

Clarification No. 3 against NIT No: TER-21 /R-APDRP/2016

Sr. No.	Section	Tender Description	Clarification Sought by the Bidder	Nigam's draft reply
1	LIQUIDATED DAMAGES FOR BOTH THE CONTRACTS	Bidders shall have to adhere to the delivery schedules mentioned in the RFP. For any delay in the same for reasons solely attributable to Bidder, Liquidated Damages shall be applicable at the rate of 0.5% per week of the value of undelivered goods & services upto a maximum of 5% of the value of undelivered goods & services.	Bidders shall have to adhere to the delivery schedules mentioned in the RFP. For any delay in the same for reasons solely attributable to Bidder, Liquidated Damages shall be applicable at the rate of 0.5% per week of the value of undelivered goods & services upto a maximum of 5% of the value of undelivered goods & services.	The clarification has already been issued as per clarification no. 2.
2	LIABILITY FOR ACCIDENTS AND DAMAGES	Under the Contract, the Contractor shall be responsible for loss or damage to the plant until the successful completion of commissioning as defined elsewhere in the Bidding Documents.	The Purview of this clause is very wide and may not under our control. Hence, request for deletion of the same.	The clarification has already been issued as per clarification no. 2.
3	CONSTRUCTION OF THE CONTRACT	All parts of the contract will contain interlinking cross fall breach clause specifying that breach of one part of the contract will constitute breach of the other part of the contract.	Request deletion	As per RFP.
4	EFFECTIVENESS OF CONTRACT	The contract shall be considered as having come into force from the date of the notification of award, unless otherwise provided in the notification of award.	The contract shall be considered as having come into force from the date of signing of Contract the notification of award, unless otherwise provided in the notification of award.	As per RFP
5	LIQUIDATED DAMAGES FOR BOTH THE CONTRACTS	Delivery time is the essence of the purchase order. The supplier shall complete the supplies within the stipulated delivery period and in case the material is not supplied within scheduled Completion period or beyond 4 months after the purchaser shall be well within its right to cancel the purchase order and effect purchase at the risk and cost of the firm. In case the delivery schedule provides lot wise delivery of material, lot wise penalty shall be imposed. Notwithstanding anything contained elsewhere in the Contract, any amount incurred due to risk purchase shall be limited to 5% of the value quoted for such services/goods.	Delivery time is the essence of the purchase order. The supplier shall complete the supplies within the stipulated delivery period and in case the material is not supplied within scheduled Completion period or beyond 4 months after the purchaser shall be well within its right to cancel the purchase order and effect purchase at the risk and cost of the firm. In case the delivery schedule provides lot wise delivery of material, lot wise penalty shall be imposed. Notwithstanding anything contained elsewhere in the Contract, any amount incurred due to risk purchase shall be limited to 5% of the value quoted for such services/goods.	As per RFP

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6	<p>LIQUIDATED DAMAGES FOR BOTH THE CONTRACTS</p>	<p>Equipment and other materials will be deemed to have been delivered only when all its components, parts are also delivered. If certain components are not delivered in time, the hardware and materials will be considered as delayed until such time the missing parts are also delivered.</p> <p>3. Software will deem to have implemented only when all the equipment/ hardware and functionality/ modules of software as specified in the bid is integrated and demonstrated in the trial run. If equipment/ hardware and all the functionality/ modules of software are not integrated in time, the software implementation will be considered as delayed until, such missing functionality/ modules are also integrated.</p>	<p>Equipment and other materials will be deemed to have been delivered only when all its components, parts are also delivered. If certain components are not delivered in time, the hardware and materials will be considered as delayed until such time the missing parts are also delivered.</p> <p>3. Software will deem to have implemented only when all the equipment/ hardware and functionality/ modules of software as specified in the bid is integrated and demonstrated in the trial run. If equipment/ hardware and all the functionality/ modules of software are not integrated in time, the software implementation will be considered as delayed until, such missing functionality/ modules are also integrated.</p>	As per RFP
7	<p>WARRANTY</p>	<p>Upon the supplier failing to do so, the damages/defects may be got rectified by the purchaser and the cost adjusted from the firm's pending dues and/or security deposit against this or any other contract in force and the balance left be got deposited/made good by the supplier. The purchaser may withhold the amount equal to cost of defective material.</p>	<p>Upon the supplier failing to do so, the damages/defects may be got rectified by the purchaser and the cost adjusted from the firm's pending dues and/or security deposit against this or any other contract in force and the balance left be got deposited/made good by the supplier. The purchaser may withhold the amount equal to cost of defective material. Notwithstanding anything contained elsewhere in the Contract, any amount incurred due to risk purchase shall be limited to 5% of the value quoted for such services/goods.</p>	As per RFP

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8	<p>LIMITATION OF LIABILITIES</p>	<p>Subject to clause 3, each Party's and its Affiliates' aggregate and collective liability arising out of or in connection with this Agreement and any Statement of Work (whether in contract, tort, negligence, under an indemnity or by statute or otherwise) entered into subject to its terms, will, to the extent permissible by law, be limited to the amount of Loss directly resulting from the relevant cause of action and will also not exceed the Annual Charges (excluding reimbursement of expenses, pass-through expenses, taxes and amount attributable to purchase of hardware and software on behalf of Customer) paid or payable by the Customer to Supplier under the relevant Statement of Work to which the cause of action relates. For the purpose of this clause, "Annual Charges" mean the annual average Charges paid to the Supplier in respect of Services delivered under the relevant Statement of Work. For the avoidance of doubt any claim made under an SOW, where the tenure of the SOW is less than 12 months, Annual Charges shall mean the value of such SOW</p>	<p>Subject to clause 3, each Party's and its Affiliates' aggregate and collective liability arising out of or in connection with this Agreement and any Statement of Work (whether in contract, tort, negligence, under an indemnity or by statute or otherwise) entered into subject to its terms, will, to the extent permissible by law, be limited to the amount of Loss directly resulting from the relevant cause of action and will also not exceed the Annual Charges (excluding reimbursement of expenses, pass-through expenses, taxes and amount attributable to purchase of hardware and software on behalf of Customer) paid or payable by the Customer to Supplier under the relevant Statement of Work to which the cause of action relates. For the purpose of this clause, "Annual Charges" mean the annual average Charges paid to the Supplier in respect of Services delivered under the relevant Statement of Work. For the avoidance of doubt any claim made under an SOW, where the tenure of the SOW is less than 12 months, Annual Charges shall mean the value of such SOW</p> <p>The limitations of liability set out in clause 2, shall not apply to:</p> <ul style="list-style-type: none"> 4 wilful misconduct or fraud (including fraudulent); 4 death or personal injury resulting from the negligence of a Party; 4 breach of Confidentiality obligations and Intellectual Property Rights; 4 liability of a Party for Excess Amount (if any) 4 any Losses suffered by a Party pursuant to any Employment Regulations; and 4 Customer's payment obligations under this Agreement. 	As per RFP
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9	LIMITATION OF LIABILITIES	<p>Each Party agrees that it will not allow its Affiliates to bring a claim directly against the other Party under, or related to, this Agreement and that all rights and obligations will be enforced directly by between the Customer and SUPPLIER. If either Party breaches this <u>clause 4.4</u> because an Affiliate of a Party brings a claim against the other Party, and such Affiliate is awarded damages ("Excess Amount") in judgment from a court of competent jurisdiction, then the breaching Party will reimburse the other Party the Excess Amount actually paid to such Affiliate resulting from such claim. For the avoidance of doubt, it is clarified that Customer may seek to recover damages</p>	<p>Clause 4.4. is not seen in the tender document. Please provide clarification.</p>	<p>It is a typographical error, it is clarified that ".....the clause 4.4....." mentioned in the point 4 of clause 19. LIMITATION OF LIABILITIES of section-II of GCC of tender document may be read as clause 4.</p>
10	CONTRACTOR'S DEFAULT	As per RFP	<p>Request to add: In all cases of termination, Contractor shall be paid for all services rendered upto the effective date of termination.</p>	As per RFP
11	TERMINATION OF CONTRACT ON OWNER'S INITIATIVE	As per RFP	Request deletion of this clause.	As per RFP
12	ARBITRATION	<p>All the matters, questions, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or relating to this Contract whether or not obligations of either or both parties under this Contract be subsisting at the time of such dispute and whether or not this Contract has been terminated or purported to be terminated or completed, shall be referred to the Sole Arbitrator to be nominated by Managing Director, DHBVN. The Award of the Arbitrator shall be final and binding on the parties to this Contract</p>	<p>All the matters, questions, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or relating to this Contract whether or not obligations of either or both parties under this Contract be subsisting at the time of such dispute and whether or not this Contract has been terminated or purported to be terminated or completed, shall be referred to the Sole Arbitrator to be nominated by both the Parties Managing-Director, DHBVN. The Award of the Arbitrator shall be final and binding on the parties to this Contract</p>	As per RFP

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13	RIGHT OF ACCEPTANCE	All other petty materials not appearing in the bill of materials but required to complete the scope of work on turnkey basis shall have to be arranged by the successful bidder without any extra payment by DHBVN.	All other petty materials not appearing in the bill of materials but required to complete the scope of work on turnkey basis shall have to be arranged by the successful bidder without any extra payment by DHBVN for which payment shall be made separately over and above the Contract Price	The clarification has already been issued as per clarification no. 2.
14	Total BOQ Sheet : Precision air conditioning (PAC) UNITS	Precision air conditioning (PAC) unit of 8.5 TR nominal capacity designed at 35 deg ambient Temp with Electronic expansion valve, EC motor, sequential controller, R407 C refrigerant, communication card for BMS integration. Cost of all above to be included in the item. Installation amount to include loading, unloading, placement, installation and commissioning charges.	The required PAC system needs to be designed at ambient temperature of 35 degree whereas the same goes upto 45-46 degree temperature during summers in North India. Please clarify what temp we should consider to design the solution.	As per RFP.
15		DG sets – No clearances is required from the authority.		The statutory clearances, if any, are in bidder's scope.
16		Running operation of DG sets- The Diesel for the running of DG sets shall be provided by DHBVN at site.		Agreed. The diesel for the running of DG sets shall be provided by DHBVN at site.
17		No CEIG approval is involved during the execution of project.		The statutory clearances, if any, are in bidder's scope.
18		Project completion timeline- We request you to look into this and provide the completion time up to 5 months.		As per RFP.

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		As per O&M scope.	
19	O&M – The infrastructures to Wipro team shall be provided by DHBVNL on free of cost basis.		
20	ITB 4. Qualification of the Bidder (Point No. 11)	RFP asked for 5 CDCP & 3 CDCS, Our recommendations is it should be 5 & not 8 as CDCS already covers CDCP & it should also include CDCE, ATD & PMP as well, As these are higher certifications & may be required to demonstrate the capability & strength of the Bidder. However the total should be required 5 as these are sufficient for such scale of the project.	As per RFP.
21	ITB 4. Qualification of the Bidder (Point No. 15)	Power of Attorney is asked as per RFP, Our recommendation is to include Board of resolution as well, Since it is more authenticated & the signing authority is among the Board member only & not the junior one.	Agreed.

All other terms and conditions of the tender shall remain same.


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For CE/R-APDRP, DHBVN, Hisar.

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