

Clarification No.-I dated 20/12/2023 to the RfP Document for Engagement of consultant for assistance in tax and business regulatory services to set up a Special Purpose Vehicle ('SPV') in Kenya.

GeM Bid No.: GEM/2023/B/4218799

Sl. No.	Ref Clause No.	Provision in RfP documents	Bidder's Queries	POWERGRID's reply
1.	Terms Of Reference (ToR), Section-II of the RfP documents Clause 7.1.3 of RfP documents	<p>Phase 3: Implementation of finalized structure and post implementation support</p> <p>Consultant shall provide the following assistance:</p> <ol style="list-style-type: none"> 1. Assistance in incorporation and setting up of entity(ies) in Kenya/ intermediate jurisdiction; 2. Assistance in obtaining necessary tax registrations as applicable in Kenya/ intermediate jurisdiction; 3. Ongoing assistance in compliances required to be done with respect to Direct taxes, TP and Indirect taxes in Kenya/ intermediate jurisdiction by the JV/ O&M/ subsidiary entity, for a period of 1 year from incorporation of entity; and 4. Tax registrations to be obtained for the employees posted/ deputed in Kenya/ intermediate jurisdiction and advising on tax compliance and liability, thereof. <p>.....</p> <p>7.1.3 Further, in addition to the Consultancy fee quoted by the Consultant, administrative expenses and Out of Pocket Expenses (OPE) incurred for travel & stay shall be reimbursed by POWERGRID as per actual against documentary evidence.</p>	<p>1. Section-II: TERMS OF REFERENCE (Scope of Work), please confirm the following: Phase 3: Implementation of finalized structure and post implementation support</p> <ol style="list-style-type: none"> 1. While tax registrations for the employees deputed to Kenya/ intermediate jurisdiction are to be included in the scope, whether the Consultant will also be expected to assist with undertaking tax compliances in these jurisdictions. 2. How many personnel (indicatively) will be deputed/ hired locally in Kenya and/ or intermediate jurisdiction for the purposes of the Project. 3. For entity registration, we understand that the cost of government fee/ registration fee to be paid to the relevant authorities in Kenya/ intermediate jurisdiction, cost of translation of documents in local languages (if required), cost of external notarisations in Kenya/ intermediate jurisdiction shall be reimbursed by Power Grid to the Consultant in accordance with Para 7.1.3 of SECTION – III: CONDITIONS OF CONTRACTS. Please confirm. 4. Please confirm that notarisation of documents <u>in India</u> (for shareholder documents, if required as part of Phase 3) will be managed by Power Grid. 	<ol style="list-style-type: none"> 1. Consultant is required to assist POWERGRID with undertaking tax compliances in these jurisdictions. 2. Tantative personnel (indicatively) to be deputed by POWERGRID shall be upto 30 nos. 3. Shall be dealt in line with provision of the bidding documents. 4. It will be managed by POWERGRID.

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2.	Terms Of Reference (ToR), Section-II of the RfP documents	<p>Phase 4: Investment in other countries</p> <p><i>Consultant shall provide the assistance specified in Phase 1, 2 & 3 above with respect to proposed investments in other countries as well.</i></p> <p><i>The above-mentioned scope of services shall cover the following legislations:</i></p> <ol style="list-style-type: none"> 1. <i>Income-tax Act, 1961 and Income-tax Rules, 1962 made thereunder;</i> 2. <i>Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ('OECD Guidelines – January 2022') published by the Organisation for Economic Cooperation and Development ('OECD');</i> 3. <i>Double taxation avoidance agreement between India and Kenya (and as applicable between India and intermediate jurisdictions);</i> 4. <i>Foreign Exchange Management Act, 1999 including,</i> <ol style="list-style-type: none"> a) <i>Foreign Exchange Management (Overseas Investment) Regulations, 2022</i> b) <i>Foreign Exchange Management (Overseas Investment) Rules, 2022</i> c) <i>Foreign Exchange Management (Overseas Investment) Directions, 2022 and</i> d) <i>Other RBI regulations, as applicable.</i> 5. <i>Securities and Exchange Board of India ('SEBI') regulations, as applicable; and</i> 6. <i>Applicable overseas tax laws (the information provided in Phase 1 will be high-level and will need to be confirmed with local team in Phase 2).</i> 	<p>With reference to the above Bid, the Buyer Specific Additional Terms and conditions does not mention the exact names of the other jurisdictions for Phase 4 (Investment in Other Countries). Request you to kindly confirm the said jurisdictions at the earliest, so that we can co-ordinate with XXXX overseas teams.</p> <p>Further, we have initiated our internal risk compliances and have also reached out to XXXX Kenya for providing their fee quote, so that a consolidated fee quote can be given. Also, once you confirm the jurisdictions, we will be able to get an exact idea of the countries involved and provide our fee quote accordingly.</p> <p>In case you need any further information / clarification, do let us know.</p>	<p>In addition to KENYA, Bidder is expected to cover following countries.</p> <ol style="list-style-type: none"> 1. Tanzania 2. Mozambique 3. Nigeria 4. Morocco
			<p>Phase 4: Investment in other countries</p> <ol style="list-style-type: none"> 1. How many countries will the Bidder be expected to cover under Phase 4, relevant for purposes of estimating the efforts? 2. Are they any identified countries which will need to be covered under Phase 4? 	

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3.	Clause 17.0.0, Conditions of Contracts, Section-III of RfP documents	<p>17.0.0 LIABILITY OF THE CONSULTANT</p> <p>17.1.0 <i>Any mistake or inadequacy appear in the documents submitted by the consultant, the consultant shall perform at its own initiative and no extra cost to POWERGRID, all such services as shall be necessary to remedy the said mistake or inadequacy.</i></p> <p>17.2.0 <i>The Consultant shall be further liable for the consequences resulting from errors and commissions due to negligence or from inadequacy on its part or on the part of its employees or associates or experts to the extent of the fees actually received by the Consultant.</i></p> <p>17.3.0 <i>Consultant shall indemnify and hold harmless POWERGRID against any and all claims, demands, and/or judgements of any nature brought against POWERGRID arising out of the services by Consultant and it's staff under this Agreement. The obligation under this paragraph shall survive the termination of this Agreement.</i></p>	<p>.....</p> <p>we would request you to please help us resolve an additional query in relation to clause 17.3.0 LIABILITY OF THE CONSULTANT of Section III: Conditions of Contracts, quoted below:</p> <p>“Consultant shall indemnify and hold harmless POWERGRID against any and all claims, demands, and/or judgements of any nature brought against POWERGRID arising out of the services by consultant and it's staff under this Agreement. The obligation under this paragraph shall survive the termination of this Agreement.”</p> <p>Please note that as per standard market practice, the liability of consultant against any claims arising under Clause 17.3.0 should be capped to the extent of fee received by the Consultant. Would request you to consider the same. In addition to the above, would request you to consider including the following clauses:</p> <p>“17.4.0 Owner (and any others for whom Services are provided) may not recover from Consultant, in contract or tort, under statute or otherwise, any amount with respect to loss of profit, data or goodwill or any other consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this contract or otherwise relating to the Services, whether or</p>	<p>The provisions of the RfP document read in conjunction with Clause 17.2.0 of Section-III regarding limitation of liability of the Consultant are amply clear and shall remain unaltered.</p>

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			<p><i>not the likelihood of such loss or damage was contemplated.</i></p> <p><i>17.5.0 Owner (and any others for whom Services are provided) may not recover from consultant in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this contract/Agreement or otherwise relating to the Services.</i></p> <p><i>17.6.0 Owner shall make any claim relating to the Services or otherwise under this contract no later than three years after discovery of the cause of action in relation to such claim."</i></p>	
4.	Clause 2.1.2, Conditions of Contracts, Section-III of RfP documents	The firm has to be a ' Class-I local supplier ' as defined under Public Procurement (Preference to Make in India) Order, 2017 issued by Department for promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India vide order dated 15/06/2017, its revision dated 16/09/2020 (PPP-MII Order) read in conjunction with 'Public Procurement (Preference to Make in India) to provide for Purchase Preference (linked with local content) in respect of Power Sector' order dated 16/11/2021 issued by Ministry of Power (MoP Order) and subsequent modifications/ amendments if any	Para 2.0.0 SELECTION OF CONSULTANT - Para 2.1.2 (Page 18) states that the bidder must <u>meet the local content requirement of minimum 60%</u> to be a " Class-I local supplier ". Now, in this regard, we would request for confirmation on the applicability and the methodology to be followed for this undertaking considering for a services project like this, majority of the work will be rendered through foreign offices (especially implementation part and validation) which is different from a typical EPC/ supply contract. Having said, we confirm that the entire project will be managed and delivered to Powergrid by the team based out of the Gurugram office.	Provision of RfP documents are amply clear. Bidder(s) are advised to prepare and submit their proposal(s) accordingly.

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		<p>'Local Content' means the amount of value added in India which shall be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.</p> <p>Presently, the local content requirement to categorize a supplier as 'Class-I local supplier' is minimum 60%.</p>		
5.	Clause 13.0.0, Conditions of Contracts, Section-III of RfP documents	<p>All payments under the Contract for the services rendered shall be released, on stage-wise completion of the services.</p> <p>The payment to the consultant shall be regulated as below:-</p> <p>(a) Initial Payment: 60% (Sixty Percent) of the total lumpsum price of respective Phase on submission of draft report.</p> <p>(b) Final Payment: 40% (Forty Percent) of the total lumpsum price of respective phase on submission of Final report with delivery of presentation and acceptance by POWERGRID</p> <p>It's important to note that the above payment terms are tentative and can be adjusted based on the specific requirements of the project and the procurement rules and regulations of POWERGRID. The payment terms will be detailed in the contract agreement between POWERGRID and the consultant.</p>	<p>Para 13.0.0 TERMS OF PAYMENTS – Para 13.2.0 (Page 35) mentions that 40% of the total lumpsum price will be paid on acceptance of the final report delivered by us. We would request to consider our proposal to reduce this milestone percentage to 20% since majority of the work will be completed upon submission of the draft report followed by presentation of the analysis.</p>	Provisions of RfP documents shall remain unaltered.
6.			<p>Para 13.0.0 TERMS OF PAYMENTS – Please confirm the payment milestones for Phase 3 of the TERMS OF REFERENCE.</p>	The Clause 13.0.0 of Section-III of RfP documents regarding terms of payment is amply clear.

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7.	General		2. SECTION-IV: FORMS & ATTACHMENTS (Page 57) – Form No. 4 “Information for ex-employees of Purchaser in Bidder’s firm, E-payment, PF details and declaration regarding Micro/Small & Medium Enterprises” – [S. No. 4] of Table under Para II “Information for E-payment, PF details and declaration regarding Micro/Small & Medium Enterprises”, please confirm whether for “ GST Nos. (STATE WISE) ”, the bidder is required to mention all the GST numbers of the bidding firm or only the GST number of the main office location of the authorized representative, who will be filing the bid, is sufficient for the purposes of the bid.	GST of Haryana or principal place of business may be submitted.										
8.	Clause 15.0.0, Section-III, Conditions of Contract of RfP documents	<p>WORK SCHEDULE</p> <p>Time is the essence of the contract and the work schedules for the assignment shall be strictly adhered to, as below:</p> <table border="1"> <thead> <tr> <th>Phase</th> <th>Activities</th> <th>Time period for submission of Report</th> </tr> </thead> <tbody> <tr> <td>Phase - 1a</td> <td>Setting up of Joint venture entity</td> <td rowspan="3">30 days from NOA</td> </tr> <tr> <td>Phase - 1b</td> <td>Setting up of entity for operation and Maintenance (O&M) of the project</td> </tr> <tr> <td>Phase - 2</td> <td>Validation of overseas structure</td> </tr> </tbody> </table>	Phase	Activities	Time period for submission of Report	Phase - 1a	Setting up of Joint venture entity	30 days from NOA	Phase - 1b	Setting up of entity for operation and Maintenance (O&M) of the project	Phase - 2	Validation of overseas structure	<p>SECTION – III: CONDITIONS OF CONTRACTS – Para 15.0.0 WORK SCHEDULE: We propose that the timelines for Phase – 3 be increased to a minimum of 45 days from Letter of confirmation from Employer as in our experience, this is a complex exercise requiring execution of multiple forms/ documentation including external notarisations and relevant authorities in African countries are typically take substantial time in their review before moving ahead with the application.</p>	Time period shall be as per RfP documents.
Phase	Activities	Time period for submission of Report												
Phase - 1a	Setting up of Joint venture entity	30 days from NOA												
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		Phase - 3	Implementation of finalized structure and post implementation support	30 days from Letter of confirmation from Employer		
		Phase - 4	Investment in other countries	30 days from Letter of confirmation from Employer		
					