



एयरपोर्ट्स अथारिटी एम्पलाइज यूनियन
Airports Authority Employees' Union
(Regd. No. 3515 & Recognised)



All India President: Com.S.R.SANTHANAM, Ph.(R) 040-27768269, (O) 27902721, (M) 09490681924
General Secretary: Com: BALRAJ SINGH AHLAWAT, (O) 24619274 (M) 09871717521
Central Head Quarters : T-3/1-4. I.N.A. COLONY, NEW DELHI – 110023.
TEL/FAX: 011 – 24652408, 24646007 (I.N.A.), 24633622 (R.G.BHAVAN, NEW DELHI – 3)

AAEU/PRE/CHQ/2015/006

Date: 11th Jan, 2015

Preview on RFQ dated 30th Dec, 2014 – AAEU Observation

Sub:- RFQ of Operational Management and Development through Public Private Partnership on Operational Management Development and Transfer – Reg.

Ref:- AAI/KID/RFQ/CH/2014/ dated 30-12-2014

1. Disinvestment

Disinvestment is a process in which the public undertaking reduces its portion in equity by disposing its shareholding. “Disinvestment” as per SEBI (substantial acquisition of shares) guideline, means the sale by the central government/state government, of its shares or voting rights and/or control, in PSUs. The disinvestment reduces government participation in the company. Whether serving the national interest will be affected because of disinvestment whether private sector can efficiently operate and manage the undertaking. Whether the original rate of return targeted could not be possible to achieve. Whether socio-economic objectives lots its purpose .The disinvestment process would bring in better corporate governance, exposure to competitive, corporate responsibility, improvement in work environment etc. The market participation in capital of PSUs through stock exchanges would enable the market to discover the latent worth of PSUs.

2. Demerits of disinvestment

Selling of profit-making and dividend paying PSU would result in loss of regular source of income to the government. There would be chances of ‘asset stripping’ by the strategic partner. Most of the PSUs have valuable assets in the shape of plant and machinery, land and buildings etc. PAC 2013-14 C&AG reflected. The Government policy or disinvestment includes the disposal of both profit making, as well potentially viable PSUs.

3. Privatization and Disinvestment

Privatization implies a change in ownership, resulting in a change in management. The privatization of public sector enterprises will occur only when govt. sells more than 51% of its ownership to private entrepreneurs. Disinvestment on the other hand, has a much wider connotation as it could either involve dilution of govt. stake to a level that result in a transfer of management or could also be limited to such a level as would permit govt. to retain control over the organization. Disinvestment beyond 50% involves transfer of management, where as disinvestment below 50% would result in the Govt. continuing to have a major say in the undertaking.



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4. 2014-15 Finance Minister Budget Speech Parliament

Quote :-

- Bank capital to be raised through retail sale of shares; Govt to continue to hold majority in PSU bank
- E-visa to be introduced at 9 Airports in the country
- New Airports to be developed through PPP model
- Overall subsidy regime will be reviewed, especially food and oil.
- Marginalized sections and SC/ST to be protected

Unquote:-

If the above subject is the budget speech is true in the Parliament by Finance Minister, then how RFQ – OMD – PPP – OMDT applies to existing Airports since RFQ dated 30-12-2014 do not apply for existing Airports as Budget mentions New Airports to be developed.

5. Equity Issue

As per report of Experts on empowerment of CPSE states Para 1.3, Para 1.16 that any decision to reduce the Government share holding to level less than 51% (Mini Ratna / Nava Ratna) making consistent profits CPSE to take approval from the consent of Parliament. Such a proposal AAI not passed in the board as per Section 43 of the AAI Act in order to place before each house of Parliament vide AAI/ KID/RTI/2013/47 dated 10.12.2013 RTI 2005 Act :

“Quote whether the move to operate Chennai Airport on PPP model has the approval of AAI board? Answer: No:. RTI – whether Cabinet decision for dividing equity in CPSE? Answer forwarded to MOCA for necessary action Unquote”

Special Purpose Vehicle(SPV) rationale behind such a clause interpretation of the Act to form RFQ / Concessionaire Bidder and the minutes states Quote:“ As long as SPV remained Private Limited Company there is no need for AAI to hold 26% equity in SPV. How ever once this get converted into Public Limited Company then AAI to hold 26% equity stake in SPV to exercise power of casting vote. Planning Commission suggests nomination of Two Director from AAI on the Board of this SPV to have a Golden Vote and one of them may be nominated by Ministry. The Board their after approved the proposal namely Golden Share model of Green filed and considering the approval conveyed by MoCA for Six Airports for SPV to be incorporated OMT through PPP”.



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From the above minutes extract SPV is considered as the Company formed under Company Act 1956 or any other law as per Section 12 (n). If so, what are the financial back ground of the Company and their relevant capital, experience etc., is not illustrated.

Limited Company is otherwise known as Public Limited Company and Private Limited Company is a Private Limited Company.

- ✓ Under Public Limited there are Private Sector Company and Public Limited Company. The difference between Private Sector Company and Public Limited Company is in the number of shareholders and transferability of shares.
- ✓ In Private Limited the minimum no. of shareholders is 2 and maximum is 50 excluding the past and present employees who holds shares.
- ✓ Whereas in Public Limited the minimum no. of shareholders is 7 and there is no maximum limit.
- ✓ In the case of Public Limited Company, the shares are freely transferable but it is not so in Private Limited Company.
- ✓ Some of the stringent requirements which are applicable to Public Limited Companies are not there in the case of Private Limited Companies.
- ✓ Public Sector Company is a Company where the Central Govt or State Govt or both of them combined together holds the majority of shares. But in Private Sector Companies the Private individuals or business houses holds the majority of shares.



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- ✓ As per Report of AD HOC Group of Experts (AGE) on Empowerment of Central Public Sector Enterprises states in Para 2.3, Para 2.16 recommends that any decision to reduce Government share holding to a level less than 51% in case of Category - I CPSEs i.e. Navaratna, Mini Ratnas and consistently profit making CPSEs, should be taken only with the consent of the Parliament. The Board of Directors should have all the powers to raise equity capital from the market so long as the Government's share of the overall equity remains above 51%. However, in case of Category - II CPSEs i.e., other than those mentioned above, Government should have full flexibility of owning or disinvesting their shares.
- ✓ Keeping the GOI Planning Commission IM-13(30)/2010 order dated 13th August,2010 signed by Dr.Renu S. Paramar reforms in CPSUs and above Para 2.3, Para 2.16 states Category –I Mini Ratna to reduce equity Parliament is Competent Authority and whether AAI under Section 43 of the Act rules to be lead before Parliament for bringing down equity or SPV routed through AAI Board is not clear in the extract of the minutes expect Golden Share, Nomination of Board of Directors.
- ✓ Whether the so called SPV is a Public Limited or Private Limited craved out of Section 12(n) or Section 12 (r) or without connecting Section 12 (n), Section 12(r) with Golden Share for a Limited period or longer period is not known.
- ✓ Secondly 156th Board meeting extract Member(Fin.) clarified SPV remind Private Limited Company there is no need for AAI to hold 26% Equity stake in this SPVs. However once get converted in to a Public Limited Company AAI to will have to bring funds to the tune of 26% capital to exercise affirmative vote.



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- ✓ When 156th Board meeting extract minutes RFQ Golden Share without signature of Board of Directors submitted in the Court and informing the Court by Resp.3 that petitioner is misleading through RTI is most unfortunate. Our council should demand the entire Board agenda issued by ED Company Law and Signed Minutes of the entire Board meeting of 156th held on 19th September, 2103 and 157th Board Meeting held on 18th December, 2013 in order to have transparent judicious arguments with regard to RFQ.
- ✓ 157.27 Board meeting of 157th Meeting held on 18th December, 2013 status papers on OMT select Airports. ED(KID) explained various decisions taken by Ministry on Six Airports.
- ✓ From this it is clear AAI on its own has not discussed has Ministry proposes and AAI disposes either RFQ or Contract or Selling or Private Limited or Public Limited or Golden Share or 26% Equity or Selling the employees to a contractor who has come for project construction and who is a masonry builder.
- ✓ 19th September, 2103 156th Board resolved Golden Share, RFQ documents non-transferable equity, SPV, OMT, PPP nominate two persons has Directors, JV Companies as per law appoint directors and approval conveyed by Ministry is presented by ED(KID) on 156th Board Meeting
- ✓ From the above Para can we construe that approval conveyed by the Ministry without EGoM Approval, Parliament Approval and AAI Approval because the extract states approval by Ministry Six Airports and AAI ha not taken decision comes to reality through RTI were RTI states that AAI Board not taken decision as per letter No. AAI/KID/RTI/2013/57 dated 11th December,2013



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- ✓ **Without studying RFQ, MCP (Mandatory Capital Works) of Six Airports for five years Government Joint Secretary on 157th Board Meeting seeking justification of the MCP of Six web site uploaded Airports. The petitioner unable to understand that how Public Policy in Public Interest of a Vital Mini Ratna Core Public Sector of Public Utility Organization seeking justification after uploading ED(KID) RFQ and 19th December, 2013 157th Board Meeting approval of SPV OMT without Board of Directors Signature submitted in the Court as affidavit is totally misleading the Court of such a Sensitive Organization who handles Air Space Management in the World where Safety is Most Important the casual approach of the officials without any approval and contradicting options and justifications ought between 156th meeting held on 19th September, 2013 status report and later Government Justification of RFQ MCP dated 18th December, 2013 on 157th Board Meeting were ED(KIDS) states various decision taken by the Ministry.**
- ✓ **If various decisions taken by the Ministry without taking various approval from EGoM and other areas how ED(KID) notified RFQ calling for bidders without knowing the status of AAI to be a partner on Section 12 (n) or Section 12 (r) or Golden Share or Private Limited Company (PPP) or Public Limited Company (PPP).**
- ✓ **When Tripartite Committee MoCA recommendations approved by GOI were GOI / AAI is a party along with the Union, Officers how RFQ is notified without justification of the above committee report.**
- ✓ **When the employees are contracted through AAI Act how service condition is altered and notifying in RFQ 1.2.10 which is total violation of Industrial Dispute Act, AAI Act, ILO resolutions, Code of Discipline of Recognized Union**



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- ✓ **Without master plan and without proper study, without traffic projections and without complying High Power Committee Dr.Sen Gupta Report, without Complying Tripartite Committee report, without Complying Parliament Committee Report which is mandatory and report is before Rajya Sabha & Lok Sabha where the Ministry and other agencies have been interacted by the department related Parliament Committee action taken report awaited**

6. Company Act :-

There are numerous differences between private and public companies, some derived from statute while others are derived from practice. The general rule is that any company which is not a public company is a private company.

Most important difference between a public company and a private company is that a public company is intended as a vehicle not only for a business but also for public investment in that business, whereas a private company is the private concern of the persons engaged in the business incorporated in it.

Advantage of a public company is that if the public company satisfies the conditions for listing, its shares can be listed or dealt with on a recognised Stock Exchange, thus enabling the company to raise equity capital by offering shares to the public, and also permitting shareholders to buy and sell their shares very easily. In return for this benefit, and to protect public investors, public companies are subject to considerably more stringent controls than private companies.

RFQ STATES DATED 30/12/2014 PARA 1.1.3 SELECTED BIDDER WHO IS EITHER A COMPANY INCORPORATED UNDER COMPANIES ACT OR UNDERTAKES TO INCORPORATE AS SUCH PRIOR EXECUTION OF THE CONCESSION AGREEMENT, MANAGEMENT, DEVELOPMENT, DESIGNING, ENGINEERING, FINANCING, PROCUREMENT CONSTRUCTION, MAINTENANCE OF THE PROJECT UNDER LONG TERM CONCESION AGREEMENT.

BIDDER IS CONSORTIA UNDER 2.2.6(V) COLLECTIVELY HOLD 51% AT ALL TIMES. IT INDIRECTLY IMPLIES THAT AAI IS REDUCED IT'S EQUITY BELOW 51% WHICH IS NOT MENTIONED IN RFQ.



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HIGHEST PREMIUM IS THE HIGHEST BIDDER CHARGES TARIFF AS PER AERA PARA 2.2.1 STATES (B). AN APPLICANT MAY BE NATURAL PERSON, PRIVATE ENTITY, GOVERNMENT OWNED ENTITY, OR ANY COMBINATION OF THEM TO ENTER INTO CONSORTIA IN THE FORM OF AGREEMENT

IN NUT SHELL THE CONSORTIA IS EITHER PRIVATE COMPANY OR PUBLIC LIMITED COMPANY AND SIMPLY CONTRACTOR WHO OFFER HIGHER PREMIUM WITH HIRE AND FIRE METHOD DESIGNED AS SPV IN THE CONSORTIA.

1.2.10 OF RFQ STATES AAI EMPLOYEES DEEMED DEPUTATION WITH HIRE AND FIRE CONTRACTOR ON DEPUTATION BASIS WHO IS SPV/CONSORTIA. THE SAID CONSORTIA IS NEITHER PRIVATE LIMITED OR PUBLIC LIMITED NOR JVC. THE AAI ACT SECTION 12 RECOGNIZES SUB-DIVISION (n) FORM ONE OR MORE COMPANIES UNDER COMPANIES ACT 1956 OR UNDER ANY OTHER LAW RELATING TO COMPANIES TO FURTHER EFFICIENT DISCHARGE OF THE FUNCTIONS IMPOSED ON IT BY THIS ACT. SECTION 12 (r) ANY OTHER ACTIVITY AND CIVIL ENCLAVE IN THE BEST COMMERCIAL INTEREST INCLUDING CARGO, SETTING UP OF THE JOINT VENTURE FOR DISCHARGE ON ANY FUNCTION ASSIGNED BY THE AUTHORITY .

While doing this exercise of OMD /OMDT/ PPP whether revenue sharing is taken as priority or not as per Section 11 of AAI Act (Business principles)

RFQ 02.09.2013 OMT PARA 1.2.10 STATED CONCESSIONAIRE TO PROTECT THE INTEREST OF THE EMPLOYEES DEPLOYED BY AAI IN THE RESPECTIVE AIRPORT IN A MANNER TO BE SPECIFIED IN THE CONCESSIONAIRE AGREEMENT.

COMPARING 1.2.10 OF RFQ 02.09.2013 WITH 30.12.2014 AAI EMPLOYEES APPOINTED AS PUBLIC SERVANTS APPOINTED UNDER SECTION 10 OF AAI ACT IS BEING FIRED / HIRED BY THE CONTRACTOR THROUGH AAI WHO WILL DECIDE DEPUTATION AT THE RESPECTIVE AIRPORT TO SPV WHO IS NEITHER PRIVATE LIMITED OR PUBLIC LIMITED NOR JVC FORMED UNDER SECTION 12(N).

The Government promoting revival of sick Public Sector units through BIFR but in our case profit sector AAI is being brought to sick industry forcibly in the name of RFQ/OMD/PPP/OMDT/SPV, Contract Agreement, etc by making AAI as a minor partner is total social injustice with the result opportunities, appointments for the communities like SC / ST, Physically Handicap, Ex- servicemen, OBC is denied and discrimination employment opportunities is violative under Article 14.



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Moreover all the employees of AAI are appointed under Section 10 of the Act of AAI and transferring such public servants to a private entity in the name of privatization, forcing VRS etc is totally opposed by this Union. Apart from this no industrial law provides for transfer of employees from one employer to another employer and moreover the provisions governed in PSU's are Article 14, 16, 21, 43(A), 46, 51(J), 308, 309 and such constitutional provisions are not provided in private entity which is promoted through RFQ. PSU at remote areas such as North East, disturbed areas AAI meeting the requirement for maintaining such airports at the revenue earned from major Airports such as Lucknow, Chennai, Kolkatta, Ahemedabad, Jaipur, Guhawathi etc. If such airports of AAI are driven as a minority partner 13%, 26% then it will be difficult to maintain uneconomical airports including North East etc.

RFQ Para 1.2.9 dated 30.12.2014 investment and services be entitled to charges / tariff determined by AERA. Whereas, AERA Act 2008 Chapter 1 para 3 applies all Airports whereat Air Transport Services are operated or are intended to be operated, other than Airports belonging to armed forces, (b) Private Airports and leased Airport (c) all civil enclaves (d) All major Airports.

If the above OMD / OMDT / PPP / SPV / CONSORTIA is leased Airport under Section 12(n) as it is understood the Contractor through SPV who offers high premium is the bidder to undertake project. When the said contractor is not company nor private company or public limited or JVC, who is going to take as operator transfer of license not permissible under DGCA Circular / Aircrafts rule 1937. When such provision cannot be transferred and in Delhi/ Mumbai Soli.General Legal option Transfer of License was permitted on JVC Company Act. In this situation the said SPV who can't claim leased Airport, Private Airport. Under this juncture how AERA will be operative for revenue compliance.

RFQ Para 1.1.2 dated 30.12.2014 states that AAI KID Admit Rs.2400/- Crores (Rupees Two Thousand Four Hundred Corers) project constructed new terminal and now decided under take Operational, Management and Development through PPP bidding of Private entity as bidder to form as agreement for Rs.492/- Crores Project and Bidder responsible for Operating Air Side & City Side. It implies that Revenue of Aeronautical, Non Aeronautical Services of City Side & Air Side.

In this context Audit report No.5 for the year 2012-13 Submitted by C&AG Conflict between OMDA & AERA with regard Aeronautical, Non Aeronautical Services; Ex:- Quote Ground Handling Services are Non-Aeronautical Services in OMDA and defined has Aeronautical Services in AREA. According to AREA the above services were less capital intensive and more profitable Unquote.



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Under this circumstances Project Cost of Rs.1,200/- Crores in RFQ OMT dated 02.09.2013 and RFQ OMD/PPP/OMDT dated 30.12.2014 Project Cost is Rs.492/- Crores. Moreover Section 12 (a) leased by the Authority in public interest make a lease of the premises of an Airport including Buildings and structures thereon and appertaining to carry out some of its functions under Section 12 as the Authority may deemed fit. Provided that such lease shall not affect the functions of the Authority under the Section 12 which relates Air Traffic Service at Airports. Air Traffic Service includes various departments which are listed under Section 12 of the AAI Act.

RFQ / OMD / PPP/OMDT/SPV dated 30.12.2014 clause 1.2.10 Section 12 which relates to Air Traffic Service or Watch & Ward since this functions cannot be handed over to a private party in the larger interest of the Nation that Definition in AAI Act 2(d) “Air Traffic Service Includes Flight Information Service, Alerting Service, Air Traffic Advisory Service, Air Traffic Control Service, Area Control Service, Approach Control Service and Airport Control Service” and other services which are listed in the functional clause 12 are ignored which violates the statutory mandatory services for a licensed aerodrome under the rule No.78 of AAI Public Aerodrome AAI operator licensed issued by DGCA to AAI. How such responsibilities which involves employees who are regulated under the contract of employment driving to the RFQ 1.2.10 without complying Section 9(a), Section 33 of ID Act, Recognized Union code of discipline and CLC proceedings in progress which is mandatory for Public utility Organization.

Therefore RFQ/OMD/PPP/OMDT/SPV/Consortia/ capping 1.2.10 is unfair labour practice illegal, arbitrary, malafide. Union Agitation in the year 2013-14 GOI failed to submit the records before CLC Ministry of Labour and the said conciliation in progress for Section 12(3) settlement. When the policy of such exercise abruptly holding by the Government at CLC how new RFQ dated 30.12.2014 calling for applicants closing date 30th Jan, 2015, Conference 11th Feb, 2015, response quarries 03rd March, 2015, application due date 24th March, 2015 for further short listing.

The Government / AAI KID is selling all the employees with in 90 days to a Contractor who is termed as Private entity to form Consortia etc is some thing strange. The Government could trust Rs.2400/- Crores Project for AAI and Rs.492/- Crores Project which are regulated responsibilities under Section 12 of the Act is given to Contractor such as (a) Modification of Old terminal (b) Connectivity to Metro Rail (c) Operational Safety requirement (Fire Pit, Bore Well Including Water Supply for Fire Fighting) (d) Modification of Domestic terminal (e) Strengthening of Taxiway. All the said project estimated for Rs.492/-



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Crores instead of Rs.1200/- Crores higher said in the old RFQ /OMT /PPP dated 02.09.2013 for the same work.

In this regard, where is the question of employees coming in the picture with regard to RFQ dated 30.12.2014 para 1.2.10 since all are construction project similar to that off GMR Company Constructing Road Project.

What is the connectivity for the work being awarded of Rs.492/- Crores Project through RFQ dated 30.12.2014 which is contractual contract assignment to a SPV Consortia Contractor who offer highest premium to be in the bidder.

Whether AAI wants to transfer operation of the Airport to SPV or Construct Project for Rs.492/- Crores or Transfer Operation to SPV along with Rs.492/- Crores and sell the employees to the contractor along with the profit making Airports violating Section 11 of AAI Act in Business principles without any terms of reference (including AERA) so that the Government /AAI can satisfy Commerce Sector, World Bank, IMF, NRI Investors, All Corporate Industry Houses (i.e., GMR/GVK etc) will be satisfy by this exercise so that they will have dominant role.

Forwarded to All CHQ AAEU leaders / CEC members to embark your self with higher motivation to safeguard the industry, revenue, employees and their families since KID department who reports to Ministry directly selling the Airports, selling the employees by violating all provisions which is Statutory Act (AAI) and violation of ILO recommendations, violation of Chief Labour Commissioner proceedings, violation of Tripartite Committee Recommendations. Act energetically, swiftly move your Organization in order to achieve the Organizational goal as per AIC directive since we experienced Delhi, Mumbai, Hyderabad and Bangalore situation. RFQ- OMT Government have with drawn and coming up with new idea of RFQ-OMD which is indirectly reducing the equity to AAI and washing the responsibility of Officers / Employees. All working forces forget the differences and come together for fight as one working class in the New Year in order to prove yourself and increase productivity for the industry which will generate employment/promotion opportunities, better service conditions in employment



S. R. Santhyanam

**AIP,
AAEU**

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