



भारतीय लघु उद्योग विकास बैंक
Small Industries Development Bank of India

बैकअप टेप लाईब्रेरी की खरीद हेतु - प्रस्ताव का आमंत्रण

**Request for Proposal for
Procurement of Backup Tape Library**

भारतीय लघु उद्योग विकास बैंक
एमएसएमई विकास केन्द्र, सी-11, जी ब्लॉक,
बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पू.), मुम्बई - 400051

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA
MSME Development Center, C-11, 'G' Block,
Bandra Kurla Complex, Bandra (E), **Mumbai - 400 051**

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Critical Information / महत्वपूर्ण सूचना

(RfP No: 400/2018/1295/BYO/ITV) dated 14/12/2017)

SNo. क्र.सं.	Events / कार्यक्रम	Date/ तिथि	Time/ समय
1.	Last date for seeking clarifications for pre-bid meeting/ पूर्व-बोली बैठक के लिए स्पष्टीकरण की मांग की अंतिम तिथि	December 14, 2017/ 14 दिसम्बर, 2017	5:00pm
2.	Pre Bid meeting (no clarifications would be given after pre-bid meeting)/ पूर्व-बोली बैठक (पूर्व-बोली बैठक के बाद कोई भी स्पष्टीकरण नहीं दिया जायेगा)	December 22, 2017/ 22 दिसम्बर, 2017	11:00am
3.	Last date for submission of bids/ बोली जमा करने की अंतिम तिथि	January 04, 2018 / 04 जनवरी, 2018	3:30pm
4.	Date & Time of Opening of Minimum Eligibility bid & Technical bid/ न्यूनतम व तकनीकी बोली खोलने की तिथि व समय	January 04, 2018 / 04 जनवरी, 2018	4:00pm
5.	Address for Bid Submission/ बोली जमा और पूर्व-बोली बैठक करने का पता		
	General Manager (Systems) Small Industries Development Bank of India, 3rd Floor, Information Technology Vertical MSME Development Centre Plot No. C-11, G Block, Bandra Kurla Complex , Bandra (E), Mumbai - 400 051 Phone: 022-67531100 / 67531228 Fax: 022-67531236	महाप्रबन्धक (सिस्टम्स) भारतीय लघु उद्योग विकास बैंक, तीसरा तल, इन्फॉर्मेशन टेक्नालजी वर्टिकल, एमएसएमई विकास केंद्र, प्लाट-सी-11, जी ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा(पू), मुम्बई - 400 051 दूरभाष: 022-67531100 / 67531228 फैक्स: 022-67531236	
6.	Date and time of opening of commercial bids / वाणिज्यिक बोली खोलने की तिथि, समय	To be intimated at a later date बाद में सूचित किया जायेगा	
7.	Bid Validity/ बोली के वैद्यता	90 days from the last date of bid submission / बोली जमा करने की अंतिम तिथि से 90 दिन तक।	
8.	Contact details of SIDBI officials सिडबी अधिकारियों के संपर्क विवरण	Narender Kumar, AGM (Systems) 022-67531184 , narender@sidbi.in Rajesh Joshi, DGM (Systems) 022-67531251 , rjoshi@sidbi.in	
9.	बयाना जमा राशि / Earnest Money Deposit	₹30,000/- (Rupees Thirty Thousand only)	
10.	टेंडर मूल्य /Tender Cost	₹ 500/- (Rupees Five Hundred only)	

1. Introduction and Disclaimers

1.1. Purpose of RfP

The purpose of RfP is to shortlist vendor for supply, installation, configuration and commissioning of Backup Tape Library at Bank's Data Center at SIDBI, Chennai. Details of the infrastructure being procured are given in [ANNEXURE-IV TECHNICAL BID](#) of this tender document.

1.2. Information Provided

The Request for Proposal document contains statements derived from information that is believed to be relevant at the date but does not purport to provide all of the information that may be necessary or desirable to enable an intending contracting party to determine whether or not to enter into a contract or arrangement with SIDBI. Neither SIDBI nor any of its employees, agents, contractors, or advisers gives any representation or warranty, express or implied, as to the accuracy or completeness of any information or statement given or made in this document. Neither SIDBI nor any of its employees, agents, contractors, or advisers has carried out or will carry out an independent audit or verification exercise in relation to the contents of any part of the document.

1.3. Disclaimer

Subject to any law to the contrary, and to the maximum extent permitted by law, SIDBI and its officers, employees, contractors, agents, and advisers disclaim all liability from any loss or damage (whether foreseeable or not) suffered by any person acting on or refraining from acting because of any information including forecasts, statements, estimates, or projections contained in this RfP document or conduct ancillary to it whether or not the loss or damage arises in connection with any negligence, omission, default, lack of care or misrepresentation on the part of SIDBI or any of its officers, employees, contractors, agents, or advisers.

1.4. Costs to be borne by Respondents

All costs and expenses incurred by respondents in any way associated with the development, preparation, and submission of responses, including but not limited to; the attendance at meetings, discussions, demonstrations, etc. and providing any additional information required by SIDBI, will be borne entirely and exclusively by the Respondent.

1.5. No Legal Relationship

No binding legal relationship will exist between any of the Respondents and SIDBI until execution of a contractual agreement.

1.6. Recipient Obligation to Inform Itself

The Recipient must conduct its own investigation and analysis regarding any information contained in the RfP document and the meaning and impact of that information.

1.7. Evaluation of Offers

The issuance of RFP document is merely an invitation to offer and must not be construed as any agreement or contract or arrangement nor would it be construed as any investigation or review carried out by a Recipient. The Recipient unconditionally acknowledges by submitting its response to this RFP document that it has not relied on any idea, information, statement, representation, or warranty given in this RFP document.

1.8. Acceptance of Selection Process

Each Recipient/ Respondent having responded to this RfP acknowledges have reading, understanding and accepts the selection & evaluation process mentioned in this RfP document. The Recipient / Respondent ceases to have any option to object against any of these processes at any stage subsequent to submission of its responses to this RfP.

1.9. Errors and Omissions

Each Recipient should notify SIDBI of any error, omission, or discrepancy found in this RfP document.

1.10. Acceptance of Terms

A Recipient will, by responding to SIDBI for RfP, be deemed to have accepted the terms of this Introduction and Disclaimer.

1.11. Requests for Proposal

- Recipients are required to direct all communications related to this RfP, through the Nominated Point of Contact person as mentioned in Critical Information sheet above.
- SIDBI may, in its absolute discretion, seek additional information or material from any of the Respondents after the RfP closes and all such information and material provided must be taken to form part of that Respondent's response.
- Respondents should provide details of their contact person, telephone, fax, email and full address(s) to ensure that replies to RfP could be conveyed promptly.
- If SIDBI, in its absolute discretion, deems that the originator of the question will gain an advantage by a response to a question, then SIDBI reserves the right to communicate such response to all Respondents.
- SIDBI may, in its absolute discretion, engage in discussion or negotiation with any Respondent (or simultaneously with more than one Respondent) after the RfP closes to improve or clarify any response.

1.12. Notification

SIDBI will notify all short-listed Respondents in writing or by mail as soon as practicable about the outcome of the RfP. SIDBI is not obliged to provide any reasons for any such acceptance or rejection.

* * * * *

2. Background

2.1. About SIDBI

Small Industries Development Bank of India (SIDBI) was established in April 1990.

The mission of SIDBI is to empower the Micro, Small and Medium Enterprises (MSME) sector with a view to contributing to the process of economic growth, employment generation and balanced regional development having objective to serve as a single window for meeting financial and developmental needs of MSME sector.

The four basic objectives set out in the SIDBI Charter are Financing, Promotion, development and Co-ordination for orderly growth of industry in the MSME sector. The Charter has provided SIDBI considerable flexibility for adopting appropriate operational strategies to meet these objectives. The activities of SIDBI, as they have evolved over the period of time, now meet almost all the requirements of sector which fall into a wide spectrum constituting modern and technologically superior units at one end and traditional units at the other.

The bank provides its services through a network of offices located all over India. Detailed information on the functions of the bank is provided on the website www.sidbi.in.

2.2. Existing Setup

- Currently, Veritas Net-Backup Data centre (NBU) is being used as Enterprise Backup Solution (EBS) at Mumbai Data Center (MDC). Placed below are the configuration details.

Veritas Net-Backup Data centre	NetBackup server version from 7.7.3
Operating System	Red Hat Enterprise Linux 6.9
Tape Library	SUN SL500 Tape Library (4 Drives)

- EBS solution has been configured for taking backup of Server (Windows & Linux), File Server, Oracle Database, IBM Notes & SWIFT server at MDC. All data has been stored on HPE 3-PAR 8200-2N based SAN storage.
- At Chennai Data Center, SIDBI has procured HP blade servers (dual CPU) which have been virtualized using VMWare software and servers are connected to SAN storage through SAN switch. In order to take SAN based backup of these server(s), below mentioned Netbackup software licenses along with one year software update license and support are being procured separately.

SN	Description	Quantity
1	NETBACKUP ENT SERVER WLS 1 SERVER HARDWARE TIER 2 ONPREMISE STANDARD PERPETUAL LICENSE CORPORATE	1
2	NETBACKUP OPT LIBRARY BASED TAPE DRIVE XPLAT 1 DRIVE ONPREMISE STANDARD PERPETUAL LICENSE CORPORATE	2
3	NETBACKUP ENT CLIENT UX 1 SERVER HARDWARE TIER 3 ONPREMISE STANDARD PERPETUAL LICENSE CORPORATE	1
4	NETBACKUP ENT CLIENT WLS 1 SERVER HARDWARE TIER 2	5

SN	Description	Quantity
	ONPREMISE STANDARD PERPETUAL LICENSE CORPORATE	

Apart from this SIDBI has following products / applications for which backup is required to be taken using proposed Tape Library at Data Center, SIDBI Chennai. Required licensees for Veritas will be provided by SIDBI.

- ❖ Oracle Database 11G (NETBACKUP CLIENT APPLICATION AND DB PACK)
- ❖ IBM Notes
- ❖ SWIFT Server which is getting synced with Mumbai DC – SWIFT server using VERITAS INFOSCALE STORAGE.

SAN Switch: The Bank already posses 2 numbers of HP Storage works 8/24 SAN switches (each having 16 ports) installed at SIDBI, Chennai.

2.3. Tender Objective

SIDBI intend to procure infrastructure as briefed below for it's Data Center at SIDBI, Chennai. Technical specifications of the infrastructure (Hardware) under procurement are given in the [Annexure –IV Technical Bid](#) of this tender document and being summarized below.

Item Type	Qty
Backup Tape Library	1

- 2.3.1. All the above hardware should be with **FIVE years back to back warranty** with OEM.
- 2.3.2. The purpose behind issuing this RfP is to invite technical and commercial bids from the bidders and selection of bidder for the above purpose for each category of hardware.
- 2.3.3. The selection process consists of three phases viz., 1) Pre-Qualification / Minimum Eligibility Criteria 2) Technical Evaluation and 3) Commercial Evaluation.
- 2.3.4. In this tender, for each category of hardware item, either the bidder on behalf of the Principal/ OEM or Principal/ OEM itself can bid but both cannot bid simultaneously for the same model/product.
- 2.3.5. For each hardware item, if a bidder submits bid on behalf of the Principal/ OEM, the same bidder shall not submit a bid on behalf of another Principal/ OEM for the same item/ product.
- 2.3.6. Bidder should note that specification given in [Annexure –IV Technical Bid](#) is based on the minimum requirements of SIDBI. Bidders, however, may quote for items with higher specifications.
- 2.3.7. **IPv6** –SIDBI is in the process of deploying IPv6 and hence all hardware & software should be IPv4 and IPv6 compliant.
- 2.3.8. SIDBI conducts periodic Information Security audit by third party as per regulatory requirements. In case of any observation by the auditor for up-

gradation of software / firmware to mitigate the risk, the same will be conveyed to the bidder. The bidder is required to upgrade the software/firmware of all the equipment supplied by them, subject to availability from OEM.

2.3.9. Bank will initially place order for hardware with 05 years warranty and support. Order for AMC (if contracted) will be placed in respective years. In case the support and maintenance of the bidder during warranty/AMC is not satisfactory Bank has the discretion not to enter into AMC for subsequent years with the shortlisted bidder.

2.3.10. Bank reserve the right to place the order with respective bidder(s) at the contracted price for all/ part of the items in single or multiple lots within the price validity period.

2.3.11. The hardware supplied as part of this contract should be maintained by the bidder and OEM for at least 07 years (i.e. Five years warranty and two years AMC) from the date of acceptance of the hardware/solution by the Bank.

* * * * *

3. Broad Scope of Work

Vendor shall carry out supply, installation and integration of hardware items as detailed in [Annexure-IV Technical Bid](#) at Bank's Data Center, at SIDBI Chennai as detailed in RfP [Section 9.13](#).

- The vendor shall deliver the hardware items complying with prescribed technical specifications along with necessary accessories and management software/ tool for status reporting and management of respective items.
- The vendor will rack mount, install, configure and integrate the tape library and resolve issues, if any, with Bank's existing network viz. LAN/WAN/SAN, servers etc.
- Vendor will resolve any issues related to movement and alignment of robotics arm with respect to media slots and drives and recognition of media and their labels.
- Vendor shall install backup software on backup media server and configure backup policies as per Bank's backup policy. It may be noted that the backup media server, necessary licenses for backup s/w and backup policies shall be provided by SIDBI.
- Installation of backup agent s/w on client servers.
- Testing and confirmation of successful backup as per configured backup policies.
- Submission of Installation Certificate as per format prescribed in tender, duly signed by the SIDBI officials.
- Affixing Asset Tag on HW Equipment: It will be the responsibility of the successful bidder to affix the Asset tag on each equipment being supplied to the Bank. Our office will provide the asset tag details to the successful bidder.
- Submit detailed architecture for implementation / Integration with existing SIDBI infrastructure for entire solution.
- Post installation, bidder should submit Operational manual (SoP), Configuration Document to Bank.

3.1. Training & Knowledge Transfer

- The selected Bidder will ensure knowledge transfer to the Bank at every stage of the project to enable the Bank to carry out the work as specified in this RFP in future after completion of this assignment.
- The vendor will be required to demonstrate features / functionalities and administration of the commissioned hardware / software to the Bank.

3.2. Shifting

- 3.2.1.** The Bank may, during the currency of the warranty/AMC, shift the equipment to other location(s) within the Country. The bidder needs to

ensure that the OEMs warranty / AMC is valid across India. Further, bidder undertakes to continue to provide warranty/AMC and maintain/support the goods at the new location.

- 3.2.2. The charges towards physical shifting would be borne by the Bank.
- 3.2.3. Bidder will be informed about old and new location/office details as and when the Bank decides to shift the hardware due to operational/ business requirements. Bidder will deploy resource(s) for decommissioning of respective equipments at old location and Commissioning of equipments at new location at no additional cost.
- 3.2.4. The vendor is required to update their database and provide support, Warranty/AMC etc, for the shifted devices at the new location.
- 3.2.5. No additional cost whatsoever would be paid by the Bank.

3.3. Responsibility of SIDBI

- 3.3.1. SIDBI or its outsourced partner from central location would be logging all calls with the vendor central help desk and coordinating for call closure.
- 3.3.2. Make available site for installation with power, rack space, earthing, internal cabling (fibre/ UTP), patch chords/ panels (fibre, UTP), SAN Switch ports.
- 3.3.3. Providing backup media server, licenses for Backup Software and backup policies to be configured.
- 3.3.4. Provide complete details for configuring management IP, VLAN, SNMP string etc.
- 3.3.5. Provide details of contact person at the location/office who would be coordinating during installation.
- 3.3.6. Providing downtime for installation / preventive maintenance of hardware items. The vendor should communicate in advance, the proposed date for installation / preventive maintenance etc, based on which downtime would be obtained and confirmed.

* * * * *

4. Information to Bidders (ITB)

The Bidders are expected to examine all instructions, forms, terms and specifications in the bidding documents. Failure to furnish all information required by the bidding documents may result in the rejection of its bid and will be at the bidder's own risk.

4.1. Pre-bid Meeting

- 4.1.1. The Bank shall hold a pre-bid meeting on the date and time mentioned in 'Critical Information' section above. Purpose of the meeting is to bring utmost clarity on the scope of work and terms of the RFP being floated. The Bidders are expected to use the platform to have all their queries answered. No query will be entertained after the pre-bid meeting.
- 4.1.2. It would be the responsibility of the Bidders representatives (only one person per bidder) to be present at the venue of the meeting.
- 4.1.3. Clarification sought by bidder should be made in writing (Letter/ E-mail etc) and submitted on or before the date as indicated in the Critical Information sheet. Bank has discretion to consider any other queries raised by the bidder's representative during the pre-bid meeting.
- 4.1.4. The text of the clarifications asked (without identifying the source of enquiry) and the response given by the Bank, together with amendment / corrigendum to the bidding document, if any, will be posted on the Bank (www.sidbi.in) website and CPP Portal **within 05 working days** of the pre-bid meeting. It would be responsibility of the bidder to check the websites before final submission of bids.
- 4.1.5. If SIDBI, in its absolute discretion, deems that the originator of the question will gain an advantage by a response to a question, then SIDBI reserves the right to communicate such response to all Respondents.

4.2. Amendment to the bidding document

- 4.2.1. At any time prior to the date of submission of Bids, the Bank, for any reason, may modify the Bidding Document, by amendment.
- 4.2.2. In order to allow prospective Bidders reasonable time in which to take the amendment into account in preparing their Bids, the Bank, at its discretion, may extend the deadline for the submission of Bids.
- 4.2.3. The amendment, if any, will be posted on Banks website (www.sidbi.in) and CPP portal (<http://eprocure.gov.in>).
- 4.2.4. All Bidders must ensure that such clarifications/amendments have been considered by them before submitting the bid. Bank will not have any responsibility in case some omission is done by any bidder.

4.3. Language of Bid

The bid prepared by the Bidders as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Bank and supporting documents and printed literature shall be written in English.

4.4. Documents Comprising the Bid

The bid shall consist of Pre-qualification/ minimum eligibility criteria, Technical bid and Commercial bid.

4.5. Bid Currency

Bids should be quoted in Indian Rupee only.

4.6. Tender Form Cost

Non-refundable Bid Price of ₹500/- (₹ Five Hundred only) by way of Banker's Cheque/ Demand Draft/ Pay Order drawn on a scheduled bank, favoring 'Small Industries Development Bank of India', payable at Mumbai must be submitted separately along with RFP response.

4.7. Earnest Money Deposit (EMD):

4.7.1. All the responses must be accompanied by a refundable INTEREST FREE security deposit of amount of ₹ 30,000/- (Rupees Thirty Thousand only).

4.7.2. EMD should be in the form of:

Demand Draft/ Banker's Cheque in favour of "Small Industries Development Bank of India" payable at Mumbai;

OR

Bank guarantee (BG) from a Scheduled Commercial Bank valid for a period of 6 months from the last date of submission of bid and strictly in the format as prescribed in **ANNEXURE – X - EMD /BID SECURITY FORM**.

4.7.3. Any bid received without EMD in proper form and manner shall be considered unresponsive and rejected.

4.7.4. Request for exemption from EMD (Security Deposit) will not be entertained.

4.7.5. The EMD amount / BG of all unsuccessful bidders would be refunded immediately upon happening of any the following events:

Issue of Lol / purchase order to the successful bidder; OR

The end of the bid validity period, including extended period (if any); OR

Receipt of the signed contract from the selected Bidder, whichever is earlier.

4.7.6. Successful Bidder will be refunded the EMD amount / BG only after acceptance of the solution by SIDBI and submission of Performance Bank Guarantee by the bidder.

4.7.7. In case the acceptance of equipment is delayed due any reasons beyond the bank's purview, successful bidder shall have the BG (towards EMD), validity extended for a period of three months till the equipment is accepted by the bank.

4.7.8. The bid security (EMD) may be forfeited:

- If a Bidder withdraws its bids during the period of bid validity.
- If a Bidder makes any statement or encloses any form which turns out to be false/ incorrect at any time prior to signing of the contract.
- In case of successful Bidder, if the Bidder fails to accept the LOI / Purchase order or sign the contract or fails to furnish performance guarantee.
- In all the above cases, the bidder would also be banned for a period of 03 years from subsequent bidding in any of the Bank's (SIDBI) tenders.

4.8. Period of Validity of Bids

4.8.1. Prices and other terms offered by Bidders must be firm for an acceptance period of **90 days** from date of closure of this RfP.

4.8.2. In exceptional circumstances the Bank may solicit the Bidders consent to an extension of the period of validity. The request and response thereto shall be made in writing. The Bid security provided shall also be extended.

4.8.3. Bank, however, reserves the right to call for fresh quotes at any time during the period, if considered necessary.

4.9. Deadline for submission of Bids

4.9.1. The bids must be received by the Bank at the specified address not later than the date/time specified in "**Critical Information**" section.

4.9.2. In the event of the specified date for the submission of bids, being declared a holiday for the Bank, the bids will be received up to the appointed time on the next working day.

4.9.3. The Bank may, at its discretion, extend the deadline for submission of Bids by amending the Bid Documents, in which case, all rights and obligations of the Bank and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

4.10. Late Bids

Any bid received by the Bank after the deadline for submission of bids prescribed by the Bank will be rejected and returned unopened to the bidder.

4.11. Modification And/ Or Withdrawal of Bids:

4.11.1. The Bidder may modify or withdraw its bid after the bid's submission, provided that written notice of the modification including substitution or

withdrawal of the bids is received by the Bank, prior to the deadline prescribed for submission of bids.

- 4.11.2.** The Bidder modification or withdrawal notice shall be prepared, sealed, marked and dispatched. A withdrawal notice may also be sent by Fax and followed by a signed confirmation copy received by the Bank not later than the deadline for submission of bids.
- 4.11.3.** No bid may be modified or withdrawn after the deadline for submission of bids.
- 4.11.4.** Bank has the right to reject any or all bids received without assigning any reason whatsoever. Bank shall not be responsible for non-receipt / non-delivery of the bid documents due to any reason whatsoever.

4.12. Opening of Bids by the Bank

- 4.12.1.** On the scheduled date and time, bids will be opened by the Bank Committee in presence of Bidder representatives. It is the responsibility of the bidder's representative to be present at the time, on the date and at the place specified in the tender document. The bidders' representatives who are present shall sign a document evidencing their attendance.
- 4.12.2.** If any of the bidders or all bidders who have submitted the tender and are not present during the specified date and time of opening it will be deemed that such bidder is not interested to participate in the opening of the Bid/s and the bank at its discretion will proceed further with opening of the technical bids in their absence.
- 4.12.3.** The Bidder name and presence or absence of requisite EMD, RfP cost (if any) and such other details as the Bank, at its discretion may consider appropriate will be announced at the time of technical bid opening. No bid shall be rejected at the time of bid opening, except for late bids which shall be returned unopened to the Bidder.
- 4.12.4.** Bids that are not opened at Bid opening shall not be considered for further evaluation, irrespective of the circumstances. Withdrawn bids will be returned unopened to the Bidders.

4.13. Pre Contract Integrity Pact (IP)

- IP is an agreement between the prospective vendors / bidders and the buyer committing the persons / officials of both the parties not to exercise any corrupt influence on any aspect of the contract.
- The bidder has to submit signed Pre Contract Integrity Pact (IP) as per the format at **Annexure-XVII** on the non-judicial stamp paper of requisite value (to be borne by the bidder) applicable at the place of its first execution

4.14. Erasures or Alterations

The offers containing erasures or alterations will not be considered until it is duly signed and stamped by the authorised signatory. There should be no hand-written material,

corrections or alterations in the offer. Technical details must be completely filled in. Correct technical information of the product being offered must be filled in. Filling up of the information using terms such as “OK”, “accepted”, “noted”, “complied”, “as given in brochure / manual is not acceptable. The Bank may treat such offers as not adhering to the tender guidelines and as unacceptable.

4.15. Documents to be submitted

4.15.1. Bidders are required to submit their responses in THREE envelopes, with contents of each as under:

Envelope #	Bid Contents	No. of Copies	Label of Envelope
1	<p>Pre-Qualification / Minimum Eligibility</p> <ol style="list-style-type: none"> DD/ Pay Order for ₹500/- towards cost of tender form. DD/ Pay Order / BG for ₹30,000/- towards EMD. The BG should be as per format given in Annexure – X - EMD /BID SECURITY FORM. Bid Forwarding Letter as per Annexure – I. General Information about the bidder along with Documentary evidence as per Annexure – II. Documentary evidence establishing that the Bidder is eligible to Bid and is qualified to perform the contract i.e., Minimum eligibility Criteria as per Annexure – III. Masked Price Bid without indicating the price as per Annexure –V should be submitted. MANUFACTURER AUTHORISATION FORMAT (MAF) as per Annexure – VI. Undertaking of authenticity – Annexure – VII Power of Attorney for authorized signatory – Annexure – VIII. Bank Mandate Form – Annexure –IX. Non-disclosure agreement as per Annexure –XI. STATEMENT OF DEVIATIONS as per ANNEXURE – XVI PRE-CONTRACT INTEGRITY PACT as per ANNEXURE – XVII DECLARATION REGARDING CLEAN TRACK RECORD as per ANNEXURE – XVIII 	01	<p>“Minimum Eligibility”</p> <p>RFP FOR PROCUREMENT OF BACKUP TAPE LIBRARY - Tender No. 400/2018/1295/BYO/ITV) dated 14/12/2017”</p>
2	<p>Technical Bid</p> <p>Technical Bid as per Annexure - IV. Data sheets/printed literature of all the components being quoted.</p>	01	<p>“Technical Bid”</p> <p>RFP FOR PROCUREMENT OF BACKUP TAPE LIBRARY - Tender No:</p>

Envelope #	Bid Contents	No. of Copies	Label of Envelope
			400/2018/1295/BYO/ITV) dated 14/12/2017”
3	Commercial Bid Commercial Bid as per Annexure –V .	01	“ Commercial Bid ” RFP FOR PROCUREMENT OF BACKUP TAPE LIBRARY - Tender No: 400/2018/1295/BYO/ITV) dated 14/12/2017”

4.15.2. The Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorised to bind the Bidder to the Contract. Power of Attorney of the person authorized to sign the bid as per format given in **Annexure – VIII** is to be submitted.

4.15.3. The bidder to note that, under no circumstances the Commercial Bid should be kept in Technical Bid Covers. The placement of Commercial Bid in Pre-qualification / Technical Bid covers will make bid liable for rejection.

4.15.4. The Bidder shall seal the bids in non-window envelopes, super scribing the nature of bid (i.e. pre-qualification/minimum eligibility, Technical or Commercial). All the individual envelopes must be super-scribed with the following information as well:

- Name of the bidder, Contact Name, Contact Number and e-mail id.
- Bids should be enclosed with all relevant documentary proofs / certificates duly sealed and signed.

4.15.5. Important

Bidders must take the following points into consideration during preparation and submission of bids.

- Authorized signatory on whose behalf power of attorney is issued must sign all the pages of the response.
- Relevant documents must be submitted as proof wherever necessary. All the pages must be sealed and signed by the authorized signatory of the respondent.
- Faxed copies of any submission are not acceptable and will be rejected by the Bank.
- Responses should be concise and to the point. Submission of irrelevant documents must be avoided.
- If the bids do not contain all the information required or is incomplete, the proposal is liable to be rejected.
- The RfP is hosted on SIDBI website **www.sidbi.in** and also on **Central Public Procurement Portal (CPPP)**. SIDBI reserves the right to change the dates mentioned above. Changes and clarification, if any, related to RfP will be posted on web site and CPPP. Bidders must have close

watch on the website and CPPP during the intervening period before submitting response to RfP.

- 4.15.6.** The envelope(s) shall be addressed to the Bank at the address given below:

The General Manager (Systems)
Small Industries Development Bank of India
MSME Development Center, 3rd Floor,
Information Technology Vertical [ITV],
Plot No.C-11, 'G' Block
Bandra Kurla Complex, Bandra (East)
Mumbai - 400 051

- 4.15.7.** If the envelop(s) are not sealed and marked as indicated above, the Bank will assume no responsibility for the Bid's misplacement or its premature opening.

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5. Minimum Eligibility Criteria

Proposals not complying with the 'Eligibility criteria' are liable to be rejected and will not be considered for further evaluation. The proposal should adhere to the following minimum eligibility criteria.

S.N	Criteria	Proof to be Submitted
1.	The Bidder should be a registered Corporate/ Firm/ LLP/ Govt. Institution under Indian Laws or /and an autonomous Institution approved by GOI/ RBI promoted. Copy of registration certificate is required to be enclosed.	<ul style="list-style-type: none"> ▪ Partnership firm: Certified copy of Partnership Deed OR ▪ Limited Company: Certified copy of Certificate of Incorporation and Certificate of Commencement of Business. ▪ Reference of Act/Notification
2	The Bidder should have been in existence in India and must be engaged in the business of supply, installation and commissioning of Intel Servers in India for at least three (3) years as on the date of this tender. (In case of mergers / acquisition / restructuring or name change, the date of establishment of the earlier / original partnership firm/limited company will be taken into account).	<ul style="list-style-type: none"> ▪ <u>Partnership firm</u>: Certified copy of Partnership Deed. OR <u>Limited Company</u>: Certified copy of Certificate of Incorporation and Certificate of Commencement of Business. ▪ Reference of Act/Notification ▪ For other eligible entities: Applicable documents. ▪ Copy of Work order / agreement / completion certificate for completed projects.
3.	The bidder should have a minimum average annual turnover (Gross Income excluding other Income) of ₹2 crore out of Indian operations from the sales of computer hardware / software over the last three (3) financial years.	Supporting the fact the bidder should furnish CA certificate & copy of audited Balance sheet for last three financial years ending in 2017.
4.	The bidder should have positive net worth and cash profit [i.e., no cash loss] in 2 years out of last 3 years.	Supporting the fact the bidder should furnish CA certificate & copy of audited Balance sheet for last three financial years ending in 2017.
5.	The bidder must have a currently valid Sales Tax / VAT / Service tax / GST registration certificate and PAN number.	Copies of GST/ Sales Tax / VAT / Service tax / PAN to be enclosed.
6.	The bidder should be ISO 9000:2008 (or later version) certified company.	Copy of certificate is to be enclosed
7.	The OEM should authorize the bidder to quote their product in the present tender of SIDBI.	MAF from OEM as per format given in Annexure –VI covering each category of equipments need to be enclosed.
8.	All equipments offered should not be 'End of Support' for a minimum of 7 years from 01.01.2018 .	Certificate from OEM on Non-End of Support for a minimum of 7 years starting from January 1, 2018 need to be

S.N	Criteria	Proof to be Submitted
		enclosed covering each category of equipment.
9.	The bidder should submit Pre-Contract Integrity Pact as per format provided in Annexure XVII	Pre-Contract Integrity Pact duly signed by authorized signatory on non-judicial stamp paper of requisite value (to be borne by the bidder) as per format given in Annexure –XVII need to be enclosed.
10.	The bidder MUST HAVE SUPPORT CENTER at Chennai.	Detailed address with contact details of support center at Chennai to be submitted along with the technical bid.
11.	The bidder should have at least one engineer having <input checked="" type="checkbox"/> Certification on OEM technology & <input checked="" type="checkbox"/> Expertise of Veritas implementation in response to the RFP .	Details of the engineers along with the copy of certification & experience of engineer to be attached along with the technical bid.
12.	The bidder should not have been black-listed by any Public Sector Bank, RBI or IBA or any other Government agencies.	Declaration regarding Clean Track Record as per format Annexure XVIII enclosed. (Yes /No).

- The bidder to submit documentary evidence for all the above points along with [Annexure-III](#) – Minimum Eligibility Criteria.
- Proposals of bidders who do not fulfill the above criteria or who fail to submit documentary evidence thereon would be rejected.
- Above details are MANDATORY without which the Bid is liable to be rejected.

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6. Evaluation Methodology

6.1. Clarification of bids

- 6.1.1. During evaluation of Bids, the Bank, at its discretion, may ask the Bidders for clarifications of their Bids. The request for clarification and the response shall be in writing (Letter/e-Mail), and no change in the price of substance of the Bid shall be sought, offered or permitted.
- 6.1.2. Bidder to submit point by point compliance to the technical compliance and it should be included in the Bid.
- 6.1.3. Any deviations from the specifications should be clearly brought out in the bid.
- 6.1.4. Bidder to quote for entire package on a single responsibility basis for the goods and services it proposes to supply under the contract.

6.2. Preliminary Examinations

- 6.2.1. The Bank will examine the Bids to determine whether they are complete, the documents have been properly signed, supporting papers/documents attached and the bids are generally in order.
- 6.2.2. The Bank may, at its sole discretion, waive any minor infirmity, 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.
- 6.2.3. Prior to the detailed evaluation, the Bank will determine the substantial responsiveness of each Bid to the Bidding document. For the purpose of this clause, a substantially responsive Bid is one, which conforms to all the terms and conditions of the Bidding Document without material deviations.
- 6.2.4. Deviations from or objections or reservations to critical provisions, such as those concerning Bid security, performance security, qualification criteria, insurance, Force Majeure etc will be deemed to be a material deviation.
- 6.2.5. The Bank's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, without recourse to extrinsic evidence. The Bank would also evaluate the Bids on technical and functional parameters including possible visit to inspect live site(s) of the bidder, witness demos, bidders presentation, verify functionalities / response times etc.
- 6.2.6. 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.

- 6.2.7.** The Bidder is expected to examine all instructions, forms, terms and specification in the Bidding Document. Failure to furnish all information required by the Bidding Document or to submit a Bid not substantially responsive to the Bidding Document in every respect will be at the Bidder's risk and may result in the rejection of its Bid.
- 6.2.8.** Bids without EMD / Bid security in the proper form and manner will be considered non-responsive and rejected.
- 6.2.9.** The Bank would also evaluate the Bids on technical and functional parameters including possible visit to inspect live site(s) of the bidder, witness demos, bidders presentation, verify functionalities / response times etc.
- 6.2.10.** The bidder should satisfy the pre-qualification criteria as specified in the tender.

6.3. Technical Evaluation

- 6.3.1.** Pursuant to the evaluation of pre-qualification/ minimum eligibility criterion mentioned above, bidders will be short-listed for technical evaluation. Technical evaluation will be carried out only for the bidders who succeed the Minimum Eligibility Criteria criterion.
- 6.3.2.** SIDBI will review the technical bids of the short-listed bidders [who qualify the minimum eligibility criteria] to determine whether the technical bids are substantially responsive. Bids that are not substantially responsive are liable to be disqualified at SIDBI's discretion.
- 6.3.3.** The bidder's disqualification during technical evaluation in any one item would result in disqualification of the tender as a whole.
- 6.3.4.** During Technical evaluation the Bank at its discretion can ask the bidders for the demonstration / POC of all or some components/ features and components of the hardware items quoted by them. However, SIDBI will not pay/ reimburse any expenditure incurred by the vendor for arranging the demonstration / POC.
- 6.3.5.** Bank may waive off any minor infirmity or nonconformity or irregularity in a bid, which does not constitute a material deviation, provided such a waiving, does not prejudice or effect the relative ranking of any bidder
- 6.3.6.** Technical evaluation would be carried out and all bidders who qualify the technical evaluation will be short listed for commercial evaluation.

6.4. Commercial Evaluation

- 6.4.1.** All the bidders who qualify in Technical evaluation as per the criteria mentioned above would be short listed for commercial evaluation.
- 6.4.2.** Bidders who do not qualify the technical evaluation will not be invited for opening of commercials.

- 6.4.3. **Total Cost of Ownership (TCO)** = [Cost of New Hardware with Five years Warranty + AMC Cost of New Hardware for two years (6th & 7th year)].
- 6.4.4. Bidder with lowest TCO shall be determined as L1 and be short listed for award of contract and the rest of the bids shall be ranked in ascending order of lowest cost as L2, L3, L4 and so on.
- 6.4.5. Once the status of the vendors is determined, purchase preference, splitting of order etc will be carried out and accordingly contract would be awarded to bidder(s).
- 6.4.6. Refer to [Chapter 7](#) of the RfP for Purchase Preference.

6.5. Arithmetic errors correction

Arithmetic errors, if any, in the price break-up format will be rectified on the following basis:

- 6.5.1. If there is discrepancy between the unit price and the total price, which is obtained by multiplying the unit price with quantity, the unit price shall prevail and the total price shall be corrected unless it is a lower figure. If the supplier does not accept the correction of errors, its bid will be rejected.
- 6.5.2. If there is discrepancy in the unit price quoted in figures and words, the unit price, in figures or in words, as the case may be, which corresponds to the total bid price for the item shall be taken as correct.
- 6.5.3. If the vendor has not worked out the total bid price or the total bid price does not correspond to the unit price quoted either in words or figures, the unit price quoted in words shall be taken as correct.
- 6.5.4. Bank may waive off any minor infirmity or nonconformity or irregularity in a bid, which does not constitute a material deviation, provided such a waiving, does not prejudice or affect the relative ranking of any bidder.

6.6. Award of Contract

- 6.6.1. SIDBI shall award the contract to L1 vendor short listed after commercial evaluation of bids. Refer to Chapter-7 of this RfP for Purchase preference and treatment, which would be followed by SIDBI.

* * * * *

7. Purchase Preference

7.1. Introduction

- 7.1.1. Purchase preference for MSEs and Domestically Manufactured Electronic Products (DMEP) would be provided as per the extent guidelines subject to satisfying the minimum eligibility criteria and technical specifications given in the tender.
- 7.1.2. Since the quantity of items under current procurement is not sufficient for splitting between L1 and other bidders, purchase preference for MSEs and DMEP shall not be applicable in this RfP.

7.2. Public Procurement Policy on Micro and Small Enterprises (MSEs)

- 7.2.1. SIDBI is governed by provisions of the Public Procurement Policy for Micro and Small Enterprises (MSEs) as circulated by The Ministry of MSME, GoI.
- 7.2.2. These provisions shall be applicable to Micro and Small Enterprises (MSEs) registered with District Industries Centers or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises (MSMEs).
- 7.2.3. Such MSEs would be entitled for exemption from furnishing tender fee and earnest money deposit (EMD). In case of any issue on the subject matter, the MSE's may approach the tender inviting authority to resolve their grievances.
- 7.2.4. Agencies/ Bidders desirous of availing exemptions under above provisions should submit a copy of proof of Registration as MSEs/ and ownership of the same by SC/ST along with the tender/RFP.

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8. Special Terms and Conditions

8.1. Price

- 8.1.1. Prices quoted by the bidders should include all taxes, duties, levies, transportation costs, back to back support with OEM during warranty/AMC, insurance costs etc. till the bid validity period.
- 8.1.2. 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.
- 8.1.3. Bidder will be entirely responsible for all applicable present and future, duties, levies, charges, license fees, VAT etc. in connection with delivery of goods at site including incidental services and commissioning.
- 8.1.4. In case of any changes in tax structure by Central / State Govt. the price shall change corresponding to the changes in tax structure. Accordingly, in situations where taxes are lowered, the bidder shall pass on the benefits to SIDBI, and in case there is upward revision in tax structure, SIDBI shall bear the additional costs towards revision in taxes.
- 8.1.5. No other cost whatsoever will be paid by SIDBI.

8.2. Terms of Payment

The standard payment terms of SIDBI are given below:

8.2.1. 50% payment:

- i. On delivery and verification of item
- ii. Submission delivery challans duly signed, stamped, dated by SIDBI officials.

8.2.2. 40% payment:

- i. On completion of Installation, configuration, integration of the hardware items & Veritas Backup Software as per Scope of Work and
- ii. Submission of Installation certificate by the vendor as per format given in **Annexure – XII** duly signed, stamped and dated by the Bank officials.

8.2.3. 10% payment

- i. On Acceptance of equipment by the Bank.
- ii. Submission of performance Bank Guarantee equivalent to 10% of the contract value. The BG shall be valid for a period of 60 MONTHS from the date of acceptance with invocation period of additional THREE months beyond expiry of warranty i.e, 60 months + 3 months. The

performance bank guarantee should be as per the format given in **Annexure –XIV**.

- iii. Submission of Back to back warranty certificate from OEM valid for a period of 05 years from date of acceptance and
- iv. In case bidder does not submit PBG, the final 10% payment would be released after 03 months from completion of warranty period.

8.2.4. Payment during AMC

The payment terms during AMC would be paid annually 100% in advance on:

- i. Submission of invoice
- ii. Proof of back to back alignment with OEM and
- iii. PBG (to be submitted annually) for 10% of the AMC value for the respective year valid for a period of 15 months.
- iv. In case vendor does not submit PBG, the payment would be would be released after 3 months from completion of AMC period.

8.2.5. All the payments will be made by SIDBI, Mumbai electronically through RTGS/ NEFT. Hence, Bidder to submit Bank Mandate Form (as per Annexure –IX) along with cancelled cheque in original with technical bid.

8.2.6. The Bidder must accept the payment terms proposed by the Bank. The financial bid submitted by the Bidder must be in conformity with the payment terms proposed by the Bank. Any deviation from the proposed payment terms would not be accepted.

8.2.7. 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.

8.2.8. TDS, if any, will be deducted while releasing the payment.

8.2.9. All Payments will be made to the Bidder in Indian Rupee only.

8.2.10. 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.

8.2.11. All payments will be released within 30 days subject to submission of invoices along with supporting documents / reports /certificates towards completion of activities.

8.3. Warranty and AMC

8.3.1. Warranty

- i. The warranty of all the hardware items shall be onsite, comprehensive, back to back from respective OEMs, for a period of 05 years from the date of acceptance.

- ii. The bidder will warrant all the hardware items against defects arising out of faulty design, materials and media workmanship of the hardware and software. The bidder will provide support for hardware and pre-installed software components including firmware etc. during the warranty period. Defective hardware shall be replaced by the vendor at his own cost, including the cost of transport.
- iii. The Bidder warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.
- iv. The Bidder further warrants that all the Goods supplied under this Contract shall have no defect arising from design, materials or workmanship (except when the design and/ or material is required by the Bank's Specifications) or from any act or omission of the Bidder, that may develop under normal use of the supplied Goods in the conditions prevailing at the final destination.
- v. In case equipment is taken away for repairs, the bidder shall provide similar standby equipment so that the equipments can be put to use in the absence of the originals/ replacements without disrupting the Bank's regular work.
- vi. Warranty should not become void if the Bank buys any other add-on hardware from a third party and installs it with in hardware items in the presence of the representative of the bidder. However, the warranty will not apply to such third-party hardware items installed by the Bank.

8.3.2. Annual Maintenance Contract

- i. The selected bidder will enter into comprehensive onsite AMC (Annual Maintenance Contract) with the bank, if so desired by the bank, for post warranty maintenance after the expiry of the 05 years warranty period. However, the bank will be having right to go with any other vendor for AMC, if so desired.
- ii. The order for AMC would be placed in respective years The AMC charges for the equipment for 6th and 7th year shall not exceed the rates finalized at the time of purchase.
- iii. AMC should cover the total equipment along with software etc. procured from the vendor & minimum of 2 preventive maintenance calls every year as per the requirement of the bank.
- iv. AMC arrangement should be back to back with respective OEM.
- v. The penalty terms during AMC would be same as during warranty period as specified above.

8.4. Uptime

- i. The bidder shall guarantee an uptime of **99%** for the equipment, during warranty and also during AMC, if contracted, which shall be calculated on monthly basis.
- ii. The "**Downtime**" is the time between the Time of Report by the Bank and Time of Restoration/resolution within the contracted hours. "Failure" is the condition that renders the bank unable to perform any of the defined functions on the server(s). "**Restoration**" is the condition when the selected bidder demonstrates that the equipment is in working order and the Bank acknowledges the same.
- iii. The Downtime calculated shall not include any:
 - a. Failure due to bank (Power, Network etc.)
 - b. Preventive maintenance activity
 - c. Force Majeure
 - d. Any other mutually agreed pre-planned activity.

However bidder shall inform the Bank minimum 7 days in advance before doing preventive maintenance or pre-planned activity.
- iv. The percentage uptime is calculated on monthly basis (24 hours a day).
- v. The performance would be measured as under on monthly basis:

$$\text{Performance (\%)} = \frac{\text{[Total contracted minutes in a month – Downtime Minutes within contracted minutes in a month]}}{\text{Total contracted minutes in a month}} \times 100$$

Shortfall in performance = 99% - Performance (%)
- vi. If the bidder fails to maintain guaranteed uptime of 99%, the Bank shall impose penalty.
- vii. **Call to Resolution (CTR):** Vendor shall resolve the issue within '**Six Hours**' of its reporting.

8.5. Liquidity damages for Default Delivery

- 8.5.1. If the vendor fails to deliver the items within stipulated period, Bank will impose a penalty of 1% of the order value for the late delivered item for each weeks delay or part thereof, subject to maximum of 10% of value of the late delivered items.
- 8.5.2. In case the delay exceeds FIVE weeks, Bank reserves the right to cancel the order. In such an event vendor will not be entitled to or recover from Bank any amount by ways of damages, loss or otherwise.
- 8.5.3. 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.

8.6. Liquidity damages for Delay in Installation

- 8.6.1.** If the vendor fails to install the items within stipulated period, Bank will impose a penalty of 1% of the order value for the late installed item for each week's delay or part thereof, subject to maximum of 5% of value of the late installed items.
- 8.6.2.** However, no penalty will be imposed for the durations leading to delays in installation of hardware / software due to reasons solely attributable to the Bank.
- 8.6.3.** The vendor will be required to inform the banks well in advance the installation schedule / plan to enable the Bank to make the site ready and obtaining downtime etc.

8.7. Liquidity damages for shortfall in Performance Compliance Level

- 8.7.1.** If the bidder fails to maintain guaranteed uptime of 99% per month during Warranty and AMC the Bank shall impose penalty.
- 8.7.2.** Amount of penalty to be calculated on monthly basis for the shortfall in performance compliance level is as under:
- i. **Penalty for shortfall in Performance Compliance Level:** Amount of penalty to be calculated on monthly basis for the shortfall in performance compliance level is as under:

Shortfall in Performance	Penalty (% of the contract value of the equipment)
<= 1%	1
>1% and <= 3%	3
>3% and <= 5%	5
>5% and <=6%	6
>6% and <=8%	8
>8%	10

- ii. The amount of penalty may be claimed/ adjusted while releasing the Performance Bank Guarantee or vendor will be advised to pay the same.
- iii. However, no penalty will be imposed for the reasons solely attributable to the Bank, in such cases the bidder has to submit the proof.

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9. General Terms and Conditions (GTC)

9.1. Definitions

In this Contract, the following terms shall be interpreted as indicated:

- 9.1.1. "The Bank", "SIDBI" means Small Industries Development Bank of India (SIDBI);
- 9.1.2. "Bidder", "Vendor", "Supplier" means the respondent to the RFP document.
- 9.1.3. "RFP" or "Tender" or "RfP" or 'Bid document' means the 'Request for Proposal document.
- 9.1.4. "Bid" may be referred to as 'Offer'.
- 9.1.5. "The Contract" means the agreement entered into between the Bank, represented by its Head Office / MSME Development Centre / Regional Offices and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein;
- 9.1.6. "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations;
- 9.1.7. "The Goods" means all of the equipment, machinery, software, and/or other materials which the Supplier is required to supply to the Bank under the Contract;
- 9.1.8. "The Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the Supplier covered under the Purchase Contract;
- 9.1.9. "The Project Site" means Small industries Development Bank of India, Overseas Towers, 756-L, Anna Salai, Chennai – 600002, Tamil Nadu

9.2. Use of Contract Documents and Information

- 9.2.1. The Supplier shall not, without the Bank's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Bank in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

- 9.2.2. The Supplier will treat as confidential all data and information about the Bank, obtained in the execution of his responsibilities, in strict confidence and will not reveal such information to any other party without the prior written approval of the Bank.

9.3. Subcontracts

- 9.3.1. The Supplier shall not assign to others, in whole or in part, its obligations to perform under the contract.

9.4. Technical Information

- 9.4.1. The Bidder should strictly quote for the Brand/ Model complying with technical specifications given in Annexure – III.
- 9.4.2. The technical documentation involving detailed instruction for operation and maintenance, users' manual etc., is to be delivered with every unit of the equipment supplied. The language of the documentation should be English.
- 9.4.3. The Models offered should strictly conform to the specifications given in the product literature and these models should be supported for a minimum period of 07 years including warranty period and post warranty maintenance (AMC). The Models proposed/ marked for withdrawal from the market and the models under quality testing should not be offered. Bank shall reserve right to ask for PROOF OF CONCEPT on working of the newly introduced Models in the market, if offered, on the agreed terms & conditions.
- 9.4.4. When the configuration/ feature required is not available in a particular model, the next available higher configuration model shall be offered.
- 9.4.5. In addition to the above, if any additional/ enhanced configuration is suggested in view of technological changes, it may be furnished as optional feature with/ without cost duly explaining the additional utility of the offered model in both the technical offer document as well as Commercial Offer document. However, the basic quote should be confined only to the configuration/ model offered for.

9.5. Governing language

- 9.5.1. The purchase order/Contract shall be written in English. All correspondence and other documents pertaining to the purchase order / Contract, which are exchanged by the parties, shall be written in English.
- 9.5.2. The technical documentation involving detailed instruction for operation and maintenance, User Manual etc. is to be delivered with every unit of the equipment supplied. The language of the documentation should be English.

9.6. Applicable laws

The Contract shall be interpreted in accordance with the laws prevalent in India.

9.7. Compliance with all applicable laws:

The Bidder shall undertake to observe, adhere to, abide by, comply with and notify the Bank 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 there from.

9.8. 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 there from and the Bank will give notice of any such claim or demand of liability within reasonable time to the bidder.

9.9. Performance security

A. During Warranty:

- 9.9.1.** The successful bidder shall provide Performance Security in the form of an unconditional Bank Guarantee (BG) from a scheduled commercial Bank for an amount equivalent to 10% of contract value and valid for WARRANTY period (60 month) + THREE months (invocation period) from the date of acceptance.
- 9.9.2.** The performance guarantee to be submitted within ONE month after acceptance of goods and before release of full and final payment of the Contract for indemnifying Bank against any default / failure in execution of contract, as per the format provided by Bank.
- 9.9.3.** Since the validity of the BG is linked to the warranty/ acceptance of the hardware, the bidder shall submit the BG only after getting the confirmation from the Bank about the acceptance & warranty period.

B. During AMC

- 9.9.4.** During AMC period, the successful bidder shall provide Performance Security in the form of an unconditional Bank Guarantee (BG) from a scheduled commercial Bank for an amount equivalent to 10% of annual AMC value and valid for 15 months (including invocation period of 3 months) from the date of start of AMC. The BG to be submitted annually for the AMC period.
- 9.9.5.** If the successful bidder does not submit the BG, the payment in respect of AMC shall be made after the expiry of the AMC period.

9.10. Insurance

- 9.10.1.** The Bidder is responsible for acquiring insurance for all components, equipment and software. The goods supplied under the Contract shall be fully insured.
- 9.10.2.** The insurance shall be for an amount equal to 110 percent of the Cost, Insurance and Freight (CIF) value of the Goods delivered to SIDBI covering "All Risks" (fire, burglary, natural calamities such as Earth quake, floods etc.) valid till one month from the date of delivery. 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.
- 9.10.3.** Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within India, transport to such place of destination in India, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier.
- 9.10.4.** Should any loss or damage occur, the Bidder shall:
- a. Initiate and pursue claim till settlement, and
 - b. Promptly make arrangements for replacement of any damaged item/s irrespective of settlement of claim by the underwriters.

9.11. Inspections and tests

- 9.11.1.** Bank reserves the right to carry out Inspection and Quality Control tests before evaluation, prior to shipment of Goods and at the time of final acceptance as under:
- a. Inspection/ Pre-shipment Testing of Goods including functional testing, burn-in tests and mains fluctuation test at full load, facilities etc., as per the standards/ specifications may be done at factory site of the Supplier before dispatch of goods, by the Bank/ Bank's Consultants /Testing Agency. The supplier should intimate the Bank before dispatch of goods to various locations/ offices for conduct of pre-shipment testing. Successful conduct and conclusion of pre-shipment inspection shall be the sole responsibility of the Supplier.

b. In the event of the hardware and software failing to pass the acceptance test, as per the specifications given, a period not exceeding **two weeks** will be given to rectify the defects and clear the acceptance test, failing which, the Bank reserves the right to cancel the Purchase Order.

9.11.2. On successful completion of above pre-shipment test, receipt of deliverables, etc., and after the Bank is satisfied with the working on the system, the clearance certificate will be signed by the representative of the Bank/ Testing Agency.

9.12. Delivery and Installation Schedule

A. Delivery

9.12.1. The Bidder should deliver the goods within **Six weeks from the date of purchase order.**

9.12.2. Delivery of the Goods shall be made by the Supplier in accordance with the terms of the Purchase order. The bidder should take responsibility of the Goods till it reaches the delivery destination as informed by Bank, transport to such place of destination in India, including insurance and storage, as shall be specified in the purchase order, shall be arranged by the Supplier.

9.12.3. Products shall be supplied in a ready to use condition along with Rack mounting kit, Cables, Connectors, Software Drivers, Manuals and Media etc.

9.12.4. Bidder shall arrange the Road Permits or any other document wherever required. Any letter required for this will be given by the Bank.

9.12.5. The Bank will not be in a position to supply Form-C or Form-D and bidder will have to arrange for Form 31 or 32 or any other road permit, if required, on behalf of SIDBI.

B. Installation

9.12.6. The Bidder shall install the hardware/software; integrate with existing network (LAN/WAN/SAN); Showcase/demonstrate the functionality as per acceptance test criteria **two weeks from the date of delivery** of the equipment at respective location.

9.12.7. The Bidder to explain the Bank officials the details of all the features and functionality of the solution.

9.12.8. After completion of installation & acceptance test the bidder should obtain sign-off on the Installation-cum-Acceptance certificate as per **Annexure –XIII** from the Bank official at respective locations. SIDBI will carry out acceptance of hardware/software as per acceptance test plan.

9.12.9. Installation will be treated as incomplete in one/all of the following situations:

- a. Non-delivery of any hardware or other components viz. accessories, documentation, software/ drivers media mentioned in the order.
- b. Improper integration and configuration.
- c. System operational but unsatisfactory to the Bank.

9.12.10. The Bank will consider the inability of the Bidder to deliver and/ or install the equipment within the specified time limit as a breach of contract and would entail the payment of Liquidation Damages on the part of the Bidder.

9.12.11. The liquidation damages represent an estimate of the loss or damage that the Bank may have suffered due to delay in performance of the obligations of the deliverables as per Scope of Work, by the Bidder.

9.12.12. The Bank shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum as specified in General Terms and Conditions.

9.13. Locations for Delivery & Installation and Buy-back:

The equipment to be delivered, installed and maintained (including support) at the following location:

Small Industries Development Bank of India [SIDBI]

Overseas Towers,
756-L, Anna Salai,
Chennai - 600002
Tamil Nadu
Phone No: 044-28413716, 044-66636015

9.14. Delivery and Documents:

The details of shipping and/or other documents to be furnished by the Supplier are specified hereunder.

- 9.14.1.** Original copy of the duly signed delivery challan along with name, designation, date and office seal of the SIDBI official receiving the delivery.
- 9.14.2.** Original copy of Supplier's invoices showing contract number, goods description, quantity, unit price, taxes and total amount;
- 9.14.3.** Inspection Certificate issued by the nominated inspection agency and the Supplier's factory inspection report and Quality Control Test Certificates, if any.

9.15. Acceptance Test

- 9.15.1.** The acceptance / performance test will be performed after completion of installation of all the equipments. The acceptance test will be conducted by the Bank, Consultant or other such person nominated by the Bank at its option. The Bidder will be responsible for setting up and running the acceptance test without any extra cost to the Bank.
- 9.15.2.** The Installation will be deemed as incomplete if any component of the hardware is not delivered or is delivered but not installed and / or not operational or not acceptable to the Bank after acceptance testing/examination. In such an event, the supply and installation will be termed as incomplete and system(s) will not be accepted and the warranty period will not commence. The installation will be accepted only after complete commissioning of hardware.
- 9.15.3.** In the event of hardware and any of its constituent components failing to pass the acceptance test, a period not exceeding **two weeks** will be given to rectify the defects and clear the acceptance test, failing which the Bank reserves the right to get the corresponding component replaced by the Bidder at no extra cost to the Bank or to cancel the order and recall all the payments made by the bank to the bidder and forfeit the EMD / Bank Guarantee (BG).
- 9.15.4.** Successful conduct and conclusion of the acceptance tests for the installed components shall also be the sole responsibility and at the cost of the Bidder. During acceptance testing the bidder has to demonstrate all the features of the respective hardware items.
- 9.15.5.** The Bank 's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival at destination shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Bank or its representative prior to the shipment of the goods.
- 9.15.6.** Acceptance test criteria for all the h/w items are given below:

S.N	Nature of activity	Remarks
1	Physical Delivery of the hardware items as per the PO and hardware configuration.	Vendor has to deliver and install the items mentioned in the PO at respective locations along with all the accessories, CDs/DVDs, manuals etc.
2	Installation and integration of tape library with backup media server, backup software and network.	<ul style="list-style-type: none"> The vendor will install and configure tape library and resolve issues, if any, related to connectivity with SAN Switch, media server and other servers. The vendor shall ensure the integration of the Tape Library with present network setup of SIDBI (LAN/WAN/SAN) Vendor will resolve any issues related to movement and alignment of robotics arm with respect to media slots and drives and recognition of media and their

S.N	Nature of activity	Remarks
		labels.
3	Backup Media Configuration	<ul style="list-style-type: none"> • Vendor will install media server with backup software and configure backup policies as provided by SIDBI. • Vendor will perform all necessary environment settings to streamline and optmise backup operations.
5	Features demonstration of Tape Library.	The bidder shall demonstrate all features to SIDBI officials.

As a confirmation to the above activities mentioned at Sr. 1, 2 & 3, bidder shall obtain Installation-cum-acceptance certificate as per [Annexure – XI](#) duly signed by SIDBI officials after 1 week of successful operation of the equipment.

The installation-cum-acceptance certificate to be submitted at the time of claiming final payment.

9.16. Acceptance Date

9.16.1. Post receipt of installation-cum-acceptance certificate from the vendor, Bank will formally accept the hardware. Date of acceptance and 05 years warranty period starting from the date of acceptance, shall be determined and conveyed to the bidder in writing.

9.16.2. The back to back warranty certificate from OEM should be from date of acceptance and the same to be submitted for release of final payment.

9.17. Change / Modification in Delivery Locations

Bank reserves the right to change/modify location for supply of the items at any other location in India. In the event of any change/modification in the locations where the hardware items are to be delivered, the bidder in such cases shall deliver, install and commission at the modified locations at no extra cost to the Bank. However if the hardware items are already delivered, and if the modifications in locations are made after delivery, the bidder shall carry out installation and commissioning at the modified locations. The Bank in such cases shall bear the shifting charges/arrange shifting. In case required, on Bank's request, the bidder shall shift the material to the alternate locations at mutually agreed price. The OEM Warranty/AMC should remain valid and applicable to the altered locations also.

9.18. Forfeiture of performance security

The Bank shall be at liberty to set off/adjust the proceeds of the performance guarantee towards the loss, if any, sustained due to the supplier's failure to complete its obligations under the contract. This is without prejudice to the Bank's right to proceed against the Supplier in the event of the security being not enough to fully cover the loss/damage.

9.19. No Commitment to Accept Lowest or Any Offer

9.19.1. The Bank reserves its right to reject any or all the offers without assigning any reason thereof whatsoever.

9.19.2. The Bank will not be obliged to meet and have discussions with any bidder and/ or to entertain any representations in this regard.

9.19.3. The bids received and accepted will be evaluated by the Bank to ascertain the best and lowest bid in the interest of the Bank. However, the Bank does not bind itself to accept the lowest or any Bid and reserves the right to reject any or all bids at any point of time prior to the order without assigning any reasons whatsoever. The bank reserves the right to re-tender.

9.20. Conditional Bids

Conditional bids shall not be accepted on any ground and shall be rejected straightway. If any clarification is required, the same should be obtained before submission of bids.

9.21. Contacting the Bank

9.21.1. Bidder shall NOT contact the Bank on any matter relating to its Bid, from the time of opening of Bid to the time a communication in writing about its qualification or otherwise received from the Bank.

9.21.2. Any effort by the Bidder to influence the Bank in its decisions on Bid evaluation, Bid comparison may result in the rejection of the Bidder's Bid.

9.22. Taken / Brought over of Company

Subsequent to the order being placed by SIDBI, in the event of bidder or the concerned OEM being taken/ bought over by another company, all the obligations and execution of responsibilities under the agreement with SIDBI should be passed on for compliance by the new company in the negotiation for their transfer.

9.23. No Employer – Employee Relationship

The selected bidder or any of its holding / subsidiary / joint-venture / affiliate / group / client companies or any of their employees / officers / staff / personnel / representatives / agents shall not, under any circumstances, be deemed to have any employer-employee relationship with the Bank or any of its employees / officers / staff / representatives / personnel / agents.

9.24. Termination

9.24.1. Prior to the delivery of the hardware items, the Bank may at any time terminate the contract by giving written notice to the Bidder if the Bidder becomes bankrupt or otherwise insolvent. In this event, termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the Bank.

9.24.2. The Bank reserves the right to cancel the contract in the event of happening one or more of the following Conditions:

1. Failure of the successful bidder to accept the contract;
2. Delay in offering equipments for pre-delivery Inspection;
3. Delay in delivery beyond the specified period;
4. Delay in completing installation / implementation and acceptance tests / checks beyond the specified periods;
5. Serious discrepancy in hardware noticed during the pre-dispatch factory inspection; and

9.24.3. In addition to the cancellation of purchase contract, Bank reserves the right to appropriate the damages through encashment of Bid Security / Performance Guarantee given by the Bidder.

9.25. Patent Rights

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, 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.

9.26. Corrupt and fraudulent practice

As per Central Vigilance Commission (CVC) directives, it is required that Bidders / Suppliers / Contractors observe the highest standard of ethics during the execution of this RfP and subsequent contract(s). In this context, the bidders to note the following:

- 9.26.1.** “Corrupt Practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of an official in the procurement process or in contract execution.
- 9.26.2.** “Fraudulent Practice” means a misrepresentation of facts in order to influence a procurement process or the execution of contract to the detriment of the Bank and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non- competitive levels and to deprive the Bank of the benefits of free and open competition.
- 9.26.3.** The Bank reserves the right to declare a bidder ineligible, either indefinitely or for a stated period of time, to be awarded a contract if at any time it determines that the bidder has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

9.27. Waiver

No failure or delay on the part of either party relating to the exercise of any right power privilege or remedy provided under this RFP or subsequent agreement with the other party shall operate as a waiver of such right power privilege or remedy or as a waiver of

any preceding or succeeding breach by the other party nor shall any single or partial exercise of any right power privilege or remedy preclude any other or further exercise of such or any other right power privilege or remedy provided in this RFP all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to either party at law or in equity.

9.28. Violation of terms

The Bank clarifies that the Bank shall be entitled to an injunction, restraining order, right for recovery, specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the Bidder from committing any violation or enforce the performance of the covenants, obligations and representations contained in this RFP. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Bank may have at law or in equity, including without limitation a right for recovery of any amounts and related costs and a right for damages.

9.29. Confidentiality

- 9.29.1.** This RfP contains information proprietary to SIDBI. Each recipient is entrusted to maintain its confidentiality. It should be disclosed only to those employees involved in preparing the requested responses. The information contained in the RfP may not be reproduced in whole or in part without the express permission of SIDBI. The Bidders shall submit a non-disclosure agreement as per [Annexure -X](#) on non-judicial stamp paper of appropriate value at the time of submission of bids.
- 9.29.2.** In case the selected vendor acts is extending similar services to multiple customers, vendor shall take care to build strong safeguards so that there is no co-mingling of information, documents, records and assets related to services within the ambit of this RfP and subsequent purchase order.

9.30. IPR Infringement

As part of this project, bidder / service provider will deliver different software, if the use of any such software by / for SIDBI, infringes the intellectual property rights of any third party, 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.

9.31. Limitation of liability

Save and except the liability under Section of “IPR Infringement” and “Indemnity provision” in [Clause 9.30](#) and [Clause 9.37](#) respectively herein below, 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 order value.

9.32. Rights to Visit

- 9.32.1. All records of the Bidder with respect to any matters covered by this Tender document/ subsequent order shall be made available to SIDBI or its designees at any time during normal business hours, as often as SIDBI deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.
- 9.32.2. SIDBI, including its regulatory authorities like RBI etc., reserves the right to verify, through their officials or such other persons as SIDBI may authorise, the progress of the project at the development /customization site of the Bidder or where the services are being rendered by the bidder.
- 9.32.3. The Bank and its authorized representatives, including regulator like Reserve Bank of India (RBI) shall have the right to visit any of the Bidder's premises with prior notice to ensure that data provided by the Bank is not misused. The Bidder will have to cooperate with the authorized representative/s of the Bank and will have to provide all information/ documents required by the Bank.
- 9.32.4. The right to visit under these clauses shall be restricted to physical files related to this arrangement. Visit shall be conducted during normal business hours and on normal working days after informing the bidder in advance.

9.33. Audit

- 9.33.1. 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.
- 9.33.2. 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.
- 9.33.3. Audit under this clause shall be restricted to physical files related to this arraignment. Audit shall be conducted during normal business hours and on normal working days after informing the bidder in advance.

9.34. Grievances Redressal Mechanism

Bank has a grievances redressal mechanism for its customers and designated grievances redressal officers. The bank would use the same mechanism to address the grievances,

if any, of the customers related to the services being rendered within the ambit of this RfP.

9.35. Compliance with Statutory and Regulatory Provisions

It shall be the sole responsibility of the Vendor to comply with all statutory and regulatory provisions while delivering the services mentioned in this RFP, during the course of the contract.

9.36. Right of Publicity

Any publicity by the Bidder in which the name of SIDBI is to be used should be done only with the explicit written permission of SIDBI.

9.37. Indemnity

- 9.37.1.** 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:
- 9.37.2.** Bank's authorized / bona fide use of the Deliverables and /or the Services provided by Bidder under this RfP document; and/or
- 9.37.3.** 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
- 9.37.4.** Claims made by employees or subcontractors or subcontractors' employees, who are deployed by the Bidder, against the Bank; and/or
- 9.37.5.** 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
- 9.37.6.** Any or all Deliverables or Services infringing any patent, trademarks, copyrights or such other Intellectual Property Rights; and/or
- 9.37.7.** Breach of confidentiality obligations of the Bidder contained in this RfP document; and/or
- 9.37.8.** Negligence, fraudulence activities or gross misconduct attributable to the bidder or its employees or sub-contractors; and/or
- 9.37.9.** The use of unlicensed and illegal Software and/or allied components by the successful Bidder

9.37.10. 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:

1. Notifies the Bidder in writing; and
2. Cooperate with the bidder in the defence and settlement of the claims.

9.37.11. The Bidder shall not be liable for defects or non-conformance resulting from:

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.

9.38. Force majeure

9.38.1. If the performance as specified in this order is prevented, restricted, delayed or interfered by reason of Fire, explosion, cyclone, floods, War, revolution, acts of public enemies, blockage or embargo, Any law, order, proclamation, ordinance, demand or requirements of any Government or authority or representative of any such Government including restrict trade practices or regulations, Strikes, shutdowns or labour disputes which are not instigated for the purpose of avoiding obligations herein, or Any other circumstances beyond the control of the party affected, then notwithstanding anything here before contained, the party affected shall be excused from its performance to the extent such performance relates to prevention, restriction, delay or interference and provided the party so affected uses its best efforts to remove such cause of non-performance and when removed the party shall continue performance with utmost dispatch.

9.38.2. 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

9.39. Resolution of Disputes

- 9.39.1.** It will be the Bank's endeavor to resolve amicably any disputes or differences that may arise between the Bank and the Bidder from misconstruing the meaning and operation of the Tender and the breach that may result.
- 9.39.2.** In case of Dispute or difference arising between the Bank and a Supplier relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The Arbitrators shall be chosen by mutual discussion between the Bank and the Supplier OR in case of disagreement each party may appoint an arbitrator and such arbitrators may appoint an Umpire before entering on the reference. The decision of the Umpire shall be final.
- 9.39.3.** The Bidder shall continue work under the Contract during the arbitration proceedings unless otherwise directed in writing by the Bank or unless the matter is such that the work cannot possibly be continued until the decision of the Arbitrator or the umpire, as the case may be, is obtained.
- 9.39.4.** Arbitration proceedings shall be held at Mumbai, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English;
- 9.39.5.** Notwithstanding anything contained above, in case of dispute, claim & legal action arising out of the contract, the parties shall be subject to the jurisdiction of courts at Mumbai, India only.
- 9.39.6.** Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by fax and confirmed in writing to the other party's specified address. The same has to be acknowledged by the receiver in writing.
- 9.39.7.** A notice shall be effective when delivered or on the notice's effective date, whichever is later

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10. Annexure(s)