to be substituted:</p> <p><u>“Employer/client means the entity purchasing the services viz., the Managing Director, Andhra Pradesh Medical Services & Infrastructure Development Corporation (APMSIDC) on behalf of “Dr. YSR Aarogyasri Health Care Trust, representing the Governor of Andhra Pradesh for the state of Andhra Pradesh in procuring services related to the Operations and Maintenance etc., of MMUs-(104).”</u></p> <p>Same to be carried out in the entire RFP wherever necessary.</p>	These recommendations are made as essential.
18.	In the RFP at Cl.6.23.15&16 at page-52-at General Conditions of Contract-at Arbitration for Dispute Resolution, a clarification is required.	<p>In the RFP at Cl.6.23.15&16 at page-52-at General Conditions of Contract- at Arbitration for Dispute Resolution, the title & the Clauses are to be modified as follows:</p> <p><u>The title to be changed as Disputes and modes of Settlement of claims/ disputes and place of exclusive jurisdiction:</u></p> <p><u>Cl.6.23.15(a). If during the contract period any dispute or difference arisen, the Contractor within one month therefrom shall initially by a written representation submit to the TIA for his decision thereon and the TIA shall within one month therefrom give his decision in writing which is final. If the contractor is not satisfied with the same within fifteen days of its service on him, he shall give in writing to refer the same as dispute for decision to appoint an in house arbitrator by the TIA-viz., There shall be an in-house arbitration for settlement of several small claims and the Chief Engineer/ Chief General Manager of the State Government of A.P. concerned with the projects, operation & maintenance as the case may be who is other than the TIA</u></p>	The recommendation is essential to comply.



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		<p><u>shall be the Arbitrator to be nominated by the TIA and to whom the dispute is to be referred by either party to the dispute and only upto the limit of Rs.10,00,000/-as sole Arbitrator as it is a welcome feature to save time, money and manpower of both parties by providing the limit upto Rs.10,00,000/-</u></p> <p><u>Cl.6.23.15(b).No doubt, the Government of Andhra Pradesh (while under the composite state) issued proceedings in G.O.Rt.No.116, Law (M-I) Department, dated.30-01-2002, with finance concurrence, to refer disputes to the ICADR in government contracts for arbitration up to Rs.10.00 Lakhs. Modified proceedings to G.O.Rt.No.116 supra are yet to be issued increasing said sum of Rs.10.00 Lakhs to Rs.10 Crore, from the cost of the work & service components in the present prevailing price from the estimates as per SOR are also increased many more times when compared to past 20 years.</u></p> <p><u>Cl.6.23.15(c).From the above, it is directed that where the claim is below Rs.10.00 Lakhs to settle by in house arbitration supra as per the Indian Arbitration Act,1996 amended from time to time and where the claim is above Rs.10.00 Lakhs, it is up to Rs.10 Crores the dispute shall be referred to the International Centre for Alternative Dispute Resolution, Regional Centre, (ICADR), Andhra Pradesh, to nominate a sole Arbitrator from their panel (since covered by G.O.Rt.No.116 up to Rs.10.00 Lakhs, to read as above Rs.10.00 Lakhs and up to Rs.10 Crores till State Government issue modified proceedings by virtue of the above directions).</u></p> <p><u>Further, where the claim value in dispute is above Rs.10 Crores, since the service and works contracts coming for judicial preview are all above Rs.100 Crores value, it is only to invoke the jurisdiction of civil courts of Mangalagiri(Guntur District) within the State of Andhra Pradesh by excluding jurisdiction outside the State.</u></p> <p><u>Cl.6.23.16(a).So far as seat of Arbitration and place of jurisdiction for the arbitration supra is at the seat of the office of TIA of Andhra Pradesh at Mangalagiri of Guntur District, by excluding seat of Arbitration and place of jurisdiction outside the State of Andhra Pradesh.</u></p> <p><u>Cl.6.23.16(b).The language shall be in English with any translation to English from documents in local language with due certification.</u></p> <p><u>Cl.6.23.16(c).The expenses in internal arbitration shall be borne by respective parties and expenses and fees of the sole Arbitrator (external) shall be borne equally by both parties subject to final decision on costs by sole external Arbitrator. The fees is as per Schedule IV of the Arbitration Act, in addition to the remuneration payable to the ICADR.</u></p>	



S.No	Defects found in the RFPs clauses	Defect rectification to the RFP suggested	Findings of the JUDGE
		<p><u>Cl.6.23.16(d).The arbitrator shall give a reasoned award and same is governed by the provisions of the Arbitration Act-1996 for either finality or execution or enforcement as the case may be.</u></p> <p><u>Cl.6.23.16(e).The contractor shall not stop the contract works/service pending any issue raised for resolution with the client as referred in the claim or dispute or in seeking reference to arbitration and during pendency of arbitration as referred in other clauses supra including in pendency of any dispute in Civil Court and the like supra.</u></p> <p>Same to be carried out in the entire RFP wherever necessary.</p>	

In addition to the above the following directions, suggestions and observations are given to make necessary modifications in the tender document while issuing tender notice:

1. The contractor for convenience can also be referred as Service provider and it is the same meaning even referred as service provider or bidder or contractor from so to mention, so also for the employer to be referred for convenience as client or employer or client/employer.
2. With regards to payment schedule, all parameters should be taken not to allow higher percentage of amounts. The payment schedule always should be proportionate to the corresponding work/service and should not facilitate the contracting agency for drawals of more amounts. Further while making payments the deficit security deposit recoveries and any dues and any third party claims amounts be deducted and retained. Same to be carried out in the RFP wherever required, in addition to what are the precautions already taken in its mention.
3. The contractor once entered contract agreement, cannot withdraw, nor ask for novation, alteration or tinker with any of the contract terms and conditions, and otherwise from default in performance makes liable for forfeiture of any amounts due and also the performance security, with all other consequences under the contract. It is the duty of the contractor to secure skilled and unskilled staff as per the pattern of strength and with no excuse.
4. Similarly so far as the Machinery, Equipment, Accessories and Furniture etc., which are part of the Contract work/service, that is not covered by the above supra, it is also to bestow personal attention for nothing unreasonable.
5. The Bidder either Individual or other legal entity like Trust/Society/JV or Consortium or Partnership or Company even any member or Director of any of these applied for or availed corporate debt restructuring/strategic debt restructuring and not cleared the loan for more than six years/whether DRT/NCLT proceedings pending or not, is not eligible to participate in the bid.
6. So far as the equipment, devices(software and hardware) and allied materials concerned the Type tests conducted or for others legal proof submitted only gives eligibility in the technical and financial bids, whereas for the allied material concerned the quality control tests to be conducted through NABL or other required lab and certification by the contractor shall also be made a pre condition, unless a certificate of exemption for any of the specific items for the time being given by the employer from the request of the bidder.
7. The chartered accountant's certificate must relate to income and other eligibility criteria shall not be more than six months old.
8. EMD & Security deposit/performance Guarantee-Bank Guarantee etc.,: In case of bank guarantee, the date of issue of the Bank Guarantee should not be more than six months old to the date of submission either for EMD or for Security deposit/performance Guarantee. The TIA shall cause verify with the bank genuineness of the BG submitted by the bidder before its acceptance. The banker should be informed that the Bank Guarantee should not be liquidated without official consent in writing of the Client/ Employer.
9. The Contractor shall provide the Original Equipment Manufacturers Authorisations of all electronic, electrical and other critical equipment and Contractor's Documents specified in the Contract, and all Contractor's Personnel, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects. The Works and service contract shall include any work which is necessary to satisfy the Employer's Requirements, or is implied by the Contract, and all works and service which (although not mentioned in the Contract) are necessary for necessity or for affective completion, or safe and proper operation, of the Works and service in its sustainability to achieve the purpose of the project.



10. The Contractor shall be responsible for the adequacy, stability and safety of all Site and service delivery operations, of all methods of installation and of all the Works and service. The Contractor shall, whenever required by the Employer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works and in providing of service. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Employer/client.

11. The Contractor has to make his own arrangements and at his own cost the manpower, water, drainage / sewerage and electricity or alternative power supply and any land for use and such other facilities and provisions including to site office etc., required for the works and service to the accommodation of his workers (skilled and un-skilled) and at work sites, fair wages/remuneration, statutory insurance of manpower, their security and safety measures, compliance of various statutory provisions for commencement, execution and completion of the works contract, save those specifically agreed to be provided by the employer/client in the RFP.

12. In case of any claim by any workman pending in any court of law or tribunal involving the employer also with the contractor, the employer is entitled to retain amount in relation to the claim from pending or even from final bill of contractor till the claim is cleared”.

13. The Contractor shall dispose of the pollutants and waste if any time to time during the execution of the contract works as per PCB norms with prior permission of the Employer or as and when required by the Employer.

14. The above to be incorporated by substitution of what is contra contained in the RFP respectively with necessary modulation and phraseology.

15. Special conditions to prevail over General conditions of the Contract: At the end of the General Conditions of the Contract a note is to be mentioned as NB: that the above General Conditions of the Contract incorporated are from the formats with modifications if any. It is made clear thereby that the General Conditions of the Contract are to be read as subject to the Special Conditions of the Contract. Further, in case of inconsistency or irreconcilability between the General Conditions of the Contract and the Special Conditions of the Contract, the Special Conditions shall prevail over the general conditions.

16. General Instructions to the TIA: Above and similar other corrections to be made suitably wherever required making meaningful with necessary modifications in the tender documents while publishing notice/s inviting tender/s. The Tender Initiating Authority shall while incorporating above specific findings by going through the RFP wherever required to the extent necessary as directed supra, also correct the typographical mistakes in wordings and figures and formats etc, and further all the arithmetical calculations are to be re-verified and any errors in this regard also be rectified.

17. Conclusion para of Judicial Preview findings: Accordingly the findings and observations supra are given so as to suitably modify the RFP conditions where ever required by the tender initiating department/client/employer in preparing the tender documents with forms, schedules, tables etc., respectively and in entering contract agreements with necessary terms and conditions also from what are broadly suggested in the findings and observations supra and with reference to any latest government orders and circular instructions that are required to be incorporated as part of the terms and conditions of the RFP and submit copy of the modified RFP to this office in form-III of the rules under the Act which will be the tender document.

Given under the seal of this 10th day of January, 2023.

Justice Dr. B Siva Sankara Rao
Judge- Judicial Preview
Government of Andhra Pradesh
Guntur.