

Name of Work: RFP for engagement of DEA empaneled Transaction Advisor for providing Advisory services for Development & Operationalization of NW-10, NW-28 and NW-85				
E-Tender ID- 2022 IWAI 721889_1				
File No: IWAI/HY/Maha-NWs/2022				
Last date of Submission of Bids: 12.12.2022				
S.No	Section No. Clause, Sub Clause No. and Page no. of Tender	Tender Clause Description	Query	IWAI Reply
(1)	Notice Inviting E-Tender, Clause 2, Critical Date, Page No. 9	Bid Submission Last Date- 12.12.2022	It is suggested to extend the bid submission by at least 15 days from the date of issuance of pre-bid queries in order to have sufficient time to prepare the proposal	Refer Corrigendum on e-procure and IWAI website.
(2)	Instruction to Bidders (ITB), Clause 7, Page No, 19/20	EMD	As per the clause the EMD to be deposited through RTGS in the account mentioned in the RFP. It is suggested that EMD in the form of Bank Guarantee may also be allowed.	Tender Condition shall prevail.
(3)	Instruction to Bidders (ITB), Clause 8, Page no. 21	Cost of tender document	Kindly correct the clause 6.9.11, there is no clause no. 6.9.11	May be read as <i>“All Bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or Department or Startups as recognized by Department for Promotion of Industrial and Internal Trade (DPIIT) on submission of a valid registration certificate as per the Government of India rules are required to pay the cost of Tender Document as mentioned in Section-III, Clause 8 of Data Sheet through RTGS. The cost of Tender Document is Non-Refundable”</i>
(4)	Instruction to Bidders (ITB), Clause No. 9, Page No. 21	Bank Solvency certificate	Since this RFP has been issued to only the empaneled Transaction Advisor, therefore the condition for the submission of Bank solvency certificate may be waived off.	Tender condition shall prevail.
(5)	Instruction to Bidders (ITB), Clause no 15, Page no. 23	Bids by Joint venture/consortium – Not Applicable	The assignment is for undertaking the entire bid process management which involves preparation of RFP/RFQ/MCA and other contractual documents which are legal in nature and hence required to be prepared by legal firm. Therefore, it is requested that a consortium shall be allowed so that the prospective bidders may form a consortium with reputed legal agency for undertaking all the legal services pertaining to the assignment	As requested by all bidders, consortium is being allowed for availing legal services only.
(6)	Instruction to Bidders (ITB), Clause 19.1.2 Enclosure-II, Page no. 32	Scanned copy of the Annual Report/Audited Balance sheet for the last three years	Scanning of the entire Annual report sometimes takes much of the space and sometimes illegible, therefore it is suggested that few relevant sections of Annual report may upfront be mentioned in the RFP which are required to be uploaded.	Tender condition shall prevail.
(7)	Instruction to Bidders (ITB), Clause 19.1.3 Enclosure -III,	Copies of completion certificate on client letter head for similar projects executed by the bidder in last seven years	It is suggested that work order along with the CA certificate duly certifying the amount received from such assignment may also be allowed as alternative for completion certificate	Tender condition shall prevail.

				<table><tr><td>Experience in transaction advisory projects in India related to IWT/Ports/Railways sector</td><td><ul style="list-style-type: none">– 2 PPP transactions: 3 marks– More than 2 projects: 4</td><td>4</td></tr><tr><td>Tariff structuring experience in projects related to Inland Waterways/Ports/Railways sector</td><td><ul style="list-style-type: none">– 1Project: 0.5 mark– 2 Project s: 1.5 marks– 3 or above Projects: 3 marks</td><td>3</td></tr><tr><td>Experience in feasibility studies, financial analysis, financial modelling, business plan and Bid/PPP advisory of transportation infrastructure project</td><td><ul style="list-style-type: none">– 1 project: 2 marks– 2 projects or more projects: 4 marks</td><td>4</td></tr><tr><td colspan="2">Total</td><td>15</td></tr></table>	Experience in transaction advisory projects in India related to IWT/Ports/Railways sector	<ul style="list-style-type: none">– 2 PPP transactions: 3 marks– More than 2 projects: 4	4	Tariff structuring experience in projects related to Inland Waterways/Ports/Railways sector	<ul style="list-style-type: none">– 1Project: 0.5 mark– 2 Project s: 1.5 marks– 3 or above Projects: 3 marks	3	Experience in feasibility studies, financial analysis, financial modelling, business plan and Bid/PPP advisory of transportation infrastructure project	<ul style="list-style-type: none">– 1 project: 2 marks– 2 projects or more projects: 4 marks	4	Total		15	
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		Finance Expert		<p>Finance Expert: Maximum marks: 9</p> <table><tr><th>Criteria</th><th>Scoring pattern</th><th>Maximum marks</th></tr><tr><td>Total Work Experience (align with Manual of DEA for appointment of empaneled transaction Advisor)</td><td><ul style="list-style-type: none">– 8 years- 1 marks– More than 8 years –2 marks</td><td>2</td></tr><tr><td>Tariff structuring experience in projects related to Inland Waterways/Ports/Railways sector</td><td><ul style="list-style-type: none">– 1 Project: 0.5 mark– 2 Proje cts: 1.5</td><td>3</td></tr></table>	Criteria	Scoring pattern	Maximum marks	Total Work Experience (align with Manual of DEA for appointment of empaneled transaction Advisor)	<ul style="list-style-type: none">– 8 years- 1 marks– More than 8 years –2 marks	2	Tariff structuring experience in projects related to Inland Waterways/Ports/Railways sector	<ul style="list-style-type: none">– 1 Project: 0.5 mark– 2 Proje cts: 1.5	3				
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(11)	Instruction to Bidders (ITB), Clause 25.2.1, Detailed marking scheme	Traffic Expert	<table><tr><td colspan="3">Traffic Expert</td><td>Maximum marks: 6</td></tr><tr><td>Criteria</td><td>Scoring pattern</td><td colspan="2">Maximum marks</td></tr><tr><td>Total Work Experience (align with Manual of DEA for appointment of empaneled transaction Advisor)</td><td>– 8 years- 2.5 marks – More than 8 years –3 marks</td><td colspan="2">3</td></tr><tr><td>Experience in Traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & logistic projects involving river and/or maritime transport including IWT/ Ports/ Railway/ Aviation sector</td><td>– 1 Project: 1 mark – 2 Projects: 2 marks – 3 or above Projects: 3 marks</td><td colspan="2">3</td></tr><tr><td colspan="2">Total</td><td colspan="2">6</td></tr></table> <p>It is suggested that Authority may revise the sector to IWT/Port/Railway in place of IWT/ Port/Railway/Aviation sector as Aviation has not been so relevant from the perspective of the assignment.</p>	Traffic Expert			Maximum marks: 6	Criteria	Scoring pattern	Maximum marks		Total Work Experience (align with Manual of DEA for appointment of empaneled transaction Advisor)	– 8 years- 2.5 marks – More than 8 years –3 marks	3		Experience in Traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & logistic projects involving river and/or maritime transport including IWT/ Ports/ Railway/ Aviation sector	– 1 Project: 1 mark – 2 Projects: 2 marks – 3 or above Projects: 3 marks	3		Total		6		May kindly refer the amendments.
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(12)	Instruction to	Traffic Surveyor	It is suggested that Authority may revise the sector to	The sectors may be read as IWT/ Port/Railway sector.																				

	Bidders (ITB), Clause 25.2.1, Detailed marking scheme		IWT/Port/Railway in place of IWT/ Port/Railway/Aviation sector as Aviation has not been so relevant from the perspective of the assignment.	
(13)	Section-III, Data Sheet, Clause No 24 of Data Sheet, page No. 53	Duration of contract – 9 months	It is suggested to increase the duration of contract to at least 12 months , as traffic study needs to be carried out for all the three national waterways	Tender condition shall prevail.
(14)	Section-VI, Terms of Reference (ToR), Clause 2: Detailed Scope of Work, Module-1: Market Assessment, Note (b), Page No. 88	The required data shall be complied from primary and secondary sources	Kindly clarify that only primary interaction with various stakeholders (transporters, shippers, industry bodies, association) to obtain the traffic data, no primary traffic survey is envisaged to be conducted.	No traffic count/survey is required to be undertaken in this assignment. However, the consultant is required to undertake the market assessment through primary/secondary sources and the primary interaction with different trade association/industry bodies/other stakeholder's and provide the traffic projections as per the scope of work.
(15)	Section-VI, Terms of Reference (ToR), Clause 2, Module 3, sub clause (ii) and (iii), Page no. 90	Sub Clause (ii)- The consultant shall assist IWAI in the following---- (a)---- till the signing of the concession agreement Sub Clause (iii)- The consultant shall assist IWAI----- till Letter of Award stage	Kindly clarify the role of TA is upto the signing of concession agreement or till the letter of Award stage?	Till concession agreement.
(16)	Section-VI, Terms of Reference (ToR), Clause 3, Deliverables, Timelines and Payment terms, S.No. 3, Page no. 91	Draft Appraisal Report(s) – Within 2 months of receipt of EoI being invited by Authority or within 5 months whichever is later	Is EoI floated by IWAI, if not, by when IWAI is planning to float the EoI. It is suggested not to link the deliverable with EoI to avoid ambiguity in the timelines	May refer amendments.
(17)	General Query		Will the use of deliverables be limited to the Authority only or the Authority may be sharing the deliverables with the third parties? If yes then who are the third parties?	It is at the discretion of IWAI.
(18)	Pg 23, Clause 15 Bids by Joint venture/consortium	Not applicable	We Request the authority to please allow Joint Venture / subcontracting as part of proposal to be submitted	Refer reply at S.No-5.
(19)	Pg 34, Clause 19.1.4. (iX) Key personnel - replacement	Since the replacement of key personnel affects the marking of technical evaluation of the bids, the bidders shall strictly observe that there shall be no replacement/ change in the key personnel proposed by the Consultants at the time of signing of contract from the key personnel proposed by the Consultant at the time of bidding. For any reasons whatsoever if the bidder engages in replacement of key personnel there shall be a deduction of 10% from the total remuneration of the replaced personnel.	We request the authority to kindly consider the following: Since the replacement of key personnel affects the marking of technical evaluation of the bids, the bidders shall strictly observe that there shall be no replacement/ change in the key personnel proposed by the Consultants at the time of signing of contract from the key personnel proposed by the Consultant at the time of bidding. For any reasons whatsoever if the bidder engages in replacement of key personnel there shall be a deduction of 10% from the total remuneration of the replaced personnel.	Tender condition shall prevail.
(20)	Pg 34 Clause 19.1.4. (X) Key personnel -	During execution of work, the replacement of the key personnel shall only be on health grounds of the individual or if the personnel ceases to work for the	We request the authority to kindly consider the following: During execution of work, the replacement of the key	Tender condition shall prevail.

	replacement	Consultant and is no longer an employee of the Consultant. The Consultant shall not replace any of the key personnel without the written prior consent of the Employer. In case Consultant engages in such activity i.e. replacement of key personnel with or without employers’ prior consent, such action shall attract a deduction of 5% of remuneration of the replaced personnel. However, there shall be no deduction if the replacement is made on health grounds of the personnel. The Consultant shall submit medical certificate of such personnel intended to be replaced on health grounds.	personnel shall only be on health grounds of the individual or if the personnel ceases to work for the Consultant and is no longer an employee of the Consultant. The Consultant shall not replace any of the key personnel without the written prior consent of the Employer. In case Consultant engages in such activity i.e. replacement of key personnel with or without employers’ prior consent, such action shall attract a deduction of 5% of remuneration of the replaced personnel. However, there shall be no deduction if the replacement is made on health grounds of the personnel. The Consultant shall submit medical certificate of such personnel intended to be replaced on health grounds.																	
(21)	37 25.1.1 Qualification criteria for consultancy services	For this purpose, the “Similar Works” means working as Transaction Advisor for PPP projects IWT/Ports/Shipping Sector. Substantially completed works are those which are 75% complete in terms of ToR and contract value.	<i>We request the authority to please clarify if “ports” includes “Dry ports” like ICD, CFS, etc.?</i>	The experience in dry ports will not be considered.																
(22)	Pg 38 Clause 25.1.1 Qualification criteria for consultancy services	The bidder should have successfully completed and/or substantially completed “Similar Works” in the previous 7 (seven) years (2015-16 to 2021-22) ending from the Bid Submission Last Date as per the criteria specified below: (i) Three similar works each costing not less than INR 80 Lakhs; or, (ii) Two similar works each costing not less than INR 100 Lakhs; or (iii) One similar work costing not less than INR 158 Lakhs.	<i>Due to magnitude of the assignment, it is recommended to have a consultant showcasing similar sized projects. We request the authority to please consider following:</i> The bidder should have successfully completed and/or substantially completed “Similar Works” in the previous 7 (seven) 10 (years) years (2015-16 2012-13 to 2021-22) ending from the Bid Submission Last Date as per the criteria specified below: (i) Three similar works each costing (with a project cost) not less than INR 80 Lakhs 100 crores ; or, (ii) Two similar works each costing (with a project cost) not less than INR 100 Lakhs 150 crores ; or (iii) One similar work costing (with a project cost) not less than INR 158 Lakhs 300 crores .	Tender condition shall prevail																
(23)	Pg 38 25.1.2 Qualification criteria for Average Annual Turnover for last 3 financial years i.e. 2019-20 to 2021-22	Average annual turnover of the Bidder from consultancy services for last 3 financial years i.e. 2019-20 to 2021-22 should be at least INR 60 Lakhs.	<i>Due to the magnitude and duration of the assignment, it is recommended to have a consultant showcasing good financial capacity.</i> <i>We request authority to consider following:</i> <i>Average annual turnover of the Bidder from consultancy services for last 3 financial years i.e. 2019-20 to 2021-22 should be at least INR 60 Lakhs 50 crores.</i>	Tender condition shall prevail																
(24)	Pg 39 Clause 25.2.1. Table 1: General Evaluation Criteria	<table><tr><th>Parameter</th><th>Maximum Marks</th></tr><tr><td>Technical presentation</td><td>50</td></tr><tr><td>Qualifications and competence of the key staff for the assignment</td><td>50</td></tr><tr><td>Total</td><td>100</td></tr></table>	Parameter	Maximum Marks	Technical presentation	50	Qualifications and competence of the key staff for the assignment	50	Total	100	<i>We request the authority to kindly consider the following:</i> <table><tr><th>Parameter</th><th>Maximum Marks</th></tr><tr><td>Technical presentation</td><td>5025</td></tr><tr><td>Qualifications and competence of the key staff for the assignment</td><td>5075</td></tr><tr><td>Total</td><td>100</td></tr></table>	Parameter	Maximum Marks	Technical presentation	50 25	Qualifications and competence of the key staff for the assignment	50 75	Total	100	Tender condition shall prevail
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Total	100																			

(25)	Pg 39 Clause 25.2.1. Table 2: Technical presentation on the subject and Adequacy of the proposed Approach & Methodology in responding to Terms of Reference:- 50 Marks	<table><tr><th>Parameter</th><th>Maximum Marks</th></tr><tr><td>Technical presentation</td><td>30</td></tr><tr><td>Work Plan</td><td>10</td></tr><tr><td>Quality of Approach and Methodology</td><td>10</td></tr></table>	Parameter	Maximum Marks	Technical presentation	30	Work Plan	10	Quality of Approach and Methodology	10	<p><i>We request the authority to kindly consider the following:</i></p> <table><tr><th>Parameter</th><th>Maximum Marks</th></tr><tr><td>Technical presentation</td><td>3010</td></tr><tr><td>Work Plan</td><td>105</td></tr><tr><td>Quality of Approach and Methodology</td><td>1010</td></tr></table>	Parameter	Maximum Marks	Technical presentation	30 10	Work Plan	10 5	Quality of Approach and Methodology	10 10	Tender condition shall prevail
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(26)	Pg 40 Clause 25.2.1. 1 PPP Expert cum Team Leader	Minimum ten (10) years of overall experience out of which minimum five (05) years of experience in feasibility studies, financial analysis, financial modelling, business plan and Bid/ PPP advisory of transportation infrastructure projects. Should preferably have relevant experience in the IWT/ Ports / Railway Sectors	<p><i>We request the authority to kindly consider the following:</i></p> <p><i>Minimum ten (10) fifteen 15 years of overall experience out of which minimum five (05) ten 10 years of experience in feasibility studies, financial analysis, financial modelling, business plan and Bid/ PPP advisory of transportation infrastructure projects. Should preferably have relevant experience in the IWT/ Ports / Railway Sectors</i></p>	Kindly refer S.No-10 above.																
(27)	Pg 40 Clause 25.2.1. 1 PPP Expert cum Team Leader	<p>Scoring pattern;</p> <p>Total work experience: 10 years: 4 marks More than 10 years: 5 marks</p> <p>Experience in feasibility studies, financial, analysis, financial modeling, business plan and Bid/ PPP advisory of transportation infrastructure project: 5 years: 4.5 marks More than 5 years: 6 marks</p>	<p><i>We request the authority to kindly consider the following:</i></p> <p>Scoring pattern;</p> <p>Total work experience: 10 years: 4 marks More than 10 15 years: 5 marks</p> <p>Experience in feasibility studies, financial, analysis, financial modelling, business plan and Bid/ PPP advisory of transportation infrastructure project: 5 7 years: 4.5 marks More than 5 10 years: 6 marks</p>	Kindly refer S.No-10 above.																
(28)	Pg 41 Clause 25.2.1. 2 Traffic Expert	Minimum five (05) years of experience in traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & logistic projects involving river and / or maritime transport including IWT/ Ports / Railway/ Aviation sector	<p><i>We request the authority to kindly consider the following:</i></p> <p><i>Minimum five (05) ten (10) years of experience in traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & logistic projects involving river and / or maritime transport including IWT/ Ports / Railway/ Aviation sector</i></p>	Kindly refer S.No-11 above.																
(29)	Pg 41 Clause 25.2.1. 2 Traffic Expert	<p>Scoring pattern;</p> <p>Total work experience: 5 years: 2.5 marks More than 5 years: 3 marks</p> <p>Experience in traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & logistic projects</p>	<p><i>We request the authority to kindly consider the following:</i></p> <p>Scoring pattern;</p> <p>Total work experience: 5 10 years: 2.5 marks More than 5 10 years: 3 marks</p> <p>Experience in traffic studies/ Demand Assessment/ Traffic</p>	Kindly refer S.No-11 above.																

		5 years: 2.5 marks More than 5 years: 3 marks	Projections/ Operating cost benchmarking for transportation & logistic projects ₹ 7 years: 2.5 marks More than ₹ 7 years: 3 marks	
(30)	Pg 44 Clause 25.2.1. 5 Legal Expert	Role of the expert	<i>Department of Economic Affairs (DEA) has undertaken 3 empanelment's – Technical, Transaction Advisors and Legal. We understand that legal scope would be undertaken by Legal empanelled firms and would request for clarification on role of legal expert as part of transaction advisory team.</i>	Kindly refer S.No-5 above.
(31)	Pg 46 Clause 25.2.1. Combined technical score will be calculated in a following manner	Tech PPT- Key P Weightage (Pw : Kw) 60:40	<i>We request the authority to please consider following change:</i> Tech PPT- Key P Weightage (Pw : Kw) 60:40 80:20	Tender condition shall prevail.
(32)	Pg 47 Clause 27.1 Indemnity	It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Employer, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.	<i>It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Employer, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future. (limited to value of contract).</i>	Tender condition shall prevail.
(33)	Pg 47 Clause 27.1 Insurance	The Consultant shall maintain at his own cost personal and accident insurance for all his Personnel and property as considered satisfactory by the Client to cover any risks arising from work and services to be rendered by the Consultant under this Consultancy Agreement. The Consultant shall ensure the same for his sub Consultants also. Client shall not be responsible for any such events or effects thereof. A statement to this effect may be submitted with the offer.	<i>The Consultant shall maintain at his own cost personal and accident insurance for all his Personnel and property as considered satisfactory by the Client Professional liability insurance valid for a period of consultancy, with a minimum coverage equal to Estimated remuneration to cover any risks arising from work and services to be rendered by the Consultant under this Consultancy Agreement. The Consultant shall ensure the same for his sub-Consultants also. Client shall not be responsible for any such events or effects thereof. A statement to this effect may be submitted with the offer.</i>	Tender condition shall prevail
(34)	Pg 88 Clause 2 Module 3	Bid Process Management	<i>We Request authority to please clarify how many transactions are expected to be undertaken by the consultant?</i>	It depends on the no of projects identified to be taken up under PPP mode as per the outcome of this assignment.
(35)	Pg 94 Clause 5 Key personnel 6. Traffic surveyor	Shall be responsible for supporting the Traffic Expert in assessing the potential of cargo traffic and conducting traffic assessment studies required as per scope	<i>May we request the authority to please clarify if traffic, vehicle count, vehicle type and cargo OD surveys have to be conducted on important road freight routes (NH, SH, etc.) by deploying a survey agency at important tolls for a few days?</i>	Refer S.No-14 above.
(36)	Pg 112 Clause 3.1.3 Confidentiality	Except with the prior written consent of the Employer the Consultant and the personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the services, nor shall the Consultant and its personnel make public the recommendations formulated in the course of, or as a	<i>We request the authority to please consider the following:</i> <u>Confidentiality:</u> Except with the prior written consent of the Employer the Consultant and the personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the services, nor shall	Tender condition shall prevail.

		result of the services.	<i>the Consultant and its personnel make public the recommendations formulated in the course of, or as a result of the services. These obligations shall be valid for a period of 3 years from the date of termination of this Agreement.</i>	
(37)	Clause 25.1.1 Qualification criteria for consultancy services on page no 37 of RFP.	<p>The bidder should have successfully completed and/or substantially completed “Similar Works” in the previous 7 (seven) years (2015-16 to 2021-22) ending from the Bid Submission Last Date as per the criteria specified below:</p> <p>(i) Three similar works each costing not less than INR 80 Lakhs; or, (ii) Two similar works each costing not less than INR 100 Lakhs; or (iii) One similar work costing not less than INR 158 Lakhs.</p> <p>For this purpose, the “Similar Works” means working as Transaction Advisor for PPP projects IWT/Ports/Shipping Sector. Substantially completed works are those which are 75% complete in terms of ToR and contract value.</p>	<p>The bidder should have successfully completed and/or substantially completed “Similar Works” in the previous 7 (seven) years (2015-16 to 2021-22) ending from the Bid Submission Last Date as per the criteria specified below:</p> <p>(i) Three similar works each costing not less than INR 80 Lakhs; or, (ii) Two similar works each costing not less than INR 100 Lakhs; or (iii) One similar work costing not less than INR 158 Lakhs.</p> <p>For this purpose, the “Similar Works” means working as Transaction Advisor for PPP projects IWT/Ports/Shipping Sector/ other infrastructure projects. Substantially completed works are those which are 75% complete in terms of ToR and contract value.</p> <p>We request the authority for change in the criteria as there are not many projects of similar nature in India.</p> <p>Request you to kindly consider the same.</p>	Tender condition shall prevail.
(38)	Clause 19 Submission of Bids: Subclause 19.1.4 Enclosure – IV Page 33 of 137	<p>(i) The Key Personnel must be permanent and full-time employee(s) of the firm.</p> <p>ix) Since the replacement of key personnel affects the marking of technical evaluation of the bids, the bidders shall strictly observe that there shall be no replacement/change in the key personnel proposed by the Consultants at the time of signing of contract from the key personnel proposed by the Consultant at the time of bidding. For any reasons whatsoever if the bidder engages in the replacement of key personnel there shall be a deduction of 10% from the total remuneration of the replaced personnel.</p>	<p>(i) The Key Personnel may or may not be a permanent and full – time employee(s) of the firm.</p> <p>(ii) Since the replacement of key personnel affects the marking of technical evaluation of the bids, the bidders shall strictly observe that there may be replacement/change in the key personnel proposed by the Consultants at the time of signing of contract as compared with the key personnel proposed by the Consultant at the time of bidding with equivalent or better replacement. For any reasons whatsoever, thereafter if the bidder engages in the replacement of key personnel there shall be a deduction of 5% from the total remuneration of the replaced personnel.</p> <p>Request you to kindly consider the same.</p>	Tender condition shall prevail.
(39)	NOTICE INVITING E-TENDER 2 Critical Data sheet: Page no 9	Bid Submission Last Date 12.12.2022 up to 1500 hrs.	We request the Authority to kindly provide 4 weeks of time for submission of Technical proposal, PPT and financial quote from the date of publishing reply to bidder’s queries	Kindly refer S.No-1.
(40)	Brief scope of work	(v) The Chairman, IWAI through this RFP intends to appoint a transaction advisor to submit a business plan for operationalization of 3 national waterways i.e. NW-10, NW-28 and NW-85.:	<p>We request the Authority to kindly provide some information on the sources of fund to finance the mentioned capex requirement.</p> <p>- How many projects and type of projects that are</p>	Kindly refer S.No-34 above.

			<p>expected to be taken up? Kindly brief.</p> <ul style="list-style-type: none"> - Is it expected to be funded in single phase? - Is it going to be fund entirely through PPP mode? <p>Is there any funding planned by IWAI through internal resources, budgetary support, external debt funding etc.?</p>	
(41)	Clause 1.0 Page no 14	<p>1.10 It was accordingly decided that we may develop the NWs in Maharashtra through PPP mode and firstly take on the development of Cat-A National waterways.</p> <p>1.13 The transaction advisor does all the detailed financial, technical and legal work required to implement the proposed project. Transaction advisory services are the third-party services obtained from professional firms.</p>	We request the authority to kindly brief about the developmental work that are intended. What is the type of projects and how many projects are expected?	The proposed development activities include but not limited to development of IWT ports, VTMS, Night Navigation, Fairway development. However, the Consultant is required to suggest the suitable methodology for the procurement of above services/infrastructures.
(42)	Clause 19 Page no 31	<p>19. Submission of Bids</p> <p>Online Bids submitted without hard copies of original payment instruments i.e. Tender document fee and EMD shall automatically become ineligible and shall not be considered. The Cost of Tender Document shall be non-refundable.</p>	Please clarify that the bids are to be submitted online and the payment proof need to be sent in hardcopy to Authority after the due date.	The bids are to be submitted online only and the original copy of instruments is to be submitted in hardcopy before the last date and time of submission of bids.
(43)	4 Detailed Scope of Work for the services Page no 12 & FORM 4C: Average Annual Turnover of Applicant	4.1 Module 1: Preparation of tender documents for NW-5 and NW-64 development through PPP mode (v) Assisting client in conducting roadshows/workshops for development and operationalizing of assets on PPP mode.	<p>Request the Authority to please clarify that cost towards conducting he workshop, road shows to be borne by the IWAI.</p> <p>Also, we request the authority to indicate a timeline for the same. This kind of activity requires around 15-20 days additionally. Hence request Authority to allow additional time for this activity.</p>	The cost of road shows/workshops will be borne by IWAI. However, cost of travel of the Consultants and his team is to be borne by the transaction advisor.
(44)	25. Bid evaluation 25.1 Qualification criteria 25.1.2	<p>25.1.2 Qualification criteria for Average Annual Turnover for last 3 financial years i.e. 2019-20 to 2021-22</p> <p>Average annual turnover of the Bidder from consultancy services for last 3 financial years i.e. 2019-20 to 2021-22 should be at least INR 60 Lakhs.</p>	<p>Kindly note that We follow Jan to Dec as our accounting year and our statements are from Jan-Dec. We request the Authority to kindly modify the clause accordingly.</p> <p>Also, we request the Authority to kindly allow the consultants to submit CA certified certificates supported by Audited Financial statements as Documentary Evidence towards Annual turnover. These Audited annual statements are also submitted to ROC/MCA.</p>	Allowed, the years may be 2020-21, 2019-20 and 2018-19.
(45)	19.2 Cover-II: Financial Bid Page 34	(b) All duties, taxes, royalties and other levies payable by the bidder under the Contract, or for any other cause, shall be included in the rates, prices, and total Bid price submitted by the Bidder except for service	Request the authority to clarify what are the duties, royalties and other levies payable by the consultant.	Tender condition shall prevail.

		tax which will be quoted separately as per the format in Form Fin – 2 and which will be reimbursed to the Bidder on producing proof of payment. The rates and prices quoted by the Bidder shall be fixed for the duration of the Contract and shall not be subject to any adjustment. The prices shall be quoted by the Bidder entirely in Indian Rupees. All payments shall be made in Indian Rupees (INR).		
(46)	19.1.4 Enclosure – IV Page no 33	(iv) The Key Personnel shall remain available for the period as indicated in the Tender Document	Please clarify that the consultant's team as required in the tender document is not required to be stationed at IWAI office.	The consultant's team shall be made available at IWAI office as and when required during assignment. No permanent deputation is envisaged.
(47)	25.2 Technical Evaluation 25.2.1 Table 3: Qualification and Competence of the Key Professionals for the assignment shall be evaluated. Sl no 1 PPP Expert cum Team Leader	<p>Team lead</p> <p><u>Total Work Experience:</u> – 10 years: 4 marks – More than 10 years: 5 marks</p> <p><u>Experience in feasibility studies, financial analysis, financial modelling, business plan and Bid/ PPP advisory of transportation infrastructure project</u> – 5 years: 4.5 marks – More than 5 years: 6 marks</p> <p><u>Experience in transaction advisory projects in India</u> 2 projects: 3 marks – More than 2 projects: 4 marks</p>	<p>We request the Authority to kindly revise the criteria as follows: -</p> <p><u>Total Work Experience:</u> – 10 -15 years: 4 marks – More than 15 years: 5 marks</p> <p><u>Experience in feasibility studies, financial analysis, financial modelling, business plan and Bid/ PPP advisory of transportation infrastructure project</u> – 10 -15 years: 4.5 marks – More than 15 years: 6 marks</p> <p><u>Experience in transaction advisory projects in India</u> - 5 projects: 3 marks – More than 5 projects: 4 marks</p>	Kindly refer S.No-10 above.
(48)	25.2 Technical Evaluation 25.2.1 Table 3: Qualification and Competence of the Key Professionals	<p><u>Total Work Experience:</u> – 5 years: 2.5 marks – More than 5 years: 3 marks</p> <p><u>Experience in traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation</u></p>	<p><u>Total Work Experience:</u> – 10 years: 2.5 marks – More than 10 years: 3 marks</p> <p><u>Experience in traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & Logistic projects</u></p>	Kindly refer S.No-11 above.

	for the assignment shall be evaluated. Sl no 2 Traffic	<u>& Logistic projects</u> – 5 years: 2.5 marks – More than 5 years: 3 marks	– 10 years: 2.5 marks – More than 10 years: 3 marks											
(49)	25.2 Technical Evaluation 25.2.1 Table 3: Qualification and Competence of the Key Professionals for the assignment shall be evaluated. Sl no 3 Infrastructure Expert	<u>Total Work Experience:</u> – 8 years: 3 marks – More than 8 years: 4 marks	<u>Total Work Experience:</u> – 10 years: 3 marks – More than 10 years: 4 marks	Tender condition shall prevail										
(50)	Form Fin – 3: Consultancy Fees	Form Fin – 3: Consultancy Fees	We understand that the fee quoted to be in LS basis. Kindly explain the purpose of the form.	This form entails provisions considered by IWAI in estimation that can be referred in case of dispute/arbitration/foreclosure.										
(51)	Clause VI Page no 104	vi) The Consultant shall insure all their personnel working on this project and keep IWAI indemnified of all liabilities, loss, etc.	Request IWAI to limit indemnity for fraud, misconduct, negligence, breach of applicable laws. This current clause amounts to open indemnity which shall be limited.	Tender condition shall prevail.										
(52)	19.1.4 Enclosure – IV Page no 33	a. Scanned copies of following keeping in view the scope of work listed in the ToR: (i) The approach to the work and methodology to be adopted, and (ii) Detailed work plan	Please clarify whether the A&M, Presentation and case study need to be submitted along with technical proposal / submission. Also please mentioned the dates for presentation.	Except presentation all other details have to be submitted alongwith the bid. The presentation will be allowed only for the qualified firms.										
(53)	Combined technical score will be calculated in a following manner Page no 46	<u>19.6 Combined technical score will be calculated in a following manner</u> <table><tr><th>Particulars</th><th>Score</th></tr><tr><td>Marks for Technical Presentation (Tech PPT)</td><td>TechPPT</td></tr><tr><td>Marks to Key Personnel</td><td>KeyP</td></tr><tr><td>TechPPT- KeyP Weightage (Pw:Kw)</td><td>60:40</td></tr><tr><td>Combined Technical Score Calculation</td><td>$S_t = Pw * TechPPT + Kw * KeyP$</td></tr></table>	Particulars	Score	Marks for Technical Presentation (Tech PPT)	TechPPT	Marks to Key Personnel	KeyP	TechPPT- KeyP Weightage (Pw:Kw)	60:40	Combined Technical Score Calculation	$S_t = Pw * TechPPT + Kw * KeyP$	We request the Authority to provide more weightage to the Key Personnel and modify the criteria as follows: - Tech PPT-KeyP Weightage: 20:80	Tender condition shall prevail.
Particulars	Score													
Marks for Technical Presentation (Tech PPT)	TechPPT													
Marks to Key Personnel	KeyP													
TechPPT- KeyP Weightage (Pw:Kw)	60:40													
Combined Technical Score Calculation	$S_t = Pw * TechPPT + Kw * KeyP$													
(54)	25.2 Technical Evaluation Table 1	Table 1: General Evaluation Criteria	We request the Authority to also add criteria regarding company experience in terms of number of port sector TA experience, TEFR experience.	Tender condition shall prevail.										

	Page 39			
(55)	FORM 4C: Average Annual Turnover of Applicant Page 60	FORM 4C: Average Annual Turnover of Applicant Certificate from the Statutory Auditor This is to certify that..... [Name of the Firm] [Registered Address] has received the payments shown above against the respective years.	<p>Kindly note that We follow Jan to Dec as our accounting year and our statements are from Jan-Dec. We request the Authority to kindly modify the clause accordingly.</p> <p>Also, we request the Authority to kindly allow the consultants to submit CA certified certificates supported by Audited Financial statements as Documentary Evidence towards Annual turnover. These Audited annual statements are also submitted to ROC/MCA.</p> <p>Request the following modifications: Certificate from the Statutory Auditor This is to certify that..... [Name of the Firm] [Registered Address] has earned revenue shown above against the respective years.</p>	Kindly refer S.No-44 above.
(56)	INTEGRITY PACT Page 119	INTEGRITY PACT	Is it required to be executed on legal stamp paper?	It is to be executed on legal stamp paper of Rs 100/- as per the enclosed format.
(57)	3. Deliverables Timelines and Payment Terms Page 90	3. Deliverables Timelines and Payment Terms	<p>We request the authority to increase the overall timeline to at least 52 weeks.</p> <p>Mobilisation period of 15 days is also requested.</p>	Mobilisation period of 15 days will be considered. However, the other T&C remains the same,
(58)	7.2.2. Liquidated Damages for delay	2.8 LIQUIDATED DAMAGES 2.8.1 If the Consultant fails to complete all items of works within the period(s) of completion as stipulated in the aforesaid tender or any extended period, the consultant shall without prejudice to any other right or remedy of the Authority on account of such default, pay compensation (not by way of penalty) at the rate of 1 % (one percent) per week or part of the week on the total value of the contract subject to a maximum of 10% of the total value of the contract. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to SCC Clause 2.9.	<p>We request the Authority to kindly modify the clause as follow: -</p> <p>2.8.1 If the Consultant fails to complete all items of works within the period(s) of completion as stipulated in the aforesaid tender or any extended period, the consultant shall without prejudice to any other right or remedy of the Authority on account of such default, pay compensation (not by way of penalty) at the rate of 1 % (one percent) per week or part of the week on the total value of the contract subject to a maximum of 5% of the total value of the contract. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to SCC Clause 2.9.</p>	Tender condition shall prevail.
	Legal Queries			
(59)	Clause 3.8.3 Page 84	3.8.3. The Consultant shall hold the Authority harmless	We request for deletion of the clause	Tender condition shall prevail.

		and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as "Claims") which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.		
	Additional clauses We request the authority to include the following clauses in the agreement			
(60)	New clauses to be added	Limited Liability clause	We request to add the Limited Liability clause as stated below: - “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, and even if advised of the likelihood of such damages. The total aggregate liability of Consultant, whether in contract, tort (including negligence) or otherwise, under or in connection with this assignment, shall in no circumstances exceed a sum equal to the fees paid or payable by the Client under this assignment.”	Tender condition shall prevail.
(61)	New clauses to be added	GST	It is suggested that the standard clause of GST as provided below is added: "The fees and any amount payable under this assignment are exclusive of all applicable taxes (including GST), levies, duties, etc. With regards to the applicability of Goods and Services Tax, the IWAI's address as mentioned for the purposes of GST will be considered as the consumption location for the Services provided by consultant under this assignment. The GST registration number ("GSTIN") provided by the Client will be used by consultant for filing of the GST returns. With regards to the applicability of Goods and Services Tax, IWAI's address as mentioned for the purposes of GST will be considered as the consumption location for the Services provided by the Consultant under this assignment. Where the Consultant issues a credit note to IWAI in relation to any invoice, IWAI shall adjust and upload its Input Tax Credit on the GSTN on or before the end of the	Tender condition shall prevail.

			<p>month in which the credit note is issued by Consultant to IWAI. If IWAI fails to do so, and this results in additional liability for Consultant, IWAI shall be liable to reimburse the Consultant for any liability incurred by the Consultant (being tax, interest and any penalties thereon). The current contract pricing assumes that GST will apply to the Services provided by the Consultant to IWAI, and the Consultant is able to claim credit of 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 invoice values to the Consultant."</p>	
(62)	New clauses to be added	Anti -Bribery and Corruption	<p>We request the authority to include this new clause.</p> <p>Anti -Bribery and Corruption: <i>"Each party represents, warrants and undertakes that:</i> <i>(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 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.</i></p> <p><i>(b) Each party shall, adhere to applicable anti-bribery and corruption laws.</i></p>	Tender condition shall prevail.

			<p><i>(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).</i></p> <p><i>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."</i></p>	
(63)	New clauses to be added	Economic and Trade Sanctions:	<p>We request the authority to include this new clause.</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>	Tender condition shall prevail.
(64)		Non-Exclusivity:	<p>We request the authority to include this new clause.</p> <p>The Client acknowledges that CRISIL 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 provided under the agreement shall be on a non-exclusive basis.</p>	Tender condition shall prevail.
(65)		Non-Conformity	<p>We request the authority to include this new clause.</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</p>	Tender condition shall prevail.

			the 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.					
(66)	Section - III DATA SHEET, Clause - 4 Page 51 of 137 of RFP	<table><tr><th>PARTICULARS</th><th>DESCRIPTION</th></tr><tr><td>Date & time for submission of Bid</td><td>Date: 12.12.2022 Time: Latest by 1500 Hrs (IST) Submission: Online submission</td></tr></table>	PARTICULARS	DESCRIPTION	Date & time for submission of Bid	Date: 12.12.2022 Time: Latest by 1500 Hrs (IST) Submission: Online submission	We request the Authority to kindly extend the date of submission of proposal and opening of proposal by at least 3 (three) weeks from the date of issuance of clarifications raised during the pre-bid meeting/ minutes from pre-bid meeting. This would help us in submitting a comprehensive and competitive proposal and also provide sufficient time in gathering a team of skilled key experts to meet the objectives envisaged under this opportunity.	Kindly refer S.No-1.
PARTICULARS	DESCRIPTION							
Date & time for submission of Bid	Date: 12.12.2022 Time: Latest by 1500 Hrs (IST) Submission: Online submission							
(67)	SECTION-II: INSTRUCTIONS TO BIDDERS (ITB) Clause 19.1.4 Enclosure – IV, Sub-clause b (i) Page 33 of 137 of RFP	(i) The Key Personnel must be permanent and full-time employee(s) of the firm.	We would like to highlight that most of consulting organisation do not provide in-house services related to Legal scope and do not have any Legal Expert on their own payroll and hence the required expertise is sought by taking the expert as a SME/ sun-contracting role on project requirement basis. Hence, the Authority is kindly requested to modify this clause as: <i>(i) The Key Personnel, except ‘Legal Expert’, must be permanent and full-time employee(s) of the firm.</i>	Kindly refer S.No-5 above.				
(68)	SECTION-II: INSTRUCTIONS TO BIDDERS (ITB) Clause 25.1.1 Qualification criteria for consultancy services Page 38 of 137 of RFP	The bidder should have successfully completed and/or substantially completed “Similar Works” in the previous 7 (seven) years (2015-16 to 2021-22) ending from the Bid Submission Last Date as per the criteria specified below: (i) Three similar works each costing not less than INR 80 Lakhs; or, (ii) Two similar works each costing not less than INR 100 Lakhs; or (iii) One similar work costing not less than INR 158 Lakhs. For this purpose, the “Similar Works” means working as Transaction Advisor for PPP projects IWT/ Ports/ Shipping Sector . Substantially completed works are those which are 75% complete in terms of ToR and contract value.	We believe that best practices & learning’s from transaction advisory work carried out in other modes of transport like rail, logistics, roads and aviation sectors will also be helpful in this assignment. Hence, we request the Authority to kindly change this clause as follows: <i>“The bidder should have successfully completed and/or substantially completed “Similar Works” in the previous 7 (seven) years (2015-16 to 2021-22) ending from the Bid Submission Last Date as per the criteria specified below:</i> <i>(i) Three similar works each costing not less than INR 80 Lakhs; or,</i> <i>(ii) Two similar works each costing not less than INR 100 Lakhs; or</i> <i>(iii) One similar work costing not less than INR 158 Lakhs.</i> <i>For this purpose, the “Similar Works” means working as Transaction Advisor for PPP projects IWT/ Ports/ Shipping/ Roads/ Railways/ Aviation / Logistics Sector. Substantially completed works are those which are 75% complete in terms</i>	Kindly refer S.No-12 above.				

			<i>of ToR and contract value.”</i>	
(69)	<p>SECTION-II: INSTRUCTIONS TO BIDDERS (ITB)</p> <p>Clause 25.2 Technical Evaluation,</p> <p>Sub-Clause 25.2.1 Detailed marking scheme</p> <p>Page 38 of 137 of RFP</p> <p>and Page 46 of 137 of RFP</p>	<p><u>Sub-Clause 25.2.1 Detailed marking scheme</u></p> <p>Only those bidders whose Technical Bids score 60 marks or more out of 100 shall qualify for further consideration and shall be ranked from highest to the lowest on the basis of their technical score (ST).</p> <p><u>Following clause is also given on Page 46 of 137:</u></p> <p>Shortlisting of Bidders</p> <p>The bidders ranked on the basis of technical score (St), not more than five shall be prequalified and shortlisted for price evaluation in the second stage. The Minimum technical Score to pass the technical evaluation stage is 70 marks out of total 100 marks.</p>	<p><u>Correction required:</u> There is a mismatch between the two statements covering requirement of minimum technical score.</p> <p>Hence, Authority is requested to kindly correct the same and keep the requirement as:</p> <p><i>“The Minimum technical Score to pass the technical evaluation stage is 70 marks out of total 100 marks.”</i></p>	<p><u>Clause 25.2.1 stands modified as</u></p> <p>Detailed marking scheme</p> <p>In the first stage, the Technical bid will be evaluated on the basis of the bidder’s experience, and experience of its key personnel. Only those bidders whose Technical Bids score 65 marks or more out of 100 shall qualify for further consideration and shall be ranked from highest to the lowest on the basis of their technical score (ST).</p> <p>In addition the Shortlisting of Bidders stands modified as under</p> <p>The bidders ranked on the basis of technical score (St), not more than five shall be pre-qualified and shortlisted for price evaluation in the second stage. The Minimum technical Score to pass the technical evaluation stage is 65 marks out of total 100 marks.</p>
(70)	<p>SECTION-II: INSTRUCTIONS TO BIDDERS (ITB)</p> <p>Clause 25.2 Technical Evaluation, Sub-Clause 25.2.1</p> <p>Table 3: Qualification and Competence of the Key Professionals for the assignment</p> <p>Page 45 of 137 of RFP</p>	<p>S.No. 6: Traffic Surveyor</p> <p>Preferred criteria:</p> <p>Minimum five (03) years of experience in traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & logistic projects involving river and / or maritime transport including IWT/ Ports / Railway/ Aviation sector</p>	<p>Request Authority to please clarify whether 5 years or experience or 3 years of relevant experience is preferred in case of Traffic Surveyor. There seems to be typo error in the highlighted statement.</p> <p>We request that the minimum number of years of experience for this position may be kept as 3 years</p> <p>Kindly provide clarification regarding this.</p>	<p>The Table No -3 S.No 6 Pg No 45 clause stands modified as under</p> <p>Minimum five (05) years of experience in traffic studies/ Demand Assessment/ Traffic Projections/ Operating cost benchmarking for transportation & logistic projects involving river and / or maritime transport including IWT/ Ports / Railway/ sector</p>
(71)	SECTION-II: INSTRUCTIONS	Final Evaluation	We understand that this opportunity is very unique and will require quality inputs from the transaction advisor who has lot	Accepted.

	TO BIDDERS (ITB) Clause 25.2 Technical Evaluation, Sub-Clause 25.2.1 'Final Evaluation' Page 47 of 137 of RFP	A combined score of Technical and Financial will be evaluated. The successful Bidder shall be selected as per the following procedure:- (i) The weights, Technical (Tw) and Financial (Fw) would be given for Technical and Financial proposals, where Tw=0.70 and Fw=0.30 (Tw=the weight given to technical proposal; Fw=weight given to the financial proposal; Tw+Fw=1)	of relevant experience in transport & logistics sector. Further, in order to ensure that experienced and quality bidders participate in this opportunity, we would request Authority to kindly modify the technical score and financial score weightages under final evaluation clause as per below: <i>“(i) The weights, Technical (Tw) and Financial (Fw) would be given for Technical and Financial proposals, where Tw=0.80 and Fw=0.20”</i>	
(72)	SECTION-VI: TERMS OF REFERENCE (ToR) Clause 2 Detailed Scope of Work for the services: Module 1: Market Assessment – Scope item no. (i) Page 87 of 137 of RFP	Undertake assessment of existing cargo movements through all modes of transport (i.e. road, railway & waterways) in and around the hinterland area of the identified Project stretches relating to domestic cargo movement	We request the Authority to kindly define the hinterland area so that we can estimate the effort required to carry out this module under the project scope.	Hinterland area means all the area of that a service provider intends to cover to further his business prospects.
(73)	SECTION-VI: TERMS OF REFERENCE (ToR) Clause 2 Detailed Scope of Work for the services: Module 1: Market Assessment – Scope item no. (i) Page 87 of 137 of RFP	Scope of work items such as: <ul style="list-style-type: none"> The Consultant shall give details of the vessels being used for transportation with vessel details such as size, capacity, draft requirements, no. of vessels in each category, O-D pair, turnaround time and operating parameters. Take into account existing and new development related to industrial, economic and transportation infrastructure (including dredging) in the influence area which are likely to come up in the next 5 to 10 years and their impact on the O-D study;	For such highlighted scope of work items under Market Assessment module, we would request Authority to provide necessary support (eg. Authorisation letters, existing list of stakeholders, if any, etc.) in obtaining various data/information of external stakeholders.	Yes authorisation letters will be provided by IWAI at its sole discretion based on the stakeholders list will be provided by the consultant.
(74)	SECTION-VI: TERMS OF REFERENCE	iii. Gather market intelligence through detailed Stakeholder discussions:	Request Authority to kindly clarify as to what kind of market intelligence is expected in discussion with the indicated stakeholders. Clarity on the same will help in understanding	Market intelligence is the information or data that is derived by consultant from the stakeholders and the market they operates in or wants to operate in, to help

	<p>(ToR)</p> <p>Clause 2 Detailed Scope of Work for the services: Module 1: Market Assessment – Scope item no. (i)</p> <p>Page 87 of 137 of RFP</p>	<p>a. With large customers / captive cargo owners</p> <p>b. With potential developers / operators of the assets/ logistics service providers</p> <p>c. With Stakeholders / Industry bodies/ associations/ sea-ports for the waterway</p> <p>d. With vessel owners/ operators</p> <p>e. With ferry/ cruise operators</p>	<p>the requirements under this module.</p>	<p>determine market segmentation, market penetration, market opportunity, and existing market metrics.</p>
(75)	<p>SECTION-VI: TERMS OF REFERENCE (ToR)</p> <p>Clause 2 Detailed Scope of Work for the services: Module 2: Project Appraisal / Project Structuring / Models for Concession</p> <p>Page 89 of 137 of RFP</p>	<p>(vi) Tax and Insurance related Matters: During the course of the Consultancy, the Consultant may be called upon to advise on tax and / or insurance related issues affecting the Project.</p>	<p>Request clarity from the Authority as to what tax and insurance related matters will have to be studied under scope. Few examples will help us in understanding the requirements better and budget for the same in our efforts.</p> <p>Further, would request the Authority if additional key expert covering these aspects are included in the RFP. This will help in covering the scope requirements in comprehensive manner.</p>	<p>The consultant may be called upon for clarification on compliance of taxation and insurance related matter.</p>
(76)	<p>SECTION-VI: TERMS OF REFERENCE (ToR)</p> <p>Clause 2 Detailed Scope of Work for the services: Module 3: Bid Process Management</p> <p>Page 89-90 of 137</p>	<p>Module 3: Bid Process Management</p>	<p>With respect to the scope listed under this module i.e. bid process management, We request the Authority to kindly confirm if our following understanding is correct:</p> <p>“As transaction advisors we shall only assist the authority in the preparation of responses to queries/clarifications/comments raised by market participants during pre-application and pre-bid stages regarding the RFP only. All technical and commercial inputs will be provided by the Authority and their representatives including technical and legal teams of Authority.”</p>	<p>The bidder shall prepare the responses to queries/clarification/comments and all other activities till the concessionaire agreement. IWAI will render all possible assistance in technical inputs only.</p>

	of RFP			
(77)	<p>SECTION-VI: TERMS OF REFERENCE (ToR)</p> <p>Clause 5 Key Personnel</p> <p>Page 93 of 137 of RFP</p>	<p>S.No. 4 : Legal Expert</p> <p><u>Responsibilities:</u> Shall be responsible for assisting in drafting of RFP / Bid Documents & Concession Agreements and provide legal viewpoint on issues related to project development and project structuring.</p>	<p>We request you kindly confirm our understanding that:</p> <p>“As Consultants, especially involving the position of Legal Expert and in general, we will not be providing any legal opinion/ legal services with regards to the project and our role will only be limited to assessing and reviewing deliverables related to the project.”</p>	Tender condition shall prevail.
(78)	<p>SECTION-VI: TERMS OF REFERENCE (ToR)</p> <p>Clause 2 Detailed Scope of Work for the services:</p> <p>Module 2: Project Appraisal / Project Structuring / Models for Concession</p> <p>Page 88 of 137 of RFP</p>	<p>Module 2: Project Appraisal / Project Structuring / Models for Concession</p> <p>(ii) Cost Estimates</p> <p>For the purpose of project appraisal including financial assessment, the Consultant is required to prepare the capital cost in sufficient details for identified project components along with O&M expenses based on inputs received from IWAI and get the same reviewed by IWAI</p>	<p>Regarding preparation of capital cost estimates, it may be noted that the Consultant’s scope be limited to reparation of the overall project cost and not the cost of works to be done in the project such as civil, mechanical or other works. The cost of these works may be provided by IWAI. Based on the proposed team as per the ToR, there are no technical experts for the cost estimates preparation. We request the Authority to kindly confirm on the same.</p>	Tender condition shall prevail.
(79)	<p>SECTION-VI: TERMS OF REFERENCE (ToR)</p> <p>Clause 2 Detailed Scope of Work for the services:</p> <p>Module 2: Project Appraisal / Project Structuring / Models for</p>	<p>Scope of Work</p> <p>Module 2: Project Appraisal / Project Structuring / Models for Concession - Scope items (ii) to (vii) and</p> <p>Module 3: Bid Process Management</p>	<p>We understand that these activities would be required to be undertaken only <u>one time</u> for the Project Components identified as per scope under Module 2 item no. (i).</p> <p>It is requested that the Client provide approval of the Project components identified at this stage (under Module 2 item no. (i)) before proceeding with other activities as per scope of work.</p> <p>In the event no bids are received, or the contract is not signed for an approved Project Component, the Consultant would not be required to prepare new documents under this assignment. It can be done as an additional scope.</p>	<p>Refer Clause No 3- Deliverables Timelines and Payment Terms of Section-VI ToR, the payment against each of the deliverable has already been mentioned in the said clause.</p> <p>a) In case, no business proposal is firmed up as during assignment, the project will be foreclosed and no payment admissible under S.No 5-7 of Clause-3.</p> <p>b) In case, the business proposal is received but the RFP fails, no payment under S.No-7 of Clause-3 will be admissible.</p>

	Concession; and Module 3: Bid Process Management Page 88-89 of 137 of RFP		Kindly clarify / confirm our understanding.	
(80)	SECTION-II: INSTRUCTIONS TO BIDDERS (ITB) Clause 3: Bidder Eligibility Criteria Sub-Clause 3.4 Page 17 of 137 of RFP	3.4 Any entity which has been barred by the Central Government, any State Government, a statutory Employer or a public-sector undertaking, or International Funding Agency (World Bank, ADB, JICA etc.), as the case may be, from participating in any project, and the bar subsists as on the Bid submission date, would not be eligible to submit Bid.	With reference to this Clause, we request Authority to revise the pre-qualification regarding blacklisting/ debarment. Entities that are not blacklisted / debarred at the time of the submission of bid should be allowed to participate in the tender process. Further, entities whose blacklisting was subsequently revoked / set aside should also be allowed to participate in the tender process. Kindly include the same in the RFP under pre-qualification criteria.	Tender condition shall prevail.
(81)	Point 8 in Form 4A on Page 56 of 137 of RFP and Point 2 of Form 4G on Page 66 of 137 of RFP	Declaration on blacklisting / debarment in Form 4A and Form 4G	The Authority is requested to allow us to submit the blacklisting declaration based on the present status of our backlisting / debarment as on date of submission of the bid.	Allowed.
(82)	SECTION-II: INSTRUCTIONS TO BIDDERS (ITB) Clause 19.1.3 Enclosure – III Sub-Clause (e) Page 33 of 137 of RFP	e. List of litigation history, if any.	We request the client to consider that PwCPL ("the Company") has long standing operations in India and it would be unusual for a company of this stature to not be party in certain litigations in its ordinary course of business. However, PwCPL believes that if these litigations are adversely determined, the same will not impact the Company's ability to perform the services under this RFP. Hence, we request the client to modify the undertaking/qualification criteria to the effect that there should only be a declaration (without litigation history) regarding the pending litigation and their impact on the ability of the Bidder to perform services under the proposed tender.	Tender condition shall prevail.
(83)	SECTION-II: INSTRUCTIONS TO BIDDERS (ITB) Clause 3.7, on Page 18 of 137 of RFP	3.7 Bidder should have, during the last three years (2019-20-2021-22) neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial Employer or a judicial pronouncement or arbitration award against the Bidder, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder	We request the Authority to kindly modify the undertaking to the effect that any such termination should have been approved/upheld by any court decree or arbitral award against the bidder to such effect. Further for performance, we confirm there is no instance of any contract having been terminated on account of any determined non-performance of contract. Our undertaking	Tender condition shall prevail.

	and Point 5 in Form 4G on Page 66 of 137 of RFP	<u>Form 4G:</u> 5. We confirm that neither we have failed nor we have been expelled from any project or agreement during the last 03 years.	shall be subject to the aforesaid clarifications. Please confirm.	
(84)	SECTION-II: INSTRUCTIONS TO BIDDERS (ITB) Clause 27 on page 47 of 137 of RFP	27. Insurance 27.1 The Consultant shall maintain at his own cost personal and accident insurance for all his Personnel and property as considered satisfactory by the Client to cover any risks arising from work and services to be rendered by the Consultant under this Consultancy Agreement. The Consultant shall ensure the same for his sub-Consultants also. Client shall not be responsible for any such events or effects thereof. A statement to this effect may be submitted with the offer.	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.	Accepted but all the working team should be appropriately insured.
(85)	Section - III DATA SHEET, Clause no. 9 Page 52 of 137 of RFP	Cost of Tender Document: INR 5,900/- (Rs 5000 + 18% GST)	Please refer to Rule 161 (IV) of GFR 2017. We understand that cost of tender document should not be charged under the said Rule. Accordingly, we request the Authority to kindly waive / delete the requirement for submitting of Cost of Tender Document under the RFP.	Tender condition shall prevail.
(86)	SECTION-VII: STANDARD FORM OF CONTRACT Clause 1.4 Page 104 of 137 of RFP	Clause on Termination without notice and rectification period	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 condition shall prevail.
(87)	SECTION-VII: STANDARD FORM OF CONTRACT Clause 2.8 Liquidated Damages Page 109 of 137 of RFP	LDs capped at higher percentage	We request Authority to kindly cap the liquidated damages/penalties cumulatively to 5% of the total contract value.	Tender condition shall prevail.
(88)	SECTION-VII: STANDARD FORM OF	2.8.4 All sums payable by way of compensation under any of the conditions will be considered as reasonable compensation without reference to the actual loss or	Payment of such damages shall not relieve the Consultant of his obligation to complete the work or from any other of his obligation or liabilities under the contract.	Tender condition shall prevail.

	<p>CONTRACT</p> <p>Clause 2.8 Liquidate Damages: Sub- Clause 2.8.4</p> <p>Page 109 of 137 of RFP</p>	<p>damage which will have been sustained.</p>	<p>We request the Authority that the selected agency should not be penalised twice for one default. Hence, we request the omission of this clause.</p>	
(89)	<p>SECTION-VII: STANDARD FORM OF CONTRACT</p> <p>Point 12(vi) of Page 117 of 137 of RFP</p>	<p>vi. All claims regarding indemnity shall survive the termination or expiry of the contract.</p>	<p>We request Authority that any obligation arising under the agreement shall survive for a period of 12 months, post termination/expiry of the Contract</p>	<p>Accepted.</p>
(90)	<p>SECTION-VII: STANDARD FORM OF CONTRACT</p> <p>Clause 5.5 on Page 115 of 137 of RFP; and Clause 13(b) on Page 118 of 137 of RFP</p>	<p>5.5 In case of delay in the progress of work, the employer shall issue to the Consultant a memo in writing pointing out the delay in progress and calling upon the Consultant to explain the causes for the delay within 3 days of receipt of the memo and 10 days from issuance of memo whichever is earlier. If the employer is not satisfied with the explanations offered, he may forfeit the security deposit and / or withhold payment of pending bills in whole or in part and/ or get the measures of rectification of progress of work accelerated to the pre-defined level at the risk and cost of the Consultant.</p>	<p>Request Authority to limit our liability under this clause to 10% of the value of corresponding goods/services not delivered by us. Please also confirm that client will use government procurement norms (including price discovery) for procurement of such services from third parties.</p>	<p>Tender condition shall prevail.</p>
(91)	<p>SECTION-VII: STANDARD FORM OF CONTRACT</p> <p>Clause 11 Professional Liability: Sub- Clause 11.4</p> <p>Page 117 of 137</p>	<p>11.4 This limitation of liability shall not affect the Consultants' 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.</p>	<p>We request the Authority to limit the consultant's liability to 1x of the total contract value.</p> <p>This is as per GFR and the guidelines issued by Meity. It is also the normal industry practice. The clause may be amended as follows:</p> <p><i>"Purchaser/Client agrees that Consultants total liability for all claims connected with the services or this agreement (including but not limited to negligence), whether in contract, tort, statute, indemnities or otherwise, is limited to one time the professional fees paid / payable for the services. Purchaser/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."</i></p>	<p>Tender condition shall prevail.</p>

			Further, Authority is also requested to delete exceptions to the limitation of liability. The exceptions render the limitation of liability ineffective and make the liability unlimited.	
(92)	SECTION-VII: STANDARD FORM OF CONTRACT Clause 3 Obligations of the Consultant: Sub- Clause 3.1.2 Conflict of Interests Page 112 of 137	3.1.2 Conflict of Interests: The Consultant shall hold the Employers interests paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments or their own corporate interests. The Consultant shall not engage and shall cause their personnel as well as their sub-Consultants and their personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this contract. If during the period of this contract, a conflict of interest arises for any reason, the Consultant shall promptly disclose the same to the Employer and seek its instructions.	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 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.	Tender condition shall prevail.
(93)	SECTION-VII: STANDARD FORM OF CONTRACT Clause 3 Obligations of the Consultant: Sub- Clause 3.1.3 Confidentiality Page 112 of 137 of RFP	3.1.3 Confidentiality: Except with the prior written consent of the Employer the Consultant and the personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the services, nor shall the Consultant and its personnel make public the recommendations formulated in the course of, or as a result of the services.	We request the authority to consider that we may have to disclose information for successful accomplishment of work and for regulatory and internal compliance purposes. However, to the extent legally permissible, we will ensure that even if the information is disclosed to any third party, such parties maintain confidentiality of such information. The clause may be amended as follows: <i>"Consultant may disclose confidential information: (a) to its employees, directors, officers and subcontractors, on a need to know basis, as required for performance of services, provided such employees, directors, officers and subcontractors are bound by confidentiality obligations; (b) where required by applicable law or regulation or for regulatory and compliance (both internal and external) purposes."</i>	The disclosure is allowed only with the written permission of IWAI.
(94)	SECTION-II: INSTRUCTIONS TO BIDDERS (ITB) Clause 19: Submission of Bids 19.1.4 Enclosure – IV Page 34 of 137 of RFP	(x) During execution of work, the replacement of the key personnel shall only be on health grounds of the individual or if the personnel ceases to work for the Consultant and is no longer an employee of the Consultant. The Consultant shall not replace any of the key personnel without the written prior consent of the Employer. In case Consultant engages in such activity i.e. replacement of key personnel with or without employers' prior consent, such action shall attract a deduction of 5% of remuneration of the replaced personnel. However, there shall be no deduction if the replacement is made on health grounds of the personnel. The Consultant shall submit medical certificate of such personnel intended to be replaced on	There may be circumstances beyond the reasonable control of the Consultant, where a replacement of personnel may be necessary, such as illness, death, resignation or disciplinary action against the concerned personnel, etc. In such cases, the authority is requested to allow exceptions to this clause and make penalties inapplicable. The Consultant shall exercise reasonable efforts to provide a suitable replacement to the authority.	Tender condition shall prevail.

		health grounds.		
(95)	<p>SECTION-II: INSTRUCTIONS TO BIDDERS (ITB)</p> <p>Clause 30: Ownership of Document and Copyright</p> <p>Page 48 of 137 of RFP</p>	<p>30. Ownership of Document and Copyright</p> <p>All the deliverables and study outputs including primary data shall be compiled, classified and submitted by the Consultant to the Employer in hard copies and editable soft copies in addition to the requirements for the reports and deliverables indicated in the Terms of Reference.</p> <p>The study outputs shall remain the property of the Employer and shall not be used for any purpose other than that intended under these Terms of Reference without the prior written permission of the Employer. In the case of any deliverables by Consultant consisting of any Intellectual Property Rights ("IPR") rights of the Consultant, the Consultant shall provide the Employer with necessary irrevocable royalty-free license to use such IPR. Further, for the avoidance of any doubt, it is clarified that any intellectual property developed during the course of, or as a result of, the services rendered in relation to the consultancy, shall be and remain property of the Employer.</p>	<p>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 the authority 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 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>	Tender condition shall prevail.
(96)	<p>SECTION-VII: STANDARD FORM OF CONTRACT</p> <p>Clause 1.4 – Sub- Clause (vi)</p> <p>Page 104 of 137 of RFP</p>	<p>vi) The Consultant shall insure all their personnel working on this project and keep IWAI indemnified of all liabilities, loss, etc.</p>	<p>There are several remedies available under law and contract to you (i.e. Authority) for such breach of obligations. For eg, there are penalties and LDs that may be imposed for some of these breaches. Seeking indemnities for such breaches frustrates the entire purpose of such remedies available to you. We understand that remedies other than indemnity will be sufficient for such breaches. We request you to kindly delete this section.</p> <p>If you still insist on retaining this section, then we request you to at least make them subject to overall cumulative liability cap of total contract value and subject to final determination of court/arbitrator.</p>	Tender condition shall prevail.
(97)	<p>SECTION-VII: STANDARD FORM OF CONTRACT</p> <p>Clause 8 Arbitration</p> <p>Page 116 of 137 of</p>	<p>8 Arbitration</p> <p>In the event of any dispute or difference covering, relating to or raising out of this agreement, the parties shall do their utmost to settle it in fair and amicable manner in a spirit of mutual cooperation and any dispute or difference not to settled within thirty days, shall be referred to the sole arbitration of a person so nominated by the Chairperson, IWAI and such arbitrator shall have the right to extend the period of arbitration proceedings with the consent of the parties.</p>	<p>In order to uphold the principles of natural justice (Nemo judex in causa sua- no one should be judge in one's own case) and the provisions of the Arbitration and Conciliation Act, we request that the arbitrator(s) be appointed with mutual consent of both the parties. Alternatively, a panel of three arbitrators may be set up in which one arbitrator is appointed by consultant, one by the client and the two arbitrators appoint third arbitrator. Request Authority to please confirm the same.</p>	Tender condition shall prevail.

	RFP	The venue of the arbitration shall be Noida. In view of the arbitration proceedings, the work under the agreement should not be suspended.		
(98)	<p>SECTION-VII: STANDARD FORM OF CONTRACT</p> <p>Clause 12 Miscellaneous Provisions – Sub- Clause (iii)</p> <p>Page 117 of 137 of RFP</p>	<p>iii. The Consultant shall at all-time indemnify and keep indemnified the Employer against all claims/damages etc. for any infringement of any Intellectual Property Rights (IPR) while providing its services under this project.</p>	<p>We request Authority to kindly include the following exceptions and procedure as these are industry standards and reasonable. They are also mentioned in the MeitY guidelines.</p> <p><i>"1. Notwithstanding anything contained in this agreement, if the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages, that may be finally awarded against Indemnified Party.</i></p> <p><i>2. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by: a) Indemnified Party's misuse or modification of the Service; b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; However, if any service, information, direction, specification or materials provided by Indemnified Party or any third party contracted to it, is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either: i. Procure the right for Indemnified Party to continue using it; ii. Replace it with a noninfringing equivalent; iii. Modify it to make it noninfringing.</i></p> <p><i>3. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement."</i></p>	Tender condition shall prevail.
(99)	<p>SECTION-VII: STANDARD FORM OF CONTRACT</p> <p>Clause 12 Miscellaneous Provisions – Sub- Clause (iv) and (v)</p> <p>Page 117 of 137 of RFP</p>	<p>iv. The Consultant shall at all times indemnify and keep indemnified the Employer against any claims in respect of any damages or compensation payable in consequences of any accident or injury sustained or suffered by its (the Consultant's) employees or agents or by any other third party resulting from or by any action, omission or operation conducted by or on behalf of the Consultant.</p> <p>v. The Consultant shall at all times indemnify and keep indemnified the employer against and all claims by employees, workman, Consultants, sub-Consultants, suppliers, agent (s), employer engaged or otherwise working for the Consultant, in respect of wages, salaries, remuneration, compensation or the like.</p>	<p><i>We request Authority to kindly delete these clauses under indemnity. Alternatively, kindly cap these indemnities to limitation of liability cap or one time the fees payable to us under this Agreement.</i></p>	Tender condition shall prevail.

(100)	No clause in RFP (Additional Clause proposed)	Limitation of Liability: Indirect and consequential losses are not excluded from liability	<p>Authority is requested to include the clause to state that we (i.e. Consultant) 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.</p> <p>Hence, Authority is requested to include the below clause:</p> <p><i>"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."</i></p>	Not accepted.
(101)	No clause in RFP (Additional Clause proposed)	<p>Confidentiality Obligations such as:</p> <ul style="list-style-type: none"> • Obligation to return all confidential information / destroy all confidential and no right to retain a copy <p>No right to disclose client name or project for citation / reference purposes</p>	<p>We request Authority 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.</p> <p>Further it may be appreciated that this is a prestigious project for us and we would like to showcase this project in our future proposals. We request Authority to allow us to refer client's name and the services we have performed for you for citation / reference purposes, as long as we do not disclose your confidential information.</p>	Accepted.
(102)	No clause in RFP (Additional Clause proposed)	Indemnities not subject to final determination by court/arbitrator	We agree to indemnify to the extent the damages/losses are finally determined by a competent court or arbitration. Please make indemnities subject to final determination by court/arbitrator. This is also the industry standard and prescribed by Meity in its guidelines.	Not accepted.
(103)	No clause in RFP (Additional Clause proposed)	No process for indemnity	<p>Request Authority to kindly include a clause covering the following.</p> <p>The indemnities set out in this agreement shall be subject to the following conditions:</p> <ul style="list-style-type: none"> (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise; (ii) (the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense; (iii) if the Indemnifying Party does not assume full control over the Defense of a claim as provided in 	Not accepted.

			<p>this clause, the Indemnified Party may participate in such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in losses;</p> <p>(iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;</p> <p>(v) all settlements of claims subject to indemnification under this Clause will: a) be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and b) include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;</p> <p>(vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;</p> <p>(vii) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;</p> <p>(viii) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this clause, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and</p> <p>if a Party makes a claim under the indemnity set out under Clause above in respect of any particular loss or losses, then that Party shall not be entitled to make any further claim in respect of that loss or losses (including any claim for damages).</p>	
(104)	No clause in RFP (Additional Clause proposed)	No protection to our pre-existing IPRs	<p>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 kindly request that we are allowed to retain ownership of our pre-existing IPRs,</p>	Not accepted.

			<p>else we might be not be able to use these in providing services to you in order to protect our ownership in them. We request you to kindly include the below clause. This is also the standard mentioned by Meity in its guidelines.</p> <p><i>"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."</i></p>	
(105)	No clause in RFP (Additional Clause proposed)	No third-party disclaimer: There is no restriction on the usage of deliverable. No third-party disclaimers.	<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.</p> <p>Please confirm our understanding is correct.</p>	Not accepted.
(106)	No clause in RFP (Additional Clause proposed)	No acceptance criteria for our deliverables	<p>If the project is to be completed on time, it would require binding both parties with timelines to fulfill their respective part of obligations. We request you that you incorporate a deliverable acceptance 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><i>"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."</i></p>	Not accepted.
(107)	No clause in RFP (Additional Clause proposed)	Deployment of resources during situations such as Covid19 crisis	<p>If there are any circumstances that reasonably restricts travel or physical presence of our personnel at your office / location, then without prejudice to your payment obligations, you shall allow such personnel to work from home or other remote location till the time such reasonable restrictions exist. Any</p>	Accepted.

			delay / default in performing our obligations arising from such restrictions, shall not be attributable to us and shall not be considered a breach of contract on our part and no consequent damages / penalties etc. arising therefrom would be imposed on us under the Contract. Request Authority to kindly include relevant clause in RFP covering above requirements.	
(108)	No clause in RFP (Additional Clause proposed)	Liquidated damages: Not sole and exclusive remedy	We understand that as per Contract Act, where LDs are stipulated, generally any other damages cannot be claimed. Therefore we request Authority to kindly make imposition of liquidated damages as sole and exclusive remedy for corresponding breaches.	Not accepted.
(109)	No clause in RFP (Additional Clause proposed)	Liquidated damages: Not limited to solely our fault	We understand that we would be liable to pay liquidated damages to the extent corresponding breach is solely attributable to us. Kindly confirm.	Not accepted.

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