

Clarifications to the queries for the Prebid meeting held on 10.01.2022

TENDER NO. ELCOT/IT-Infra/TNSWAN/TPA/OT/33512/2021-22

Tender for the Selection of Third Party Audit (TPA) Agency for 4th and 5th Year operations of Tamil Nadu State Wide Area(TNSWAN) Phase 2 Extension period.

SI No.	Page No.	Clause No.	Title of the Clause	Description of the Clauses as per Tender Document	Amendment requested	Reasons for requesting the amendment	ELCOT's Clarifications
1	7	NA	Letter of Undertaking	In case of violation of any of the conditions above, I/Weunderstand that I/ We are liable to be blacklisted by ELCOT for a period of three years.	We may request to remove this clause from the undertaking, since the tender already covers penalty clause.		Tender Conditions remains the same.
2	11	11	e-Tender Schedule	21.01.2022 @ 3.00PM through the site https://tntenders.gov.in .	04.02.2022 @ 3.00PM through the site https://tntenders.gov.in .	We request ELCOT to extend the bid submission last date by at least for two weeks from the date of release of response to pre-bid queries / corrigendum as continuous pongal holidays in between 14.01.22 to 18.01.2022 and this will allow us to get approval from various internal departments as well as get the required financial/legal documents issued from external agencies as per RFP requirement.	Tender due date has been extended to 28.01.2022

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3	14	3.7	Force Majeure:	<p>Neither the Purchaser / ELCOT nor the Successful Bidder shall be liable to the other for any delay or failure in the performance of their respective obligations due to causes or contingencies beyond their reasonable control such as:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Natural phenomena including but not limited to earthquakes, floods and epidemics. <input type="checkbox"/> Acts of any Government authority domestic or foreign including but not limited to war declared or undeclared, priorities and quarantine restrictions. <input type="checkbox"/> Accidents or disruptions including, but not limited to fire, explosions, breakdown of essential machinery or equipment, power and water shortages. <input type="checkbox"/> In such claim of Force Majeure clause, the bidder should submit the written claim, explaining the cause within 7 days of such occurrence and may be accepted by ELCOT/ Purchaser. 	<p>We request to add the below clause: Force Majeure</p> <p>It is recommended to add below clause to under Force Majeure to facilitate remote working (EP to evaluate the requirement of below clause)</p> <p>(ii) To the extent that the provision of the Services is impacted by a pandemic (including COVID-19) and any reasonable concerns or measures taken to protect the health and safety interests of either Party's personnel, the Parties will work together to amend the Agreement to provide for the Services to be delivered in an appropriate manner, including any resulting modifications with respect to the timelines, location, or manner of the delivery of Services.</p> <p>(iii) Where bidder Personnel are required to be present at Client's premises, bidder will use reasonable efforts to provide the Services on-site at [Client] offices, provided that, in light of a pandemic the parties agree to cooperate to allow for remote working and/or an extended timeframe to the extent</p> <p>(i) any government or similar entity implements restrictions that may interfere with provision of onsite Services; (ii) either</p>		Not acceptable
4	16	4.1 (2)	4.1 Eligibility	The Bidder should have done Third party audit for atleast 1 SWAN project for any State in the Country.	We request ELCOT to amend the clause as below: The Bidder should have done Third party audit for atleast 2 SWAN project for any State in the Country.	We understand that, Tamil Nadu State Wide Area Network has been identified as one of the core e-Governance back bone infrastructure by National e- Governance Action plan and ELCOT is willing to select a third party auditor who has strong experience of executing similar scope of projects.	Tender Conditions remains the same.
5	16	4.1 (4)	4.1 Eligibility	The Bidder should have an average annual turnover of at least Rs. 2 Crore in the last three audited financial years (2018-19, 2019-20, 2020-21).	We request ELCOT to amend the clause as below: The Bidder should have an average annual turnover of at least Rs. 100 Crores in the last three audited financial years (2018-19, 2019-20, 2020-21).	We understand that, this project is very critical for the state and the bidder who will be selected as a third party auditor should have strong financial strength by executing large scale projects for many state governments and central government entities.	Tender Conditions remains the same.

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6	16	4.1 (5)	4.1 Eligibility	The Bidder should have experience in providing Third Party Audit service for SWAN/Network related Government projects any where in India for a minimum value of Rs.40 Lakhs in the last three financial years (2018-19, 2019-20, 2020-21).	We request ELCOT to amend the clause as below: The Bidder should have experience in providing Third Party Audit service for SWAN/Network related Government projects any where in India for a minimum value of Rs.80 Lakhs in the last three financial years (2018-19, 2019-20, 2020-21).	We understand that, Tamil Nadu State Wide Area Network has been identified as one of the core e-Governance back bone infrastructure and the bidder who will be selected as a third party auditor should have strong experience of executing similar scope of projects with large scale implementations having high value of engagement.	Tender Conditions remains the same.
7	17	4.1 (6)	4.1 Eligibility	The Bidder should have at least 2 resources in each category and totaly 10 Certified resources in all the categories below a) PMP Certified Project Managers or equivalent b) ITIL V2 Certification or equivalent c) Security Certification (CCNA / CCNP / CEH / CISSP / CISA / CISM or equivalent) d) Routing/Switching Certification (CCNA / CCNP or equivalent) e) I ISO 27001 Certification Lead Auditor / Lead Implementor	We request ELCOT to amend the clause as below: The Bidder should have at least 10 Certified resources in all the categories below a) PMP Certified Project Managers or equivalent b) ITIL V3 Certification or equivalent c) Security Certification (CCNA / CCNP / CEH / CISSP / CISA / CISM or equivalent) d) Routing/Switching Certification (CCNA / CCNP or equivalent) e) I ISO 27001 Certification Lead Auditor / Lead Implementor	We understand that, Tamil Nadu State Wide Area Network has been identified as one of the core e-Governance back bone infrastructure and the bidder who will be selected as a third party auditor should have skilled resources	Tender Conditions remains the same.
8	17	4.1 (7)	4.1 Eligibility	The Bidder should have a minimum 50 technically qualified personnel in the areas of IT Consulting, IT infrastructure, IT security, IT procurement, e-Governance, Program/Project Management having relevant degree and shall possess prior experience in providing the above Consultancy services in India.	We request ELCOT to amend the clause as below: The Bidder should have a minimum 100 technically qualified personnel in the areas of IT Consulting, IT infrastructure, IT security, IT procurement, e-Governance, Program/Project Management having relevant degree and shall possess prior experience in providing the above Consultancy services in India.	We understand that, Tamil Nadu State Wide Area Network has been identified as one of the core e-Governance back bone infrastructure and the bidder who will be selected as a third party auditor should have skilled resources	Tender Conditions remains the same.
9	27	7.4(a)	Execution of Contract	The Successful Bidder should execute a Contract in the INR 100 non-judicial Stamp Paper bought in Tamil Nadu only in the name of the Bidder within one week from the date of Letter of Acceptance issued by ELCOT with such changes /modifications as may be indicated by ELCOT at the time of execution on receipt of confirmation from ELCOT.	We request ELCOT to amend the clause as below: The Successful Bidder should execute a Contract in the INR 100 non-judicial Stamp / E-stamp Paper bought in the name of the Bidder within one week from the date of Letter of Acceptance issued by ELCOT with such changes /modifications as may be indicated by ELCOT at the time of execution on receipt of confirmation from ELCOT.	This will allow us to get the INR 100 non-judicial Stamp Paper of Govt. of Tamil Nadu any where in India and accepted everywhere	Tender Conditions remains the same.

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10	29	7.9	Termination		We request ELCOT to add the below clause: Termination (Please add the following termination provision): Bidder may terminate this Agreement, or any particular Services, immediately upon written notice to Client if bidder reasonably determine that bidder can no longer provide the Services in accordance with applicable law or professional obligations.		Not acceptable
11	30	7.12	Liquidated Damages (LD)	The quarterly SLA reports shall be submitted to ELCOT by the TPA within 30 days from the date of completion of the quarter. Liquidated damage will be levied at the rate of 0.25% per day to the maximum of 10 of quarterly TPA Charges for the delay in submission of the SLA reports.	We may request to amended the clause The quarterly SLA reports shall be submitted to ELCOT by the TPA within 30 days from the date of completion of the quarter. Liquidated damage will be levied at the rate of 0.10% per day to the maximum of 10 of quarterly TPA Charges for the delay in submission of the SLA reports. if delay from Operator then Penalty will not applicable to TPA		Tender Conditions remains the same.
12	30 & 38	7.12 & 5	Liquidated Damages (LD) Appendix-1 Model Form of Contract	The quarterly SLA reports shall be submitted to ELCOT by the TPA within 30 days from the date of completion of the quarter. Liquidated damage will be levied at the rate of 0.25% per day to the maximum of 10%of quarterly TPA Charges for the delay in submission of the SLA reports.	We request ELCOT to amend the clause as below: The quarterly SLA reports shall be submitted to ELCOT by the TPA within 30 days from the date of completion of the quarter. Liquidated damage will be levied at the rate of 0.25% per day to the maximum of 10%of quarterly TPA Charges for the delay in submission of the SLA reports. In case of delays in the project not attributable to the TPA, penalty will not be applicable.	As the preparation of SLA reports is depends on the various inputs received from the SWAN operator and Bandwidth service provider. If the operator or Bandwidth service provider are not able to provide the required details/evidences on time and there is delay in submission of SLA Audit report. Hence, penalty will not be imposed on the TPA.	Tender Conditions remains the same.
13	31	7.13	Penalty for Non Fulfilment of Tender	A Penalty will be levied at 5% of the total value of the Work Order, for non fulfilment or non observance of any of the conditions stipulated in the Agreement, Terms and Conditions and Work Order / contract.	Pl clarify maximum capping of this clause. We request the following changes in the clause as A Penalty will be levied at 5% of the total value of the Work Order, for non fulfilment or non observance of any of the conditions stipulated in the Agreement, Terms and Conditions and Work Order / contract, subject to maximum 10% of the total contract value.		Tender Conditions remains the same.

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14	31 & 38	7.13 & 6	Penalty for Non-Fulfilment of Tender Appendix-1 Model Form of Contract	A Penalty will be levied at 5% of the total value of the Work Order, for non-fulfilment or non-observance of any of the conditions stipulated in the Agreement, Terms and Conditions and Work Order / contract	We request ELCOT to amend the clause as below: A Penalty will be levied at 5% of the total value of the Work Order, for non-fulfilment or non-observance of any of the conditions stipulated in the Agreement, Terms and Conditions and Work Order / contract. This penalty will not be applicable when delay / non-fulfilment is not attributable due to bidder	In case there is a requirement to support on any specific scope element beyond the stipulated timelines, due to delay not attributable to bidder, there should be a provision to seek an additional fee/ terminate work activity as agreeable to both parties.	Tender Conditions remains the same.
15	35	8.1 (E)	Exit Process analysis and realignment	Exit Process analysis and realignment	We may request to modify the clause. DCO will submit the Exit process to TPA and TPA will be vliadate for the same		Exit Process analysis and re-alignment will be in the scope of the TPA. However, ELCOT will Coordinate for the same
16	35	8.2 (a)	Delivery Schedule for submitting the Quarterly SLA Report for TNSWAN Operating Agency and Bandwidth Service Provider	The quarterly SLA reports shall be submitted to ELCOT by the TPA within 30 days from the date of completion of the respective quarter. Liquidated damage will be levied at the rate of 0.25% per day to the maximum of 10% of quarterly TPA Charges for the delay in submission of the SLA reports.	The quarterly SLA reports shall be submitted to ELCOT by the TPA within 30 days from the date of completion of the respective quarter. Liquidated damage will be levied at the rate of 0.10% per day to the maximum of 5% of quarterly TPA Charges for the delay in submission of the SLA reports. if delay from Operator then Penalty will not applicable to TPA		Tender conditions remains the same.
17	36	9	Payment Clause	Payment will be made only after the receipts of funds from Govt. of TN.	We may request to remove this clause from the tender, since TPA payment should not have dependency on the funds, considering the successful bidder shall be providing uninterrupted services to client'		Tender Conditions remains the same.

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18	39	8	Payment Clause	<p>PAYMENT TERMS: Payment will be made only after the receipts of funds from Govt. of TN. a. Quarterly lump-sum service charge on submission of SLA reports and acceptance of the same by ELCOT after deducting LD / Penalty if any. b. Payment for the last quarter will be made on pro-rate basis c. No other payment term is acceptable. d. However subject to above conditions, Payment will be made only after the receipts of funds from Govt. of TN. e. All taxes and other levies imposed by Governments in India will be paid at actual as applicable.</p>	<p>We request ELCOT to amend the clause as follows: PAYMENT TERMS: Payment will be made only after the receipts of funds from Govt. of TN. a. Quarterly lump-sum service charge on submission of SLA reports and acceptance of the same by ELCOT after deducting LD / Penalty if any. b. Payment for the last quarter will be made on pro-rate basis c. No other payment term is acceptable. d. However subject to above conditions, Payment will be made only after the receipts of funds from Govt. of TN. e. All taxes and other levies imposed by Governments in India will be paid at actual as applicable. f. Service charges for additional services mentioned in the scope - Tool Validation, Configuration Review, Inventory Assessment Report, extra activities and to handle exit process of Operating Agency and Bandwidth service provider</p>	<p>Submission of SLA audit report is only one deliverable as per the scope of existing TPA contract and as per the Payment terms mentioned in the new RFP also, Quarterly lump-sum service charge dare applicable on submission of SLA reports and acceptance of the same by ELCOT after deducting LD / Penalty if any. However, additional scope is included in the new RFP i.e., Tool Validation, Configuration Review, Inventory Assessment Report, extra activities and to handle exit process of Operating Agency and Bandwidth service provider Hence, we request ELCOT to amend the payment terms mentioned in the RFP</p>	<p>Tender Conditions remains the same.</p>
19	NA	NA	NA	NA	<p>We request ELCOT to add the below clause: Liability- The Client (and any others for whom Services are provided) shall not recover from the bidder, in contract or tort, including indemnification obligations under this contract, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services. The Client shall not recover from the Consultant, in contract or tort, under statute or otherwise, any amount with respect to loss of profit, data or goodwill, or any other consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated. The Client shall not recover from the Consultant, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the</p>		<p>Not acceptable</p>

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20	NA	NA	NA	NA	We request to add the below clause: Except as otherwise permitted by this Agreement, neither of the parties may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Parties may, however, disclose such confidential information to the extent that it: (a) is or becomes public other than through a breach of this Agreement, (b) is subsequently received by the receiving party from a third party who, to the receiving party's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information, (c) was known to the receiving party at the time of disclosure or is thereafter created independently, (d) is disclosed as necessary to enforce the receiving party's rights under this Agreement, or (e) must be disclosed under applicable law, legal process or professional regulations. These obligations shall be valid for a period of 1 year from the date of termination of this Agreement.	NA	Not acceptable
21	NA	NA	NA	NA	We request ELCOT to add the below Clause: Bidder may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that Bidder own in performing the Services. Notwithstanding the delivery of any Reports, Bidder retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers that bidder compile and retain in connection with the Services (but not Client Information reflected in them). Upon payment for the Services, Client may use any Materials included in the Reports, as well as the Reports themselves as permitted by this Agreement.		Not acceptable