



भारतीय लघु उद्योग विकास बैंक
Small Industries Development Bank of India

RfP for Procurement of various IT Security Solutions

टेंडर सं. / Tender No.	500/2021/1577/CBO/ITV
टेंडर जारी करने की तिथि / Tender Issue Date	August 03, 2020 / अगस्त 03, 2020
बोली जमा करने की अंतिम तिथि / Last date for submission of bids.	October 27, 2020/ अक्टूबर 27, 2020

CLARIFICATIONS

(Issued on October 09, 2020)

- Bidders are requested to note the clarifications as follows.
- Based on clarifications, RfP has been updated. Revised RfP and clarifications are published on the Bank's website and CPP portal. The bidders are required to refer to both these documents and submit their bids accordingly.

S.N	RFP Clause	Bidder Query	Clarification by Bank
1	4.22.6 Any deviations from the specifications should be clearly brought out in the bid.	It is a bid where you bring out the deviations and get rejected as you cannot submit material deviations.	Clarification The understanding is not correct that for any deviation bid is rejected. A scoring matrix is defined in RfP to evaluate the technical specifications where bidder is required to score at least 85% for each solution.
2	6.1.22 If a solution fails to meet the technical requirements of RFP during the implementation / before sign-off phase, Bank reserves the right to reject the solution with no cost to the Bank and recover all liquidated damages from the amount payable for other solutions procured. Even after, the Bank is unable to recover the amount, the bank at its discretion can invoke Performance Bank Guarantee as submitted. However, in such cases the bidder may offer alternate	Bidder requests for a cure period of 30 days before the Bank reserves the right to reject the solution and recover the liquidated damages.	Change The revised clause to be read as: 6.1.22 If any solution fails to meet the technical requirements of RFP during the implementation, Bank reserves the right, after allowing cure period of 30 days, to reject the respective solution(s) with no cost to the Bank.

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>solution to the Bank which fulfils technical specifications/ requirements of the RFP with no extra cost to the Bank. Liquidated damages shall be applicable for delay beyond the stipulated timelines</p>		<p>However, in such cases the bidder may offer alternate solution to the Bank which fulfils technical specifications/ requirements of the RFP with no extra cost to the Bank. Acceptance of such alternate solutions will be at the discretion of the Bank. However, Liquidated Damages shall be applicable for delay in implementation.</p> <p>In case the bidder is not able to provide alternate solution, the Bank will recall the payments made towards the corresponding solution(s) from the bidder alongwith interest (applicable PLR of the bank at the time of recovery). Further, the Bank reserves its right to invoke PBG and exercising other remedies available at its disposal under the RfP/subsequent contract.</p>
3	<p>6.1.31 The Bidder should provide changes (updates) and upgrades (including version upgrade) with regard to changes in regulatory /statutory/ governing bodies' requirements at the earliest (to complete the activity before the deadline set by the authority) and free of cost during the contract period.</p> <p>The bidder is to factor the cost for all the requirements and have highest level of back to back agreements with the OEM. No additional cost whatsoever would be paid by the bank during the contract period.</p>	<p>Bidder requests that upgrades which are chargeable shall be passed on as cost to Bank, if they are not factored as a part of the pricing at the start of the contract.</p>	<p>No Change</p>
4	<p>6.1.33 The Bank at its discretion, reserves the right to shift the equipment (the solution) to a new location during the contract period (within Data Centre or outside Data Centre) depending upon the requirement. Relocation of solutions (hardware and software) would happen only in case of shifting of DC and DR. Accordingly, the bidder will arrange to shift the same and install and commission at new location without any additional cost to the Bank. Transportation and insurance of the solution components being shifted to new location, would be arranged by the bank.</p>	<p>Pls change this clause that the commercials for the shift and re-installation to be mutually decided along with bidder.</p> <p>We would request the bank to restrict the scope of equipment shift to metro cities within India. Also, we would request the bank to provision a separate line item in the commercial bid as rate card for such migration of equipments.</p> <p>Bidder requests that if there are additional charges incurred for shifting of equipments, it shall be mutually decided on the cost to be</p>	<p>Change</p> <p>New Clause added.</p> <p>7.5.19 Payment for shifting added:</p> <p>7.5.19.1 In case of shifting of DC and/or DR, the bidder would be paid two man days' cost of L2 resource, for each instance of shifting, which would be arrived as [(cost of L2 resource per annum)/360] X 2.</p> <p>Cost of L2 resource per annum would be as quoted by the bidder in the commercial bid – Part-III.</p>

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		passed on to the bank, which will be reimbursed to the bidder	7.5.19.2 The scope of work during shifting will be as given in clause 6.1.33. 7.5.19.3 No additional cost whatsoever would be paid.																								
5	<p>6.7.6 Operation Phase</p> <p>6.7.6.1 The shortlisted Bidder shall deploy L1 and L2 resources, who should be in their OWN PAYROLL. Undertaking from company along with latest payslip to be submitted. No outsourced / sub-contracted staff to be deployed during any phase of the project (entire contract period, except in case the bidder proposes to carry out implementation by OEM partner satisfying the clause 6.7.3 above).</p> <p>The resource proposed by the bank in section 6.7.6.2 are minimum requirements. However, the bidder is free to provision over and above the same to meet the SLA requirements of RfP. The exact number of resources proposed by the bidder are to be indicated clearly in the bid response and commercial bid should be in-line with the same. Further, the resource should meet all other conditions as specified in this section (6.7.6).</p>	<p>“Own Payroll resources” - Considering present pandemic situation and HR guidelines on new recruitments, we are unable to avail management approval on hiring resources for this projects.</p>	No Change																								
6	<p>6.7.6 Operation Phase</p> <p>6.7.6.2 The number of resources required for managing the systems during operations phase is as under:</p> <table border="1" data-bbox="271 1121 853 1409"> <thead> <tr> <th>S.N</th> <th>Details</th> <th>Chennai</th> <th>Mumbai</th> </tr> </thead> <tbody> <tr> <td colspan="4">A. No of Resources</td> </tr> <tr> <td>1</td> <td>L1 Resources</td> <td>2</td> <td>1</td> </tr> <tr> <td>2</td> <td>L2 Resources</td> <td>2</td> <td>NA</td> </tr> <tr> <td colspan="4">B. Shift Timings (Monday to Saturday)</td> </tr> <tr> <td>1</td> <td>Shift-1: 9am to 5pm</td> <td>2XL2 and 1XL1</td> <td>1XL1</td> </tr> </tbody> </table>	S.N	Details	Chennai	Mumbai	A. No of Resources				1	L1 Resources	2	1	2	L2 Resources	2	NA	B. Shift Timings (Monday to Saturday)				1	Shift-1: 9am to 5pm	2XL2 and 1XL1	1XL1	<p>As Bank has defined the resources, we understand that no additional resources would be required, and SLAs would be monitored on best effort basis with these count of resources.</p> <p>Since this is a large setup, Bank should consider having atleast 2 L3 level resources to support them in case of P1 tickets. SLAs shall be applicable only during the service period.</p>	<p>Clarification</p> <p>The resource proposed by the bank in section 6.7.6.2 are minimum requirements. However, the bidder is free to provision over and above the same to meet the SLA requirements of RfP.</p> <p>The bidder may also refer to SoW of resource and accordingly, position the resources.</p> <p>The exact number of resources proposed by the bidder are to be indicated clearly in the bid response and commercial bid should be in-line with the same.</p> <p>Further, the resource should meet all other conditions as specified in this section (6.7.6).</p>
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A. No of Resources																											
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S.N	RFP Clause				Bidder Query	Clarification by Bank
	2	Shift-2: 1pm to 9pm	1XL1	NA		As regards to SLA, refer clause 6.7.6.2(C) for tickets raised after shift hours.
	C.	The tickets raised after shift hours are to be attended in the next business hour, in case the same are not classified as major.				
7	7.2.3. Implementation Timelines Delivery of Hardware, Software, databases and other components forming the solutions - Six (6) weeks from the date of Purchase Order				Standard delivery timelines for most OEMs ranges from 6-8 weeks. Due to Covid, a lot of these delivers have been observed to run late. Hence request Bank to consider a timeline of 10 Weeks for HW-SW delivery.	No Change Delivery of Hardware, Software, databases and other components forming the solutions – six (6) weeks from the date of purchase order.
8	7.3.2 Once a contract price is arrived at, the same must remain firm and must not be subject to escalation during the performance of the contract due to fluctuation in foreign currency, change in the duty/tax structure, changes in costs related to the materials and labour or other components or for any other reason.				We submit that any fluctuation in pricing due to reasons beyond our control will be discussed mutually between the parties. Further if there is any change in tax (GST), it shall be borne by Bank as mentioned in 7.3.4	No Change
9	7.5.2 Payment for Solution Cost The payment towards cost of solution would be released as under: 7.5.2.1. 40% of the Solution cost on delivery of all solutions at respective locations, post verification and submission of delivery challan with invoice. 7.5.2.2. 20% of the solution cost Post successful completion of UAT, Phase-1 signoff and acceptance by the Bank and submission of back to back warranty, ATS/Support certificates from OEM and verification from OEM portal. 7.5.2.3. 40% of the solution cost Post Phase-2 signoff				<ul style="list-style-type: none"> • 70% of the Solution cost on delivery of all solutions at respective locations, post verification and submission of delivery challan with invoice. • 20% of the solution cost Post successful completion of UAT, Phase-1 signoff and acceptance by the Bank and submission of back to back warranty, ATS/Support certificates from OEM and verification from OEM portal. • 10% of the solution cost Post Phase-2 • 80% of the Solution cost on delivery of all solutions at respective locations, post verification and submission of delivery challan with invoice. • 10% of the solution cost Post successful completion of UAT, Phase-1 signoff and 	Change The revised clause to be read as: 7.5.2 Payment for Solution Cost The payment towards cost of solution would be released as under: 7.5.2.1 60% of the Solution cost on delivery of all solutions at respective locations, post verification and submission of delivery challan with invoice. 7.5.2.2 20% of the solution cost Post successful completion of UAT, Phase-1 signoff and acceptance by the Bank and submission of back to back warranty, ATS/Support certificates from OEM and verification from OEM portal.

S.N	RFP Clause	Bidder Query	Clarification by Bank
		<p>acceptance by the Bank and submission of back to back warranty, ATS/Support certificates from OEM and verification from OEM portal.</p> <ul style="list-style-type: none"> 10% of the solution cost Post Phase-2 signoff. 	<p>7.5.2.3 20% of the solution cost Post Phase-2.</p> <p><i>Please refer to section 7.2.2.1(3) of revised RfP for change in SoW for phase-I.</i></p>
10	<p>7.5.3. Payment for Trainings</p> <p>7.5.3.1. 20% of training charges post Phase-1 signoff</p> <p>7.5.3.2. 80% of training charges post Phase-2 signoff.</p>	<ul style="list-style-type: none"> 80% of training charges post Phase-1 signoff 20% of training charges post Phase-2 signoff. 70% of training charges post Phase-1 signoff 30% of training charges post Phase-2 signoff 	<p>Change</p> <p>The revised clause to be read as:</p> <p>7.5.3. Payment for Trainings</p> <p>7.5.3.1 40% of training charges post Phase-1 signoff.</p> <p>7.5.3.2 60% of training charges post Phase-2 signoff.</p>
11	<p>7.5.5.Payment for Deployed Resources</p> <p>Payment towards deployment of support resources (L1 & L2) during the contract period will be divided into equal quarterly instalments and will be payable to the Bidder quarterly in arrears on submission of invoice and other supporting documents. This will start from the date of acceptance of resource. Payment for last quarter of the contract period will be released only at the end of the contract period after adjusting LD, if any</p>	<p>Payment towards deployment of support resources (L1 & L2) during the contract period will be divided into equal quarterly instalments and will be payable to the Bidder quarterly in Advance on submission of invoice and other supporting documents. This will start from the date of acceptance of resource. Payment for last quarter of the contract period will be released only at the end of the contract period after adjusting LD, if any.</p>	<p>No Change</p>
12	<p>7.5.11 Payment in case of Termination of contract</p> <p>In case the contract is terminated payment will be made on pro rata basis for the period for which services have been delivered, after deducting applicable LD, TDS and adjusting other pending charges, if any.</p>	<p>In case of termination, Bank should be make payment to bidder for services delivered along with payment for orders placed with OEMs which cannot be cancelled or where cancellation charge is levied.</p>	<p>Clause Deleted.</p>
13	<p>7.5.17 The Bank shall have the right to withhold any payment due to the Bidder, in case of delays or defaults on the part of the Bidder. Such withholding of payment shall not amount to a default on the part of the Bank.</p>	<p>We request to relax this clause as further details need to provide as what constitutes the delay or defaults as per this clause.</p>	<p>Change</p> <p>The revised clause to be read as:</p> <p>7.5.17 The Bank shall have the right to withhold any payment pertaining to the current contract, due to the Bidder, in case of delays or defaults on the part of the</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
14	<p>7.7.1(1) Termination for non-performance (not meeting SLA)</p> <p>(i) Bank may, without prejudice to any other remedy for breach of contract, by giving written notice of 30 days to the bidder, terminate the contract in whole or part on occurrence of any or part of the following events:</p> <p>a) If the bidder fails to deliver any or all of the services within the period(s) specified in the contract or within any extension thereof granted by the Bank pursuant to conditions of contract</p> <p>b) The Selected bidder breaches its obligations under the scope document or the subsequent agreement and if the breach is not cured within 30 days from the date of notice</p> <p>c) Serious discrepancy in the quality of service expected during the implementation, rollout and subsequent maintenance process.</p> <p>d) The Selected bidder (i) has a winding up order made against it; or (ii) has a receiver appointed over all or substantial assets; or (iii) is or becomes unable to pay its debts as they become due; or (iv) enters into any arrangement or composition with or for the benefit of its creditors; or (v) passes a resolution for its voluntary winding up or dissolution or if it is dissolved.</p> <p>(ii) The bank's decision in this regard will be final. Bank will not bear any compensation for these exits as they are due to non-performance of service provider.</p>	<p>Please confirm that termination shall be affected only if the Bidder has failed to rectify or remedy the default within the notice period of 30 days. Further, please confirm that termination shall not affect the rights of Bidder accrued prior to termination and Bidder shall be entitled to be paid for the work delivered successfully under the RFP.</p> <p>Bank to provide 90 days' notice</p> <p>In the event of early termination of the contract, client need to pay the applicable termination charges.</p> <p>Can we limit circumstances of termination only to material breach?</p>	<p>Bidder. Such withholding of payment shall not amount to a default on the part of the Bank.</p> <p>Change</p> <p>The revised clause to be read as:</p> <p>7.7.1(1) Termination for non-performance /Default</p> <p>(i) Bank may, without prejudice to any other remedy for breach of contract, by giving written notice of 30 days to the bidder, terminate the contract in whole or part on occurrence of any or part of the following events:</p> <p>a) If the bidder fails to deliver any or all of the services within the period(s) specified in the contract or within any extension thereof granted by the Bank pursuant to conditions of contract;</p> <p>b) The Selected bidder breaches its obligations under the scope document or the subsequent contract;</p> <p>c) Serious discrepancy in the quality of service expected during the implementation, rollout and subsequent maintenance process;</p> <p>(ii) Prior to providing written notice of termination to bidder under this clause, the Bank shall provide bidder with a written notice of 60 (sixty) days in case of clause (i) b and (i)c above, to cure such breach of the agreement/contract. If the breach continues or remains unrectified after the expiry of the cure period, the Bank shall have the right to initiate action in accordance with the above clause (I).</p> <p>(iii) The bank's decision in this regard will be final. Bank will not bear any compensation for these exits as they are due to non-performance of service provider.</p>
15	<p>7.7.1(2) Termination for Insolvency</p>	<p>Bank to provide 90 days' notice</p>	<p>Change</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>Bank may terminate the Contract by giving written notice of 30 days to the bidder, if the bidder becomes bankrupt or otherwise insolvent. In this event termination will be without any compensation to the bidder, provided that such termination will not prejudice or affect any right of action or remedy, which has occurred or will accrue thereafter to the Bank.</p>	<p>In the event of early termination of the contract, client need to pay the applicable termination charges. Can we limit circumstances of termination only to material breach?</p>	<p>The revised clause to be read as: 7.7.1(2) Termination for Insolvency Bank may terminate the Contract by giving written notice of 30 days to the bidder:</p> <ul style="list-style-type: none"> (i) if the bidder becomes bankrupt or otherwise insolvent. (ii) The Selected bidder (i) has a winding up order made against it; or (ii) has a receiver appointed over all or substantial assets; or (iii) is or becomes unable to pay its debts as they become due; or (iv) enters into any arrangement or composition with or for the benefit of its creditors; or (v) passes a resolution for its voluntary winding up or dissolution or if it is dissolved. <p>In this event termination will be without any compensation to the bidder, provided that such termination will not prejudice or affect any right of action or remedy, which has occurred or will accrue thereafter to the Bank.</p>
16	<p>7.7.1(3) Termination for the convenience of bank Notwithstanding the provisions of the Contract and/or the Bid Documents, the Bank at its sole discretion and without prejudice to any other right or remedy and without assigning any reasons, by written 30 days' notice sent to the bidder, may terminate the Contract, in whole or in part, at any time during the contract period. The notice of termination shall specify the brief reason for such termination, the extent to which performance of the Bidder under and in accordance with the Contract is terminated, and the date upon which such termination becomes effective.</p>	<p>We suggest that this clause must be mutual and any termination under this clause by the Bank, the Bank shall liable to pay the early termination charges for there reminder period of contract. Further, 90 days' notice to be provided.</p> <p>Notwithstanding the provisions of the Contract and/or the Bid documents, the Bank at its sole discretion and without prejudice to any other right or remedy and without assigning any reasons, by written 90 days' notice sent to the</p>	<p>Change The revised clause to be read as: 7.7.1(3) Termination for the convenience of bank Notwithstanding the provisions of the Contract and/or the Bid Documents, the Bank at its sole discretion and without prejudice to any other right or remedy and without assigning any reasons, by written 90 days' notice sent to the bidder, may terminate the Contract, in whole or in part, at any time during the contract period. The notice of termination shall specify the brief reason for such termination, the extent to which performance of the Bidder under and in accordance with the Contract is</p>

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	<p>The Goods that are complete and ready for shipment and/or maintenance services for which renewal happened within thirty (30) days after the supplier's receipt from the date of notice of termination shall be accepted by the Bank at the contracted terms and prices. For the remaining goods being terminated, the Bank may elect:</p> <p>(i) to have any portion completed and delivered at the contracted terms and prices; and/or</p> <p>(ii) to cancel the remainder and pay to the supplier an agreed amount for partially completed Goods or Services.</p>	<p>bidder, may terminate the Contract, in whole or in part, at any time during the contract period.</p> <p>For the purpose of clarity, we request adding the following clause in continuation to the clause on Termination for Convenience. In case of termination for convenience, Bank shall also agree to pay, at a minimum:</p> <p>(i) all invoices issued by Dimension Data for the deliverables prior to the termination date;</p> <p>(ii) costs for performing or supplying deliverables as at the date of the termination notice; and</p> <p>(iii) costs that may be incurred by Dimension Data, which it is unable to mitigate or recover.</p> <p>In the event of early termination of the contract, client need to pay the applicable termination charges. Can we limit circumstances of termination only to material breach?</p> <p>We request a 90 day notice period for termination for convenience. Further, we submit that the bank will pay for all services/goods delivered and in production till the effective date of termination along with such standard charges as mutually agreed.</p>	<p>terminated, and the date upon which such termination becomes effective.</p> <p>The Goods that are complete and ready for shipment and/or maintenance services for which renewal happened within ninety (90) days after the supplier's receipt from the date of notice of termination shall be accepted by the Bank at the contracted terms and prices. For the remaining goods being terminated, the Bank may elect:</p> <p>(i) to have any portion completed and delivered at the contracted terms and prices; and/or</p> <p>(ii) to cancel the remainder and pay to the supplier an agreed amount for partially completed Goods or Services.</p>
17	<p>7.8 Consequence of Termination</p> <p>7.8.3. Where the termination of the Contract is prior to its stipulated term on account of a default on the part of the Bidder or due to the fact that the survival of the Bidder as an independent corporate entity is threatened/has ceased, the Purchaser shall pay the Bidder for that part of the equipment /services procured which have been authorized by the</p>	<p>7.8.3. Where the termination of the Contract is prior to its stipulated term on account of a default on the part of the Bidder or due to the fact that the survival of the Bidder as an independent corporate entity is threatened/has ceased, the Purchaser shall pay the Bidder for that part of the equipment /services procured which have been authorized by the Purchaser</p>	<p>Change</p> <p>The revised clause to be read as:</p> <p>7.8.3. Where the termination of the Contract is prior to its stipulated term on account of a default on the part of the Bidder or due to the fact that the survival of the Bidder as an independent corporate entity is threatened/has ceased, the Purchaser shall pay the</p>

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	<p>Purchaser and satisfactorily performed by the Bidder up to the date of termination, without prejudice any other rights, the Purchaser may retain such amounts from the payment due and payable by the Purchaser to the Bidder as may be required to offset any direct losses caused to the Purchaser as a result of any act/omissions of the Bidder. In case of any loss or damage due to default on the part of the Bidder in performing any of its obligations with regard to executing the scope of work under this Contract the Bidder shall compensate the Purchaser for any such direct loss, damages or other costs, incurred by the Purchaser.</p>	<p>and satisfactorily performed by the Bidder up to the date of termination, without prejudice any other rights, the Purchaser may retain such amounts from the payment due and payable by the Purchaser to the Bidder as may be required to offset any direct losses caused to the Purchaser as a result of any act/ omissions of the Bidder. In case of any loss or damage due to default on the part of the Bidder in performing any of its obligations with regard to executing the scope of work under this Contract the Bidder shall compensate the Purchaser for any such direct loss, damages or other costs, incurred by the Purchaser.</p> <p>The termination will done by the Bank hence we recommend Bidder shall not be held responsible, the penalty defined is uncertain, for any non-performance Bank always has remedy to claim penalty under scope or work. We request to delete this part of clause.</p> <p>“Purchaser may retain such amounts from the payment due and payable by the Purchaser to the Bidder as may be required to offset any direct losses caused to the Purchaser as a result of any act/omissions of the Bidder. In case of any loss or damage due to default on the part of the Bidder in performing any of its obligations with regard to executing the scope of work under this Contract the Bidder shall compensate the Purchaser for any such direct loss, damages or other costs, incurred by the Purchaser”.</p> <p>Moreover, any penalty shall be applicable only in case of issue being fully attributable to bidder</p> <p>Kindly confirm that payments due to the Bidder upon termination may not be set-off against any losses if any, losses need to be dealt with</p>	<p>Bidder for that part of the equipment /services procured which have been authorized by the Purchaser and satisfactorily performed by the Bidder and accepted by the purchaser, up to the date of termination, without prejudice any other rights, the Purchaser may retain such amounts from the payment due and payable by the Purchaser to the Bidder as may be required to offset any direct losses caused to the Purchaser as a result of any act/omissions of the Bidder. In case of any loss or damage due to default on the part of the Bidder in performing any of its obligations with regard to executing the scope of work under this Contract the Bidder shall compensate the Purchaser for any such direct loss, damages or other costs, incurred by the Purchaser</p>

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		<p>separately. Only LD/Penalties maybe allowed to set-off against payments due.</p> <p>Further, pl. delete the below clause: “Purchaser may retain such amounts from the payment due and payable by the Purchaser to the Bidder as may be required to offset any direct losses caused to the Purchaser as a result of any act/omissions of the Bidder. In case of any loss or damage due to default on the part of the Bidder in performing any of its obligations with regard to executing the scope of work under this Contract the Bidder shall compensate the Purchaser for any such direct loss, damages or other costs, incurred by the Purchaser”.</p> <p>We submit deletion of this clause. The Bank has the right to terminate and in the event of default, the Bank has the right to impose liquidated damages or penalties, as applicable. We should not be held liable for any further losses.</p>	
18	<p>7.7 Consequence of Termination</p> <p>7.8.5 BANK reserves the right to recover any dues payable by the selected bidder from any amount outstanding to the credit of the selected bidder, including the pending bills and/or invoking the Bank guarantee under this contract</p>	<p>7.8.5 BANK reserves the right to recover any dues payable by the selected bidder from any amount outstanding to the credit of the selected bidder, including the pending bills and/or invoking the Bank guarantee under this contract</p>	No Change
19	<p>8.3.1.2(3) In case the delay exceeds TEN weeks, the bank reserves the right to cancel the purchase order in full. In such an event vendor will not be entitled to or recover from Bank any amount by ways of damages, loss or otherwise.</p>	<p>If the Delay occurs due to ongoing COVID pandemic, NTT cannot be penalised. Please confirm</p>	No Change
20	<p>8.3.1.2(4) If orders are cancelled due to non-delivery, the vendor will be debarred by Bank for participating in any future tenders floated by Bank for a period of 03 years.</p>	<p>We suggest to delete this clause as being an harsh penalty when bank always have a right to claim damages or other remedies available in the contract.</p>	<p>Change</p> <p>The revised clause to be read as:</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
			<p>8.3.1.2(4) If orders are cancelled due to non-delivery, the Bank reserves the right to debar the vendor for participating in any future tender floated by the Bank for a period of three (03) years.</p>
21	<p>8.3.2.1 Incidence Resolution</p> <ol style="list-style-type: none"> 1. High Incidence Resolution within 1 hour of the incident reporting. 2. Medium Incidence Resolution within 2 working hours of the incident reporting. 3. Low Incidence Resolution within 4 working hours of the incident reporting. 	<p>Request Bank to consider following SLAs:</p> <ol style="list-style-type: none"> 1. High Incidence: Response - 1 Hour; Resolution 4 Hours 2. Medium Incidence: Response - 8 Hrs; Resolution 8 Hours 3. Low Incidence: Response - 12 Hours; Resolution 12 Hours 	<p>Change</p> <p>The revised clause to be read as:</p> <ol style="list-style-type: none"> 1. High Incidence: Response - 1 Hour; Resolution 2 Hours 2. Medium Incidence: Response - 2 Hours; Resolution 4 Hours 3. Low Incidence: Response – 6 Hours; Resolution 24 Hours
22	<p>8.3.2.2 Liquidated Damages Cap</p> <p>The maximum monthly LD during the operation phase shall be capped to 10% of the MCV of the respective month</p>	<p>IBM cannot be held responsible for the delays owing to OEM default as IBM is System Integrator, should be limited to 5%.</p> <p>The maximum monthly LD during the operation phase shall be capped to 5% of the MCV of the respective month.</p> <p>10% Monthly penalty would make the opportunity unviable for bidders, hence request bank to consider a capping of 2 %.</p>	<p>Change</p> <p>The revised clause to be read as:</p> <p>The maximum monthly LD during the operation phase shall be capped to 5% of the MCV of the respective month</p>
23	<p>9.2 Period of Contract</p> <p>9.2.3. The bank reserves the right to extend the contract for additional period of 1 year or part thereof in single or multiple instance(s) beyond the contractual period of five years under the same terms and conditions and fifth year contract rate</p>	<p>SIDBI to kindly consider the commercials of contract beyond contractual period should be agreed and revised with mutual consent at the end of 5th year.</p>	<p>Change</p> <p>The revised clause to be read as:</p> <p>9.2.3The bank reserves the right to extend the contract, if required by bank, for additional period of 1 year beyond the contractual period of five years under mutually agreed terms.</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
24	<p>9.4. Sub-contracting</p> <p>9.4.1. The selected Bidder shall not subcontract or permit anyone other than its personnel or the OEM supplier to perform any of the work, service or other performance required of the bidder under the contract without the prior written consent of the Bank.</p> <p>9.4.2. If the Bank undergoes a merger, amalgamation, take-over, consolidation, reconstruction, change of ownership etc., this RFP shall be considered to be assigned to the new entity and such an act shall not affect the rights and obligations of the Bidder under this RFP.</p>	<p>9.4.1 Kindly confirm that such consent shall not be unduly withheld or delayed.</p> <p>9.4.2 Further upon a Bank merger, amalgamation or change of ownership, Bidder would need to be intimated so any changes to scope or services may be aligned accordingly.</p> <hr/> <p>Request bank to allow for Bidder, OEM and OEM recommended partners for implementation/ support.</p>	<p>Change</p> <p>The revised clause to be read as:</p> <p>9.4. Sub-contracting</p> <p>9.4.1. The selected Bidder shall not subcontract or permit anyone other than its personnel or the OEM supplier during implementation to perform any of the work, service or other performance required of the bidder under the contract.</p> <p>9.4.2. If the Bank undergoes a merger, amalgamation, take-over, consolidation, reconstruction, change of ownership etc., this RFP shall be considered to be assigned to the new entity and such an act shall not affect the rights and obligations of the Bidder under this RFP.</p>
25	<p>9.5. Negligence</p> <p>9.5.1. In connection with the work or contravenes the provisions of General Terms, if the selected bidder neglects to execute the work with due diligence or expedition or refuses or neglects to comply with any reasonable order given to him in writing by the Bank, in such eventuality, the Bank may after giving notice in writing to the selected bidder calling upon him to make good the failure, neglect or contravention complained of, within such times as may be deemed reasonable and in default of the said notice, the Bank shall have the right to cancel the Contract holding the selected bidder liable for the damages that the Bank may sustain in this behalf. Thereafter, the Bank may make good the failure at the risk and cost of the selected bidder.</p> <p>9.5.2. The below mentioned situations will also be treated as an act of negligence by the Bidder.</p> <p>1. In case of any damage of Bank's property during</p>	<p>SIDBI to kindly confirm that any cancellation or termination of contract will be done only after giving 30 days written notice to the Bidder to cure or remedy the default and only upon failure of the Bidder to remedy or cure such default as per OEM T&C.</p> <hr/> <p>Can we remove this requirement and subject all negligence related issues to normal breaches in the contract?</p> <hr/> <p>We request limiting the liability to direct damages incurred due to negligence on our part and to limiting the risk purchase to the amount payable by the Bank to us for the affected deliverable.</p>	<p>Change</p> <p>Please refer to Clause 9.26 (Limitation of liability) of revised RfP.</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>execution of the work is attributable to the bidder, bidder has to replace the damaged property at his own cost.</p> <p>2. The selected Bidder shall take all steps to ensure safety of bidder's and the bank's personnel during execution of the contract and also be liable for any consequences due to omission or act of the selected bidder.</p>		
26	<p>9.10 Ownership of Delivered Services</p> <p>9.10.1 The selected Bidder, who will be awarded the contract, will hold ownership of its delivery of the services under the contract and be responsible for the services delivered. All the deliverables as per the scope of this PO will become the property of the Bank.</p> <p>9.10.2 SIDBI has the sole ownership of and the right to use, all data that may be in possession of the Bidder or its representative in the course of performing the services under the agreement that may be entered into. All documents, report, information, data etc. collected and prepared by Bidder in connection with the scope of work submitted to SIDBI will be property of the Bank. The Bidder shall not be entitled either directly or indirectly to make use of the documents, reports given by SIDBI for carrying out of any services with any third parties. Bidder shall not without the prior written consent of SIDBI be entitled to publish studies or descriptive article with or without illustrations or data in respect of or in connection with the performance of services.</p>	<p>Neither party will gain by virtue of this contract any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other. All copyrights patents, trade secrets, trademarks and any other intellectual property rights existing prior to the Effective Date or developed independent of this contract shall belong to the party that owned such rights immediately prior to the Effective Date or has developed such intellectual property right. Bidder will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed under this Agreement and provides SIDBI a non-exclusive, worldwide, royalty-free license for its internal use only during the term of the contract.</p>	No Change
27	<p>9.10 Applicable Laws</p> <p>9.10.1 The Contract shall be interpreted in accordance with the laws prevalent in India.</p> <p>9.10.2 Compliance with all applicable laws - The Bidder shall undertake to observe, adhere to, abide by, comply with and notify the Bank</p>	<p>The bidder will comply with all applicable laws, rules, regulations and will obtain all necessary licenses and permissions as required. The bidder shall indemnify the Bank only with regards to breach of any applicable taxes and anti-bribery laws.</p>	No Change.

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>about all laws in force or as are or as made applicable in future, pertaining to or applicable to them, their business, their employees or their obligations towards them and all purposes of this Tender and shall indemnify, keep indemnified, hold harmless, defend and protect the Bank and its employees/ officers/ staff/ personnel/ representatives/ agents from any failure or omission on its part to do so and against all claims or demands of liability and all consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising therefrom.</p> <p>9.10.3 Compliance in obtaining approvals/ permissions/ licenses - The Bidder shall promptly and timely obtain all such consents, permissions, approvals, licenses, etc., as may be necessary or required for any of the purposes of this project or for the conduct of their own business under any applicable Law, Government Regulation/ Guidelines and shall keep the same valid and in force during the term of the project, and in the event of any failure or omission to do so, shall indemnify, keep indemnified, hold harmless, defend, protect and fully compensate the Bank and its employees/ officers/ staff/ personnel/ representatives / agents from and against all claims or demands of liability and all consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising therefrom and the Bank will give notice of any such claim or demand of liability within reasonable time to the bidder</p>		
28	9.14 Insurance	The insurance shall cover “All Risks” (fire, burglary, natural calamities such as Earth	<p>Change</p> <p>The revised clause to be read as:</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>9.14.2 The insurance shall cover “All Risks” (fire, burglary, natural calamities such as Earth quake, floods, power fluctuations etc.) till the successful completion of installation of hardware / solutions or 30 days from the date of delivery whichever is later. If the vendor fails to obtain insurance cover and any loss or damage occur, the vendor will have to replace the items with new ones without any cost to the Bank.</p>	<p>quake, floods, power fluctuations etc.) till the Delivery at SIDBI DC / DR.</p> <p>Can bidder rely on its standard corporate policy for insurances and issue a certificate in your name than comply to the requirement elaborated here?</p> <p>Once Product is delivered at client location, ownership will transfer to the Bank. We cannot provide Insurance for something we do not own, hence we can only provide insurance until delivery at doorstep. We hence request this clause to be deleted/ amended.</p>	<p>9.14.2 The insurance shall cover “All Risks” (fire, burglary, natural calamities such as Earthquake, floods, power fluctuations etc.) valid for a period of one month (30 days) after delivery of products at the defined destinations. If the vendor fails to obtain insurance cover and any loss or damage occur, the vendor will have to replace the items with new ones without any cost to the Bank.</p>
29	<p>9.15 Right to Alter Quantity The bank reserves the right to:</p> <p>9.15.1 Alter the requirement (increase / decrease) specified in the RfP, at the time of placing the order.</p> <p>9.15.2 Delete one or more items from scope of work specified in the RfP, at the time of placing the order.</p> <p>9.15.3 Procure additional licenses as per the contracted rate obtained in the commercial bid. Any “additional licenses” requirements by the Bank, during the period of contract, shall be placed as per the unit cost arrived at pro-rata basis of the original cost being quoted in Commercial bid Part-I for respective solutions.</p> <p>9.15.4 AMC/ATS for “additional licenses”, during the period of contract, shall be placed as per the unit cost arrived at pro-rata basis of the original cost being quoted in Commercial bid Part-II for respective solutions.</p>	<p>In case of any decrease or deletion of work, SIDBI to pay bidder for all costs which bidder is unable to mitigate, e.g., Payment for orders placed with OEMs which cannot be cancelled or where cancellation charge is levied and addition charges incurred in case of alteration of work.</p> <p>We submit that any change in the pricing due to the Bank exercising its right under this clause, the parties will mutually agree on the adjusted pricing.</p>	<p>Clarification After placing purchase order, Bill of Material will not be reduced. However, other terms and conditions mentioned in clause 9.15 will remain valid.</p>
30	<p>9.18 Patent Rights</p>	<p>9.18.1 In the event of a third party claim of intellectual property infringement under this clause, Bidder may, at its sole option:</p>	<p>Change</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>9.18.1 In the event of any claim asserted by a third party of infringement of copyright, patent, trademark, industrial design rights, etc. arising from the use of the Goods or any part thereof in India or abroad, the Supplier shall act expeditiously to extinguish such claim. If the Supplier fails to comply and the Bank is required to pay compensation to a third party resulting from such infringement, the Supplier shall be responsible for the compensation including all expenses, court costs and lawyer fees. The Bank will give notice to the Supplier of such claim, if it is made, without delay.</p> <p>9.18.2 The Bank will give notice to the supplier of any such claim without delay, provide reasonable assistance to the Supplier in disposing of the claim, and shall at no time admit to any liability for or express any intent to settle the claim.</p>	<p>(i) obtain for Banks the right to continue using the Services,</p> <p>(ii) modify the Services so that the Services are non-infringing,</p> <p>(iii) replace the Services with a functionally equivalent, non-infringing service, or</p> <p>If the alternatives in Section 9.18.1. (i) to (iii) are not available, Bidder may so notify Bank & terminate such infringing Services without penalty to either Party. Notwithstanding anything in the agreement to the contrary, this Section 9.18 is Banks sole remedy for any intellectual property infringement claims. However, with respect to all intellectual property claims, Bidder shall in no event be liable in an amount that exceeds, in the aggregate for all such liabilities, the most recent twelve (12) months of charges collected by Bidder.</p> <p>We request that provisions related to Indemnity be restricted to Third party indemnification claims arising from infringement of IPR in respect of the Services provided by Bidder.</p> <p>The liability of the Bidder shall not exceed 50% of the annual value of the contract, irrespective of whether the liability arises under contract, tort or indemnity.</p> <p>Neither party shall be liable for indirect and consequential loss and damages including but not limited to loss of profit, anticipated savings, loss of data, loss of business.</p>	<p>Patent Rights and IPR Infringement clubbed to single clause with title Intellectual Property Rights.</p> <p>The revised clause to be read as:</p> <p><u>9.18 Intellectual Property rights</u></p> <p>9.18.1 For any technology / Software / Solution developed/used/supplied by Service provider for performing Services or licensing and implementing Software and Solution for the Bank as part of this RfP/subsequent contract, Service Provider shall have right to use as well right to license for the outsourced services or third party product. The Bank shall not be liable for any license or IPR violation on the part of Service Provider.</p> <p>9.18.2 Without the Bank’s prior written approval, Service provider will not, in performing the Services, use or incorporate, link to or call or depend in any way upon, any Software or other intellectual property that is subject to an Open Source or Copy-left license or any other agreement that may give rise to any third-party claims or to limit the Bank’s rights under this RfP/ subsequent contract.</p> <p>9.18.3 Subject to clause 9.18.4 and 9.18.5 of this RfP/subsequent contract, Service Provider shall, at its own expenses without any limitation, indemnify and keep fully and effectively indemnified the Bank against all cost, claims, damages, demands, expenses and liabilities whatsoever nature arising out of or in connection with all claims of infringement of Intellectual Property Right, including patent, trademark, copyright, trade secret or industrial design rights of any third party arising from use of the technology / Software/Equipment or any part thereof in India or abroad, for Equipment supplied/Software licensed /developed as part of this engagement. In case of violation/ infringement of patent/ trademark/ copyright/ trade secret or industrial design or</p>
31	<p>9.24 IPR Infringement</p> <p>As part of this project, bidder / service provider will deliver different software, if the use of any such</p>	<p>We recommend below modifications to this clause. With respect to all intellectual property claims under this clause, the Bidder shall in no event be liable in an amount that exceeds, in the</p>	

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	<p>software by / for SIDBI, infringes the intellectual property rights of any third person, Service provider shall be primarily liable to indemnify SIDBI to the extent of direct damages against all claims, demands, costs, charges, expenses, award, compensations etc. arising out of the proceedings initiated by third party for such infringement, subject to the condition that the claim relates to Software provided/used by Bidder/ Service provider under this project.</p>	<p>aggregate for all such liabilities, the most recent twelve (12) months of charges collected by Bidder.</p> <hr/> <p>IBM should not be held liable for such damages.</p>	<p>any other Intellectual Property Right of third party, Service Provider shall, after due inspection and testing, without any additional cost</p> <p>a) Procure for the Bank the right to continue using the Software/ Equipment supplied; or</p> <p>b) Replace or modify the Software /Equipment to make it non-infringing so long as the replacement to or modification of Software provide substantially equivalent functional, performance and operational features as the infringing Software/ Equipment which is being replaced or modified; or</p> <p>c) To the extent that the activities under clauses (a) and (b) above are not commercially reasonable, refund to the Bank all amounts paid by the Bank to Service Provider under this RfP /subsequent contract.</p> <p>9.18.4 The Bank will give (a) notice to Service provider of any such claim without delay/provide reasonable assistance to Service provider in disposing of the claim; (b) sole authority to defend and settle such claim and; (c) will at no time admit to any liability for or express any intent to settle the claim provided that (i) Service Provider shall not partially settle any such claim without the written consent of the Bank, unless such settlement releases the Bank fully from such claim, (ii) Service Provider shall promptly provide the Bank with copies of all pleadings or similar documents relating to any such claim, (iii) Service Provider shall consult with the Bank with respect to the defence and settlement of any such claim, and (iv) in any litigation to which the Bank is also a party, the Bank shall be entitled to be separately represented at its own expenses by counsel of its own selection.</p> <p>9.18.5 Service Provider shall have no obligations with respect to any infringement claims to the extent that the infringement claim arises or results from: (i) Service</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
			<p>Provider's compliance with the Bank's specific technical designs or instructions (except where Service Provider knew or should have known that such compliance was likely to result in an Infringement Claim and Service Provider did not inform the Bank of the same); (ii) any unauthorized modification or alteration of the Software/Equipment by the Bank; or (iii) failure to implement an update to the licensed Software that would have avoided the infringement, provided Service Provider has notified the Bank in writing that use of the update would have avoided the claim.</p> <p>9.18.6 Service provider hereby grants the Bank a fully paid-up, irrevocable, unlimited, perpetual, non-exclusive/ exclusive license throughout the territory of India or abroad to access, replicate and use Software licensed /developed as part of this engagement, including all inventions, designs and trademarks embodied therein perpetually.</p> <p>9.18.7 Software licensed/ developed as part of this RfP/subsequent contract can be put to use in all offices of the Bank.</p>
32	<p>9.25 Indemnity</p> <p>9.25.1 The Bidder/ successful bidder shall indemnify the Bank, and shall always keep indemnified and hold the Bank, its employees, personnel, officers, directors, harmless from and against any and all losses, liabilities, claims, actions, costs and expenses (including attorneys' fees) relating to, resulting directly or indirectly from or in any way arising out of any claim, suit or proceeding brought against the Bank as a result of:</p> <p>1. Bank's authorized / bona fide use of the Deliverables and /or the Services provided by Bidder under this RfP document; and/or</p>	<p>9.25.1 (1)IBM cannot bid for such Bids where it is held liable for indirect losses or damages.</p> <p>9.25.1(8) this implies the liability is uncapped, IBM cannot bid for such Bids</p> <p>9.25.2 We suggest to delete this portion of clause as Bidder will not have the visibility for such claims and Bank to consider that it has the right to claim liquidated damages for the performance of service</p>	<p>Change</p> <p>The revised clause to be read as:</p> <p>9.25 Indemnity</p> <p>9.25.1 The Bidder/ successful bidder shall indemnify the Bank, and shall always keep indemnified and hold the Bank, its employees, personnel, officers, directors, harmless from and against any and all losses, liabilities, claims, actions, costs and expenses (including attorneys' fees) relating to, resulting from or in any way arising out of any claim, suit or proceeding brought against the Bank by a third party as a result of:</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>2. An act or omission of the Bidder, employees, agents, sub-contractors in the performance of the obligations of the Bidder under this RfP document; and/or</p> <p>3. Claims made by employees or subcontractors or subcontractors' employees, who are deployed by the Bidder, against the Bank; and/or</p> <p>4. Breach of any of the term of this RfP document and/or of the agreement to be entered subsequent this RfP or breach of any representation or false representation or inaccurate statement or assurance or covenant or warranty by the successful Bidder under this RfP document and/or of the agreement to be entered subsequent this RfP; and/or</p> <p>5. Any or all Deliverables or Services infringing any patent, trademarks, copyrights or such other Intellectual Property Rights; and/or</p> <p>6. Breach of confidentiality obligations of the Bidder contained in this RfP document; and/or</p> <p>7. Negligence, fraudulence activities or gross misconduct attributable to the bidder or its employees or sub-contractors; and/or</p> <p>8. The use of unlicensed and illegal Software and/or allied components by the successful Bidder.</p> <p>9.25.2 The Bidder will have to at its own cost and expenses defend or settle any claim against the Bank that the Deliverables and Services delivered or provided under this RfP document infringe a patent, utility model, industrial design, copyright, trade secret, mask work or trade mark in the country where the Deliverables and Services are used, sold or received, provided the Bank:</p> <p>1. Notifies the Bidder in writing; and</p>	<p>"Indemnity would be limited to court; tribunal or arbitrator awarded damages and shall exclude indirect, consequential and incidental damages. However, indemnity would cover damages, loss or liabilities suffered by the Bank arising out of claims made by its customers and/or regulatory authorities."</p> <p>We submit that we shall defend (settle and/or pay damages awarded by the court) the Bank against any third party claims arising from the following:</p> <p>a. Claims for loss or damage to third party tangible property;</p> <p>b. claim by any person in respect of bodily injury or death;</p> <p>c. claims by any third party in respect of any IP infringement;</p> <p>brought against or recovered from Bank by reasons of any act or omission on our part, our agents or employees in the performance of the contractual obligation.</p> <p>This will be subject to the Bank providing us prompt notice of such claim.</p>	<p>1. Bank's authorized / bona fide use of the Deliverables and /or the Services provided by Bidder under this RfP document/subsequent contract; and/or</p> <p>2. An act or omission of the Bidder, employees, agents, sub-contractors, OEM in the performance of the obligations of the Bidder under this RfP document/subsequent contract; and/or</p> <p>3. Claims made by employees or subcontractors or subcontractors' employees or OEM or OEM's employees, who are deployed by the Bidder and/or by any statutory /regulatory/ govt. authority, against the Bank; and/or</p> <p>4. Breach of any of the term of this RfP document or breach of any representation or false representation or inaccurate statement or assurance or covenant or warranty of the bidder under this RfP/subsequent contract; and/or</p> <p>5. Any or all Deliverables or Services supplied by Company infringing any patent, trademarks, copyrights or such other Intellectual Property Rights; and/or</p> <p>6. Breach of confidentiality obligations of the Bidder contained in this RfP document/subsequent contract; and/or</p> <p>7. Negligence or wilful misconduct, fraudulence activities or gross misconduct attributable to the bidder or its employees or sub-contractors; and/or</p> <p>8. The use of unlicensed and illegal Software and/or allied components by the successful Bidder.</p> <p>9.25.2 The Bidder will have to at its own cost and expenses defend or settle any claim against the Bank that the Deliverables and Services delivered or provided under this RfP document/subsequent contract infringe a</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>2. Cooperate with the bidder in the defense and settlement of the claims.</p> <p>9.25.3 The Bidder shall not be liable for defects or non-conformance resulting from:</p> <ol style="list-style-type: none"> 1. Software, hardware, interfacing not approved by Bidder; or 2. Unauthorized modification of Software or any individual product supplied under this RfP document, or Bank's failure to comply with any mutually agreed environmental specifications. 3. Use of a Deliverable in an application or environment for which it was not designed or not contemplated under this Agreement; 4. Modification of a deliverable by anyone other than the bidder where the unmodified version of the deliverable would not be infringing. 5. Any loss of profits, revenue, contracts, or anticipated savings. 6. Any consequential or indirect loss or damage however caused, provided that the claims against customers, users and service providers of the Bank would be considered as a "direct" claim. <p>9.25.4 The bidder shall indemnify the Bank and be liable for any loss or damage suffered by the Bank due to malfunctioning of the system as supplied and installed by them. The total liability of the selected bidder shall not exceed the total cost of the order value.</p> <p>9.25.5 Indemnity would be limited to court; tribunal or arbitrator awarded damages and shall exclude indirect, consequential and incidental damages. However, indemnity would cover damages, loss or liabilities suffered by the Bank arising out of claims made by its customers and/or regulatory authorities.</p>		<p>patent, utility model, industrial design, copyright, trade secret, mask work or trade mark in the country where the Deliverables and Services are used, sold or received, provided the Bank:</p> <ol style="list-style-type: none"> 1. Notifies the Bidder in writing; and 2. Cooperate with the bidder in the defence and settlement of the claims. <p>9.25.3 The Bidder shall <u>not be liable</u> for defects or non-conformance resulting from:</p> <ol style="list-style-type: none"> 1. Software, hardware, interfacing not approved by Bidder; or 2. Unauthorized modification of Software or any individual product supplied under this RfP document, or Bank's failure to comply with any mutually agreed environmental specifications. 3. Use of a Deliverable in an application or environment for which it was not designed or not contemplated under this Agreement; 4. Modification of a deliverable by anyone other than the bidder where the unmodified version of the deliverable would not be infringing. 5. Any loss of profits, revenue, contracts, or anticipated savings. <p>9.25.4 The bidder shall indemnify the Bank and be liable for any loss or damage suffered by the Bank due to malfunctioning of the system as supplied and installed by them.</p> <p>9.25.5 Indemnity would be limited to court; tribunal or arbitrator awarded damages and shall exclude indirect, consequential and incidental damages. However, indemnity would cover damages, loss or liabilities suffered by the Bank arising out of claims made by its customers and/or regulatory authorities for reasons</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
			attributable to breach of obligations under this RFP and subsequent agreement by the Bidder.
33	<p>9.26 Limitation of Liability</p> <p>Save and except the liability under Section of 'IPR Infringement' and/or indemnity provision (Clause 9.24 and / or clause 9.25), in no event shall either party be liable with respect to its obligations for indirect, consequential, exemplary, punitive, special, or incidental damages, including, but not limited to, loss of data / programs or lost profits, loss of goodwill, work stoppage, computer failure, loss of work product or any and all other commercial damages or losses whether directly or indirectly caused, even if such party has been advised of the possibility of such damages. The aggregate liability of the Service Provider, arising at any time under this Agreement shall not exceed the total contract value.</p>	<p>We suggest Bank to consider below changes: Save and except the liability under Section of 'IPR Infringement' and/or indemnity provision (Clause 9.24 and / or clause 9.25); In no event shall either party be liable with respect to its obligations for indirect, consequential, exemplary, punitive, special, or incidental damages, including, but not limited to, loss of data / programs or lost profits, loss of goodwill, work stoppage, computer failure, loss of work product or any and all other commercial damages or losses whether directly or indirectly caused, even if such party has been advised of the possibility of such damages. The aggregate liability of the Service Provider, arising at any time under this Agreement shall not exceed the total annual contract value.</p> <p>IBM cannot be held responsible for indirect losses</p>	<p>Change</p> <p>The revised clause to be read as:</p> <p>9.26 Limitation of Liability</p> <p>9.26.1 The maximum aggregate liability of Service Provider, subject to clause 9.26.3, in respect of any claims, losses, costs or damages arising out of or in connection with this RfP/subsequent contract shall not exceed the total contract value.</p> <p>9.26.2 Under no circumstances shall either Party be liable for any indirect, consequential or incidental losses, damages or claims including loss of profit, loss of business or revenue.</p> <p>9.26.3 The limitations set forth in Clause 9.26.1 shall not apply with respect to:</p> <ul style="list-style-type: none"> a) claims that are the subject of indemnification pursuant to Clause infringement of third party Intellectual Property Right; b) damage(s) occasioned by the Gross Negligence or Wilful Misconduct of Service Provider; c) damage(s) occasioned by Service Provider for breach of Confidentiality Obligations ; d) Regulatory or statutory fines imposed by a Government or Regulatory agency for non-compliance of statutory or regulatory guidelines applicable to the Bank, provided such guidelines were brought to the notice of Service Provider applicable to current scope of work.

S.N	RFP Clause	Bidder Query	Clarification by Bank
			<p>For the purpose of clause 9.26.3(b) the definition of “Gross Negligence “ and “Wilful Misconduct” are as follows:</p> <p>“Gross Negligence” means any act or failure to act by a party which was in reckless disregard of or gross indifference to the obligation of the party under this Agreement and which causes injury, damage to life, personal safety, real property, harmful consequences to the other party, which such party knew, or would have known if it was acting as a reasonable person, would result from such act or failure to act for which such Party is legally liable. Notwithstanding the forgoing, Gross Negligence shall not include any action taken in good faith.</p> <p>“Wilful Misconduct” means any act or failure to act with an intentional disregard of any provision of this Agreement, which a party knew or should have known if it was acting as a reasonable person, which would result in injury, damage to life, personal safety, real property, harmful consequences to the other party, but shall not include any error of judgment or mistake made in good faith.</p>
34	<p>9.27.Vicarious Liability</p> <p>9.27.The selected bidder shall be the principal employer of the employees, agents, contractors, subcontractors etc., engaged by the selected bidder and shall be vicariously liable for all the acts, deeds, matters or things, whether the same is within the scope of power or outside the scope of power, vested under the contract. No right of any employment in the Bank shall accrue or arise, by virtue of engagement of employees, agents, contractors, subcontractors etc. by the selected bidder, for any assignment under the contract. All remuneration, claims, wages dues etc. of such employees, agents, contractors, sub-contractors etc. of the bidder shall be paid by the selected bidder</p>	<p>IBM cannot be held responsible for indirect losses.</p> <p>Any vicarious liability shall be subject to the Indemnity & Limitation of liability clause as provide herein above.</p>	<p>No Change</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>alone and the Bank shall not have any direct or indirect liability or obligation, to pay any charges, claims or wages of any of the selected bidder's employees, agents, contractors, subcontractors etc. The selected bidder shall agree to hold the Bank, its successors, assigns and administrators fully indemnified, and harmless against loss or liability, claims, actions or proceedings, if any, whatsoever nature that may arise or caused to the Bank through the action of selected bidder's employees, agents, contractors, subcontractors etc</p>		
35	<p>9:30 Audit</p> <p>9.30.1 The vendor shall allow the Bank, its authorised personnel, its auditors (internal and external), authorised personnel from RBI / other regulatory & statutory authorities, and grant unrestricted right to inspect and audit its books and accounts, to provide copies of any audit or review reports and findings made on the service provider, directly related to the services, including Hardware, Software provided to the Bank and services under this RfP/subsequent PO and the bidder shall extend all cooperation in this regard.</p> <p>9.30.2 In case any of the services are further outsourced/assigned/subcontracted to other vendors, it will be the responsibility of the vendor to ensure that the authorities / officials as mentioned above are allowed access to all the related places, for inspection and verification.</p> <p>9.30.3 Audit under this clause shall be restricted to physical files related to this arrangement. Audit shall be conducted during normal business hours and on normal working days after informing the bidder in advance.</p>	<p>We submit that: Auditors shall NOT be given access to:</p> <ol style="list-style-type: none"> 1.any information not related to the Services; 2.locations/premises (or portions thereof) that are not related to the Services; or 3.records or documents relating to the makeup of our internal overhead calculations or direct costs, their relationship to the service charges, any financial cost model, calculation of service charges or our profitability; or 4. internal audit reports, or any summaries thereof. <p>Bidder requires Independent Monitors to:</p> <ol style="list-style-type: none"> 1. provide us with at least thirty (10) days' notice of its requirement for an Audit allowed once in a year, with such notice describing the issue(s) that will be the subject of the audit; 2. be subject to our site/premises security obligations and have their access controlled /monitored by us; 3.pay all our costs associated with the audit at current time and material rates and submit any requests for our assistance with an audit as a change request. <p>A third party auditor/inspector shall:</p> <ol style="list-style-type: none"> 1. not be a competitor of ours or a third party in dispute / conflict with us; 	<p>No Change.</p>

S.N	RFP Clause	Bidder Query	Clarification by Bank
	<p>9.30.4 The bank will also carry out annual review of the contract to ascertain the financial stability of the bidder in addition to the performance and service reliability. The bidder is required to submit the audited balance sheet and CA certificate, etc.</p>	<p>2.execute a confidentiality agreement acceptable to us; 3. be independent.</p>	
36	<p>9.40 Force Majeure</p> <p>9.40.1 The Successful Bidder shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that it's delay in performance or other failure to perform its obligations under the contract subsequent to this RFP is the result of an event of Force Majeure.</p> <p>9.40.2 If a Force Majeure situation arises, the Bidder shall promptly notify the Bank in writing of such condition, the cause thereof and the change that is necessitated due to the conditions. Until and unless otherwise directed by the Bank in writing, the Bidder shall continue to perform its obligations under the Contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.</p> <p>9.40.3 In such a case, the time for performance shall be extended by a period(s) not less than the duration of such delay. If the duration of delay continues beyond a period of three months SIDBI and the successful bidder shall hold consultations with each other in an endeavor to find a solution to the problem.</p> <p>9.40.4 In the event of the Force Majeure conditions continuing for a period of more than three months the parties shall discuss and arrive at a mutually acceptable arrangement.</p>	NA	<p>Change</p> <p>The revised clause to be read as:</p> <p>9.40 Force Majeure</p> <p>9.40.1 The Successful Bidder shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that it's delay in performance or other failure to perform its obligations under the contract subsequent to this RFP is the result of an event of Force Majeure.</p> <p>9.40.2 For the purposes of this clause, 'Force Majeure' means and includes wars, insurrections, revolution, civil disturbance, riots, terrorist acts, public strikes, hartal, bundh, fires, floods, epidemic, quarantine restrictions, freight embargoes, declared general strikes in relevant industries, Vis Major, acts of Government in their sovereign capacity, impeding reasonable performance of Service Provider and /or sub-contractor but does not include any foreseeable events, commercial considerations or those involving fault or negligence on the part of the party claiming Force Majeure.</p> <p>9.40.3 If a Force Majeure situation arises, the Bidder shall promptly notify the Bank in writing of such condition, the cause thereof and the change that is necessitated due to the conditions. Until and unless otherwise directed by the Bank in writing, the Bidder shall continue to perform its obligations under the Contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.</p>

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			<p>9.40.4 In such a case, the time for performance shall be extended by a period(s) not less than the duration of such delay. If the duration of delay continues beyond a period of three months SIDBI and the successful bidder shall hold consultations with each other in an endeavor to find a solution to the problem.</p> <p>In the event of the Force Majeure conditions continuing for a period of more than three months the parties shall discuss and arrive at a mutually acceptable arrangement.</p>
37	<p>11.2. Preliminary Examinations</p> <p>11.2.1. The Bank may, at its sole discretion, waive any minor informity, nonconformity or irregularity in a Bid which does not constitute a material deviation, provided such a waiver does not prejudice or affect the relative ranking of any Bidder.</p>	It is a bid where you cannot submit material deviations.	<p>Clarification</p> <p>Refer clause 11.2.4 of revised RfP which defines material deviation.</p>
38	<p>11.2.6. If a Bid is not substantially responsive, it will be rejected by the Bank and may not subsequently be made responsive by the Bidder by correction of the nonconformity</p>	It is a bid where you cannot submit material deviations, it will be rejected.	<p>Change</p> <p>The revised clause to be read as:</p> <p>11.2.6 If a Bid is not substantially responsive in all respect, it will be at the Bidder's risk and may result in rejection of the Bid.</p>
39	<p>Annexure -XII: Pre-contract Integrity Pact.</p> <p>7. Fall Clause</p> <p>The BIDDER undertakes that it has not supplied/is not supplying similar products /systems or subsystems / services at a price lower than that offered in the present bid in respect of any other Ministry/ Department of the Government of India or PSU and if it is found at any stage that similar product/systems or sub systems was supplied by the BIDDER to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the</p>	<p>We recommend to modify this clause to "Bidder to undertake that they are not supplying same quantity & same quality of products/systems or subsystems at a price lower than that offered in this bid".</p> <p>CVC issued a Circular dated 13.01.2017, formulating standard operating procedure for adoption of Integrity Pact and the same does not include Fall Clause as an essential ingredient of the Pact.</p>	<p>Clarification</p> <p>Similar means same make and quantity. Refer Clause 4.20.6 in revised RfP.</p>

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	present case and the difference in the cost would be refunded by the BIDDER to the BUYER, if the contract has already been concluded.	Can we consider removing the fall clause in the Integrity Pact (as the latest draft floated by the CVC does remove this provision)	
40	Annexure –XIII: Statement of Deviations	Why this Annexure when bid will be rejected if deviations are submitted.	Clarification In case of any deviations which the bidder proposes, the same to be submitted as per the format given in Annexure -XIII.
41	Additional Clause	NA	Additional Clause. 8.3.1.4 Liquidated Damages Cap during Implementation Phase The maximum LD during the implementation phase shall be capped at 10% of the TCO.

Note:

1. Revised RfP incorporating the changes is issued on October 09, 2020.
2. All other terms and conditions are as per revised RfP.
3. Bidders to submit bids strictly as per revised RfP only.
