



Request for Proposal (RFP) for Appointment of Consultant for Carrying out Third Party Evaluation for Sagarmala Scheme

Replies to Pre-Proposal Queries

The replies to queries submitted by the Applicants are provided below. Applicants are requested to refer to these replies, clarifications, modifications and corrigendum in the RFP document before submitting their Applications.

#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
1	Clause 2.9.2 page 19 Technical Capacity and FORM 3C page 35	<p>The Applicants should have successfully completed Eligible Assignments (one (1) Assignment for scheme size of Rs. 700 cr or two (2) Assignments for scheme size of Rs. 500 cr in the previous 7 years prior to Proposal Due Date, and the contract value of each work must be more than Rs. 20 lakhs</p> <p>Exhibit only those Assignments undertaken in the last three (3) years preceding the Proposal Due Date.</p>	<p>We request clarification on years from proposal date to be considered for eligible assignment as clause 2.9.2 mention completed assignment in the previous 7 years, whereas FORM 3C mention assignment undertaken in last three years.</p> <p>Also request you to clarify only completed assignment would be considered or ongoing assignment shall also be considered.</p>	<p>Refer Corrigendum with respect to FORM 3C.</p> <p>Only completed assignments will be considered with respect to Clause 2.9.2 (Instructions to Applicants)</p>
2	Clause 2.16.4, Page 25	Proposal Due Date	We request to kindly extend the proposal due date at least two weeks from publication of response to pre-bid queries.	RFP condition remains unchanged.
3	FORM 3C, Page 35		At firm level, EY has executed numerous international projects of similar nature. We understand same shall be considered as Eligible Assignment. Please confirm./	Refer Clause 2.9.1 and Clause 2.9.2 (Instructions to Applicants), RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
4	Clause 2.9.3, Page 19	The Applicant should have an average annual turnover of Rs. 1.5 cr in the past three Financial Years.	Given the strategic nature of this project, it requires firms of repute and experience. We therefore request you to increase the average turnover requirement to at least Rs. 500 Cr.	RFP condition remain unchanged.
5	Clause 2.5, Page 11	BID Security	Request you to share PAN & TAN details of SDCL as it is mandatory requirement for submitting the Bid Security.	Bid Security is to be provided as per Bank details mentioned in Clause 2.16.5 ((Instructions to Applicants). PAN and TAN details of Sagarmala Development Company Limited is mentioned below: PAN : AAYCS0357B TAN : DELS63657G
6	Clause 5.1-4.1, Page 51	Objective of the study – Performance of the scheme based on the output/ outcome indicators	Please clarify if the indicators are established and recorded as part of MIS or annual report by SDCL or these need to be ascertained/ assessed by the team from date of inception.	It needs to be ascertained/ assessed by the team of Successful Applicant post award of contract in consultation with the Ministry of Ports, Shipping and Waterways.
7	Clause 5.1-3, Page 51	Methodology	We understand that the list of eligible beneficiaries will be provided by the Authority for interaction with the beneficiaries. Please confirm.	It may be provided by Ministry of Ports, Shipping and Waterways post award of contract.
8	Clause 2.1, Page 53	Explanatory Memorandum	Is it possible to share Output/ Outcome indicator prepared/ proposed by NITI Aayog. Please specify the cross-cutting themes to be assessed required to be sector specific or could be general for meta data analysis. For Meta-analysis of secondary data do SDCL will be providing secondary data or the same need to be procured and or collected by applicant. Please clarify.	Secondary data is to be collected from beneficiaries and from other sources. Data available with the Ministry will be provided by the Ministry of Ports, Shipping and Waterways.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
9		New Clause	<p>We request Authority to include following clause in Draft contract:</p> <p>“The Consultant may terminate this Agreement, or any particular Services, immediately upon written notice to the Client if the Consultant reasonably determines that it can no longer provide the Services in accordance with applicable law or professional obligations”</p>	RFP condition remain unchanged.
10	SC Clause: 6.5.7, Page no. 74	<p>a) Except in case of negligence or willful misconduct on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying out the Services, the Consultants, with respect to damage caused by the Consultants to the Client’s property, shall not be liable to the Client:</p> <p>i) for any indirect or consequential loss or damage; and For any direct loss or damage that exceeds (i) the total payments for Professional Fees and Reimbursable Expenditure made or expected to be made to the Consultants hereunder, or</p> <p>(ii) the proceeds the Consultants may be entitled to receive from any insurance maintained by the consultants to cover such a liability, whichever of (i) or (ii) is higher.</p>	<p>Please Consider this clause to be modified and read as follows</p> <p>a) <u>The Consultant shall not be liable to the Client:</u></p> <p>i) for any indirect or consequential loss or damage; and</p> <p>ii) For any direct loss or damage that exceeds (i) the total payments for Professional Fees and Reimbursable Expenditure made or expected to be made to the Consultants hereunder, or</p> <p>(ii) the proceeds the Consultants may be entitled to receive from any insurance maintained by the consultants to cover such a liability, whichever of (i) or (ii) is higher.</p>	RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
		b) This limitation of liability shall not affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultants in carrying out the Services.		
11	Clause 6.13.2, page 70	Indemnity: The Consultant agrees to indemnify and hold harmless the Client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorneys’ fees and other costs of defence or investigation (i) related to or arising out of, whether directly or indirectly, (a) the breach by the Consultant of any obligations specified in relevant clauses hereof; (b) the alleged negligent, reckless or otherwise wrongful act or omission of the Consultant including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client; (c) any Services related to or rendered pursuant to the Contract (collectively “Indemnified matter”). As soon as reasonably practicable after the receipt by the Client of a notice of the	Please Consider this clause to be modified and read as follows Indemnity: <u>Subject to the maximum extent of the Professional Fees</u> , the Consultant agrees to indemnify and hold harmless the Client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorneys’ fees and other costs of defence or investigation (i) related to or arising out of, whether directly or indirectly, (a) the breach by the Consultant of any obligations specified in relevant clauses hereof; (b) the alleged negligent, reckless or otherwise wrongful act or omission of the Consultant including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client; (c) any Services related to or rendered pursuant to the Contract (collectively “Indemnified matter”). As soon as reasonably practicable after the receipt by the Client of a notice of the commencement of any action by a third party, the Client will notify the Consultant of the commencement thereof; provided, however, that the omission so to notify shall not relieve the Consultant from any liability which it may	RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
		<p>commencement of any action by a third party, the Client will notify the Consultant of the commencement thereof; provided,</p> <p>however, that the omission so to notify shall not relieve the Consultant from any liability which it may have to the Client or the third party. The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the Indemnified Matter shall survive until all claims for indemnification and / or contribution asserted shall survive and until their final resolution thereof. The foregoing provisions are in addition to any rights which the Client may have at common law, in equity or otherwise.</p>	<p>have to the Client or the third party. The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the Indemnified Matter shall survive until all claims for indemnification and / or contribution asserted shall survive and until their final resolution thereof. The foregoing provisions are in addition to any rights which the Client may have at common law, in equity or otherwise.</p>	
12		Misc.	Please provide details of publicly available previous evaluation report for Sagarmala scheme.	No such report is available.
13		Misc.	Please Share sample Copy of previous output/ outcome report	--Do--
14	Clause 2.16.4, Page 25	Proposal Due Date (P) – 7 th December 2020	Considering that this is a fairly large proposal and in view of the current scenario of Covid-19, we request the Authority to kindly extend the proposal submission deadline to at least 2 weeks from date of issuance of the clarifications.	RFP condition remain unchanged.
15	Clause 2.16.7, Page 26	Duration of assignment shall be for a period of 8 weeks from the date of the Letter of Award as per the terms of the contract.	Considering that Sagarmala scheme is ongoing for several years, we request the authority to keep the duration of assignment for a period of 12 weeks from	RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			the date of Letter of Award as per terms of the contract.	
16	Page 6	Selection process	We request the authority to keep the selection process as QCBS 70:30 to have competitive technical player conducting the job for the govt.	RFP condition remain unchanged.
17	Page 19	Documentary evidence Completion Certificate issued by the Client for the Assignment or payment received till date along-with Statutory Auditor certificate to substantiate the claim	We request the authority to accept Chartered Accountant certification for payments received till date, as statutory certification takes lot of time. It may not be possible to get the same in 1-2 weeks.	Refer Corrigendum in this regard.
18	Clause 6.5.7, Page 67	<u>liability of the consultants</u>	Not acceptable. We suggest liability to be capped to value of the contract.	RFP condition remain unchanged.
19	Clause 2.6.3, Page 13	<u>conflict of interest</u> (2) Without limitation on the generality of the foregoing, Applicants and their affiliates shall be considered to have a conflict of interest, unless stated otherwise and shall not be recruited, under any of the circumstances set forth below:-	Does this mean any other company associated with the consultant cannot enter into any agreement with the employer for services relating to only this particular project?	RFP condition remain unchanged.
20	Clause 2.15.4, Page 24	All documents and other information provided by Client or submitted by an Applicant to Client shall remain or become the property of Client.	Please note that any methodology, process, technique that is adopted by the Consultant in providing the Services belongs to the Consultant. We generally propose to add the below clause. Request addition: <i>"The Client however acknowledges that all right, title and interest in the methodologies, processes, techniques, ideas, concepts, trade secrets and know-</i>	RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			<i>how (all collectively referred to as the “Knowledge Material”) of the Consultant continue to remain those of the Consultant even if any of them is embodied in the reports, developed or supplied in connection with the Services. The Client shall have the non-exclusive perpetual license to use the reports (including any Knowledge Material provided as a part of the report to the Client) to the extent necessary for the Client to use the reports in accordance with this Contract.”</i>	
21	Clause 6.3.5.2., Page 64	No Breach of Contract: The failure of a party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:	Request to include in the beginning- “Except in case of the obligation of client to make timely payment, the failure of a Party to fulfill any of its ...”	RFP condition remain unchanged.
22	Clause 6.4.2, Page 65	By the Consultants	We request the authority to add the following: Termination Consultant will be entitled to terminate the Agreement by giving 30 days’ notice to the Client in case (i) if the provision of Services or Deliverables are delayed for the reasons attributable to Client, including but not limited to, Client’s failure to perform its obligations under this Agreement for a period beyond 2 months from the date of this Agreement and Client’s failure to remedy it this failure within 30 days or within such further period as Consultant may have subsequently approved in writing. Notwithstanding anything to the contrary stated in this Agreement, Consultant shall not be obliged to perform its services or submit any further	RFP condition remain unchanged.

#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			Deliverables where Client is in breach of its payment obligations under this Agreement.	
23	Clause 6.4.3, Page 65	Cessation of Rights and Obligations	In view of nature of services required from this project, we request deletion of this clause.	RFP condition remain unchanged.
24	Clause 6.5.2.3, Page 66	Consultants and Affiliates Not to Engage in Certain Activities: The Consultants agree that, during the term of this Contract and after its termination, the Consultants and their affiliates, as well as any Sub-consultant and any of its affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services for the period of Two (2) years.	Please define “certain activities”.	RFP condition remain unchanged.
25	Clause 6.5.2.4, Page 66	Prohibition of Conflicting Activities: Neither the Consultants nor their Sub-consultants nor the Personnel shall engage, either directly or indirectly, in ...	Does this mean any other company associated with the consultant cannot enter into any agreement with the employer for services relating to only this particular project?	RFP condition remain unchanged.
26	Clause 6.5.3, Page 66	<u>confidentiality</u>	<i>We suggest including:- Provided that this clause shall not apply to any information (a) which forms part of the public domain; or (b) which is received from a third party; or (c) which is independently developed; or (d) which is required to be submitted to any regulatory, statutory or governmental authority</i>	RFP condition remain unchanged.
27	Clause 6.5.6, Page 67	<u>Documents prepared by the consultants to be the property of client</u>	<i>Please add to the clause: “The Client however acknowledges that all right, title and interest in the methodologies, processes,</i>	RFP condition remain unchanged.

#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			<p><i>techniques, ideas, concepts, trade secrets and know-how (all collectively referred to as the “Knowledge Material”) of the Consultant continue to remain those of the Consultant even if any of them is embodied in the reports, developed or supplied in connection with the Services. The Client shall have the non-exclusive perpetual license to use the reports (including any Knowledge Material provided as a part of the report to the Client) to the extent necessary for the Client to use the reports in accordance with this Contract.”</i></p>	
28	Clause 6.10, Page 69	<p>Responsibility for accuracy of project documents General, to the extent applicable to the Assignment</p> <p>(a) The Consultant shall be responsible for accuracy of the Design, Drawings, estimate and all other details prepared by him as part of these services. The consultant shall indemnify the client against any inaccuracy in the work, which might surface during implementation of the project. The Consultant will also be responsible for correcting, at his own cost and risk, if required during the execution of the Services.</p>	<p>Request revision of the clause. Indemnity can be provided only if a situation has arisen wherein claims is impose on client owing to any gross negligence or willful misconduct having committed by the Consultant.</p>	RFP condition remain unchanged.



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		(b) The Consultant shall be fully responsible for the accuracy of reports, plans and drawings. The Consultant shall indemnify the Client against any inaccuracy / deficiency in the reports, designs and drawings noticed and the Client will bear no responsibility for the accuracy of the designs and drawings submitted by the Consultants.		
29	Clause 6.11, Page 69	liquidated damages	We request capping at 5% of agreement value as per industry standards.	RFP condition remain unchanged.
30	Clause 6.13.2, Page 70,71	Indemnity: The Consultant agrees to indemnify and hold harmless the Client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorneys’ fees and other costs of defence or investigation (i) related to or arising out of, whether directly or indirectly, (a) the breach by the Consultant of any obligations specified in relevant clauses hereof; (b) the alleged negligent, reckless or otherwise wrongful act or omission of the Consultant including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client; (c) any Services	We request deletion of the below text: “(a) the breach by the Consultant of any obligations specified in relevant clauses hereof; (b) the alleged negligent, reckless or otherwise wrongful act or omission of the Consultant including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client; (c) any Services related to or rendered pursuant to the Contract (collectively “Indemnified matter”).”	RFP condition remain unchanged.



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		related to or rendered pursuant to the Contract (collectively “Indemnified matter”).		
31	Clause 6.13.2, Page 70,71	“The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the Indemnified Matter shall survive until all claims for indemnification and / or contribution asserted shall survive and until their final resolution thereof. The foregoing provisions are in addition to any rights which the Client may have at common law, in equity or otherwise.”	Request the authority to keep the obligations till the duration of the contract and not beyond. We request deletion of this text.	RFP condition remain unchanged.
32		Additional clauses	We request the addition of the following clauses to the draft contract: Anti- Bribery & Anti-Corruption: Each Party represents, warrants and undertakes that: (a) It has not and shall not offer, promise, give, encourage, solicit, receive or otherwise engage in acts of bribery or corruption in relation to this Agreement (including without limitation any facilitation payment), or to obtain or retain business or any advantage in business for any member of its group, and has and shall ensure to the fullest extent possible that its employees and agents and others under its direction or control and directly involved in providing Services under the Agreement do not do so. For the purposes of this clause it does not matter if the bribery or corruption is (i) direct or through a	RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			<p>third party; (ii) of a public official or a private sector person; (iii) financial or in some other form; or (iv) relates to past, present, or future performance or non-performance of a function or activity whether in an official capacity or not, and it does not matter whether or not the person being bribed is to perform the function or activity to which the bribe relates, or is the person who is to benefit from the bribe. For the purposes of this clause, a “person” is any individual, partnership, company or any other legal entity, public or private.</p> <p>(b) Each Party shall, adhere to applicable anti-bribery and corruption laws.</p> <p>(c) Each Party shall, immediately upon becoming aware of them, give the other Party all details of any non-compliance with Clause (a) and Clause (b).</p> <p>(d) It is a condition of this Agreement that each Party fully complies with this Clause. If it does not do so, without prejudice to any other remedy available to a party, the non-breaching party shall have the right (but not the obligation) in its absolute discretion to terminate the whole of this Agreement, or that part of this Agreement to which the bribery or corruption relates. For the avoidance of doubt, any breach of this Clause shall be deemed to be incapable of remedy</p>	
33		Additional clauses	<p>We request the addition of the following clauses to the draft contract:</p> <p>Non-Exclusivity: The Client acknowledges that Consultant or its associates may have other commercial transactions with the Client, other parties reviewed for the Client or referred in the agreement (if any) and the services</p>	RFP condition remain unchanged.

#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			provided under the agreement shall be on a non-exclusive basis.	
34		Additional clauses	<p>We request the addition of the following clauses to the draft contract:</p> <p>Economic and Trade Sanctions</p> <p>As of the date of this Agreement the Client warrants that, (a) neither Client nor any of its subsidiaries, or any director or corporate officer of any of the foregoing entities, is the subject of any economic or trade sanctions or restrictive measures issued by the United Nations, United States or European Union (“Sanctions”), (b) the Client is not 50% or more owned or controlled, directly or indirectly, individually or collectively, by one or more persons or entities that is or are the subject of Sanctions, and (c) to the best of Client’s knowledge, no entity 50% or more owned or controlled by a direct or indirect parent of the Client, is the subject of Sanctions. For purposes of clause (c) in this section, “parent” is a person or entity owning or controlling, directly or indirectly, 50% or more of the Client. For so long as this Agreement is in effect, the Client will promptly notify CRISIL if any of these circumstances change, upon occurrence of which, CRISIL shall have the right to terminate the Agreement immediately in whole or in part for reasons of the Client’s breach.</p>	RFP condition remain unchanged.
35		Additional clauses	<p>We request the addition of the following clauses to the draft contract:</p> <p>Client may notify the Consultant in writing within 10 calendar days of Consultant providing the Deliverables to the Client any substantial non-conformity of the Deliverables vis-à-vis the</p>	RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			Requirements. Upon receiving Client’s notification, the Consultant shall rectify the non-conformity verified by it and resubmit the Deliverables to the Client within 15 calendar days. The Deliverables shall be considered “accepted” upon such re-delivery or the expiry of 10 calendar days as stated above, whichever is earlier.	
36		Additional clauses	<p>We request the addition of the following clauses to the draft contract:</p> <p>The total aggregate liability of Consultant, whether in contract, tort (including negligence) or otherwise, under or in connection with this agreement, shall in no circumstances exceed a sum equal to the fees paid or payable by the Client under this agreement. In no event will Consultant be liable for any consequential, incidental, indirect, punitive or special losses or damages (including loss of profits, data, anticipated savings, business or goodwill), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise</p>	RFP condition remain unchanged.
37			<p><u>The fees any amount Payable:-</u></p> <p>The fees and any amounts payable under this Agreement are exclusive of all applicable taxes (including GST), levies, duties etc. With regards to the applicability of Goods and Services Tax, the Client’s address as mentioned for the purposes of GST will be considered as the consumption location for the Services provided by Consultant under this Agreement. The GST registration number (“GSTIN”) provided by the Client will be used by Consultant for filing of the GST returns. With regards</p>	RFP condition remain unchanged.



#	Clause No., Page no	Existing Clause	Queries/Suggestions	Replies
			<p>to the applicability of Goods and Services Tax, the Client's address as mentioned for the purposes of GST will be considered as the consumption location for the Services provided by Consultant under this Agreement. Where Consultant issues a credit note to the Client in relation to any invoice, the Client shall adjust and upload its Input Tax Credit on the GSTN on or before the end of the month in which the credit note is issued by Consultant to the Client. If the Client fails to do so, and this results in additional liability for Consultant, Client shall be liable to be reimburse Consultant for any liability incurred by Consultant (being the tax, interest and any penalties thereon). The current contract pricing are based on an assumption that GST will apply to the services provided by the Consultant to the Client and the consultant is able to claim credit of the GST charged by its partners, vendors, sub-consultants. In the event that such assumption is incorrect and Consultant is not able to claim GST credit for the services provided to it by vendors, partners or sub-consultants, the consultant reserves its rights to recover from the Client an amount equivalent to 18% or prevailing GST rate on such statement values to the Consultant.</p>	