



**NHPC LIMITED**  
(A Govt. of India Enterprise)  
CIN: L40101HR1975GOI032564

**Corrigendum-II**

**Subject: Appointment of Transaction Advisor for Finalization of Model for Monetization through securitization of free cash flow of one or more power stations in single tranche & execution thereof**

**Bid No: GEM/2023/B/3952686 dated 13.09.2023**

**Tender Reference No.: NH/CCW/CC-II/CO-267/PR10023/193 dated 13.09.2023**

**Clarifications to the Bidders as under:**

Sl. No	Tender Clause/Ref. No.	Bidders Query	Reply/Clarification
1.	-	Name and number of Power Stations (including capacity) that will be a part of the securitization activities	The name and number of power station(s) that will be the part of the securitization shall be decided in consultation with the Consultant, commensurate with the size of monetization amount. However, there will be one/two power stations which may be considered for securitization purpose.
2.	-	Any valuation available for these above-mentioned power stations	Since the transaction is of securitization nature, valuation of power station(s) is not required.
3.	-	Please advise whether the above-mentioned Power Stations is on the Holdco Balance Sheet (i.e. NHPC) or any other SPV	The Power Station(s) to be monetized through securitization is on the Holdco Balance Sheet (i.e. NHPC)
4.	-	Please advise if the above-mentioned assets are operational assets (please provide the COD) or if they are under construction then expected SCOD	Only operational assets shall be considered for monetization through securitization in the instant case.
5.	-	Please suggest whether the requisite details (like carve out financials, operating data and future projections) shall be provided by the official of the NHPC? Also please suggest the details of the information pertaining to the above-mentioned Power Stations shall be provide by NHPC.	All the relevant information related to the Power Station(s) to be monetized, shall be provided by NHPC.
6.	-	Since the transaction is securitization in nature, we request if the scope pertains to the Financial Vendor Due Diligence Report for investor and legal due diligence to be excluded from the scope of work.	These activities are part of Scope of work mentioned in Tender Document. However, such activities shall be taken up in case the requirement of the same arises.
7.	-	We request to confirm whether the transaction pertaining to lenders/investors (like upfront fees, and due diligence to be borne by NHPC?	The payment to the consultant shall be regulated as per the Scope of Work as mentioned in the Tender Document.
8.	-	Please advise if the officials of the Consultants are to be deputed in the NHPC office or can visit on a need basis.	The official of the Consultant has to be deputed in the NHPC office on a need basis.

9.	-	Please suggest the NHPC office address and person with whom we have to coordinate for the data requirement related to above mentioned Power Station	The information shall be shared with successful bidder.
10.	-	The consultant are dependent on the information to be obtained from NHPC. Hence, the date of finalization of the financial model is to be pegged (i.e. T0) with the date of receipt of all the information as mentioned in the information requisition list.	NHPC shall provide all the requisite information in time. The time taken by NHPC for providing requisite information to Consultant from time to time has been considered at the time of preparation of time line.
11.	NIT: Clause 1 (at pg 4)	Requesting clarification whether GeM terms are applicable. If yes, the GeM bidding document states that the terms of RFP shall prevail over GTCs of GeM. We have hence reviewed the RFP. Requesting confirmation if any aspect of GeM GTC are applicable. We understand GeM is only used for submission purpose.	Tender terms & conditions shall prevail.
12.	GCC: Clause 9.2 (pg 50), SCC: Clause 2 (pg 56)	We request the client to kindly consider that term / duration of the Contract has been left open ended i.e. there is no definite time period defined in the contract. Therefore, we request you to kindly provide with a definite time period/ duration of the Contract. This will also help us in better and effective resource planning and pricing of our proposals. Further, we request the client to kindly consider that any extension of the duration of the Contract will be based on mutually agreed terms and conditions.	Tender terms & conditions shall prevail.
13.	SCC: Clause vii (pg 58)	We notice the Clause under the head Liquidated Damages & Penalty (cl 3(vii) of the SCC on page 58 of RFP) which states that the consultant shall be liable for payment of damages for negligence, willful misconduct, failure to act, non-compliance of work or recklessness of the services up to the total value of 10% of the contract price. We request you to kindly confirm that the aggregate liability of the consultant in connection with the contract shall be limited to 10% of the contract price as per this Clause.	Maximum liability under clause no. 3 (vii) of SCC shall be limited to 10% of the contract sum.
14.	SCC: Clause vii (pg 58)	Client is requested to include to Clause to state that we will not be liable for any indirect and consequential losses or damages. This is as per GFR and MeitY guidelines and also the industry standard. Even the Contract Act, stipulates and remote and consequential damages are not payable. Client is requested to include the below Clause:  "Purchase/Client agrees that Consultant will not be liable for (i) loss or corruption of data from your systems, (ii) loss of profit, goodwill, business opportunity, anticipated savings or benefits or (iii) indirect or consequential loss."	Tender terms & conditions shall prevail
15.	GCC Clause 16 (pg 51), SCC: Clause vi (pg 58)	Client is requested to allow standard exceptions to confidential information, which is industry standard and reasonable. Not all information can be regarded as confidential. For	The existing Clauses of Non-disclosure Agreement shall prevail.

*Ans*

		<p>eg., if the information is in public domain, we cannot be expected to keep it confidential at our end. Similarly, if any information is liable to be disclosed under the RTI, giving it a confidential status and obliging us to keep such information confidential is not correct. We request inclusion of following Clause:</p> <p>"Confidential information does not include any information which (i) is rightfully known to the recipient prior to its disclosure; (ii) is independently developed by the recipient without use of or reliance on confidential information; or (iii) is or later becomes publicly available without violation of this agreement or may be lawfully obtained from a third party; or (iv) which would be required to be disclosed under the (Indian) Right to Information Act."</p>	
16.	GCC: Clause 16 (pg 51), read with and Annexure III NDA	We understand from the definition of "Recipient" and point 1 of the NDA that we are permitted to disclose information received with our third party representatives (network firms, internal service providers) and agents for the purposes of the services since these terms are binding on them. Please confirm.	Tender terms & conditions shall prevail.
17.	GCC: Clause 16 (pg 51)	We request client to reduce the survival period of confidentiality obligations to one year post expiry or termination for non-UPSI information. We understand longer period is already stated for the UPSI separately in the NDA, we will treat UPSI as per applicable SEBI regulations.	The existing Clauses of Non-disclosure Agreement shall prevail.
18.	SCC: Clause 5 (pg 63)	We request client to allow us to retain our working papers and a copy of confidential information for our records and any future reference or audit requirements, subject to confidentiality obligations under this Agreement.	The existing Clauses of Non-disclosure Agreement shall prevail.
19.	-	No clause in RFP. Please include in Pre bid. Please appreciate that this is a prestigious project for us and we would like to showcase this project in our future proposals. We request client to allow us to refer to you and the services we have performed for you for citation / reference purposes, as long as we do not disclose your confidential information.	There should not be any violation to the Clauses of Non-disclosure Agreement.
20.	GCC: Clause 25 (pg 54)	To uphold the principles of natural justice, we request client to notify us and give us a rectification period of at least 30 days, prior to invoking this Clause.	Tender terms & conditions shall prevail.
21.	GCC: Clause 25 (pg 54)	To uphold the principles of natural justice and to bring parity in the contract, we request client to give us the right to terminate the contract in case client breaches any of its material obligations under the contract, provided a notice for such breach is given to client along with a rectification period of 30 days.	Tender terms & conditions shall prevail.
22.	GCC: Clause 24 (pg 54)	We wish to highlight that we are a large organization providing various services to various state and central government departments, PSUs, international organizations and private clients. We	Tender terms & conditions shall prevail.

*Against*

		wish you to note that while we have a mechanism in place to identify patent and direct conflict of interests, it may not always be possible to identify any or all indirect or remote conflict of interests. Kindly appreciate that our no conflict confirmations will be subject to the foregoing.	
23.	GCC: Clause 11, (pg 50), SCC: Clause vii (pg 58)	We request client to cap the liquidated damages/penalties cumulatively to 5% of the total contract value.	Tender terms & conditions shall prevail.
24.	GCC: Clause 11, (pg 50). SCC: Clause vii (pg 58)	We understand that as per Contract Act, where LDs are stipulated, generally any other damages cannot be claimed. Therefore we request you to kindly make imposition of liquidated damages as sole and exclusive remedy for corresponding breaches.	Tender terms & conditions shall prevail.
25.	GCC: Clause 11, (pg 50). SCC: Clause vii (pg 58)	We understand that we would be liable to pay liquidated damages to the extent corresponding breach is solely attributable to us. Kindly confirm.	The consultant would be liable to pay liquidated damages to the extent corresponding breach is solely attributable to them.
26.	SCC: Clause 2 (pg 56)	By making time of essence of the contract, you retain the right to void the contract ab initio in case timelines are not met. There are various dependencies on the client and other third parties for completing the project. There may be delays on part of client and other parties also. Thus, contract can be voided by you even if the fault is not entirely ours. We understand that it is not the intention to make the agreement void ab initio in case of any delay in achieving the timelines. You may exercise your right to terminate the contract in case of material breaches. Thus, request you to kindly delete this Clause.	Tender terms & conditions shall prevail.
27.	SCC: Clause vii (pg 58)	By making time of essence of the contract, you retain the right to void the contract ab initio in case timelines are not met. There are various dependencies on the client and other third parties for completing the project. There may be delays on part of client and other parties also. Thus, contract can be voided by you even if the fault is not entirely ours. We understand that it is not the intention to make the agreement void ab initio in case of any delay in achieving the timelines. Further, since there are LDs for delay in achieving the timelines, it does not look legally feasible to have time as essence of the contract. Thus, request you to kindly delete this Clause.	Tender terms & conditions shall prevail.
28.	GCC: Clause 19 (pg 52)	There are innumerable IPRs that exist with us which we would like to use to your benefit while delivering our services to you. These are our pre-existing IPRs and we use it for all clients. We will not be able to give ownership in such IPRs to you just because we are using them for providing services to you, like we use these for other clients. We request that we are allowed to retain ownership of our pre-existing IPRs, else we might not be able to use these in providing services to you in order to protect our ownership in them. We request you to kindly	Tender terms & conditions shall prevail.

*Aravind*




		<p>include the below Clause. This is also the standard mentioned by MeitY in its guidelines.</p> <p>"Notwithstanding anything to the contrary in this agreement, Consultant will retain the ownership of its pre-existing intellectual property rights (including any enhancement or modification thereto) even if such IPRs are used for creating deliverables, are incorporated in the deliverables, etc. To the extent such pre-existing IPRs are included/incorporated in the deliverables, upon receipt of all due and payable payment in full, the Consultant shall grant a non-exclusive, perpetual and fully paid up license to the Purchaser/Client to use such pre-existing IPRs for use of deliverables for the purpose for which such deliverables are meant for client's internal business operations."</p>	
29.	GCC: Clause 17 (pg 51)	<p>We wish to clarify that we maintain insurances, at the firm level, which are required to be maintained by us as per the provision of laws. Separate insurances for this project may not be required in light of such firm level insurance. We can provide you with a confirmation about our firm level insurance and that to the extent required by law, this project will also be covered under that insurance. We hope that should suffice. Please confirm.</p>	Tender terms & conditions shall prevail.
30.	GCC: Clause 26 (pg 54), for NDA cl(iii) of SCC (pg 63)	<p>We request client to consider referring the disputes to arbitration as per Indian laws. It is easier, faster and less cumbersome. With the recent amendments, it has become even more effective. GFR and MeitY guidelines also encourage arbitration. We therefore request you to kindly consider the below Clause inclusion:</p> <p>"In case, a dispute is not amicably resolved within forty five (45) days of referral by one party to another, it shall be resolved through arbitration, in India, in accordance with the provisions of Arbitration and Conciliation Act 1996 (and any amendments thereto). The venue of such arbitration in India shall be the _____."</p>	Tender terms & conditions shall prevail.
31.	GCC: Clause 19 (pg 52),	<p>No clause in RFP. Please include in Pre bid.</p> <p>We will be providing services and deliverables to you under the contract. We accept no liability to anyone, other than you, in connection with our services, unless otherwise agreed by us in writing. You agree to reimburse us for any liability (including legal costs) that we incur in connection with any claim by anyone else in relation to the services. Please confirm our understanding is correct.</p>	The payment shall be made as per the terms of Tender terms & conditions.
32.	-	<p>No clause in RFP. Please include in Pre bid.</p> <p>If the project is to be completed on time, it would require binding both parties with timelines to fulfil their respective part of obligations. We request you that you incorporate a deliverable acceptance</p>	The data/information to be provided by the company shall be ensured as per the timeline as given in Annexure-II of the Tender Document.

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	<p>procedure, perhaps the one provided by MeitY in their guidelines, or the one suggested below, to ensure that acceptance of deliverables is not denied or delayed and comments, if any, are received by us well in time. You may consider including the below simple Clause:</p> <p>"Within 10 days (or any other agreed period) from Client's receipt of a draft deliverable, Client will notify Consultant if it is accepted. If it is not accepted, Client will let Consultant know the reasonable grounds for such non acceptance, and Consultant will take reasonable remedial measures so that the draft deliverable materially meets the agreed specifications. If Client does not notify Consultant within the agreed time period or if Client uses the draft deliverable, it will be deemed to be accepted."</p>	
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All other terms & conditions of the tender document shall remain unchanged.

  
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