

March 31, 2020

Corrigendum – 03

Sub: Clarifications on Pre-Bid Meeting held on March 13, 2020

E-Tender Reference No.	EXIM/RFP/2019-20/080
E-Tender For:	Data Centre Design and Construction for Export-Import Bank of India

With reference to queries received by bidder during the pre-bid meeting held on March 13, 2020, the clarifications by the Bank are as follows:

Section	Point	RFP Term	Clarification / Change / addition requested	Response
General Conditions of RFP	2	Effective Date of the Contract: The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.	We understand that EMD won't be forfeited if the Exim Bank submits Deviations to the Bid. Please confirm. LOI shall be accepted only if it is in consonance with a mutually agreed DRAFT Contract, and Supplier shall not be in default for non-acceptance of a non-conforming LOI and the Customer shall correct such non- conformity and release a fresh LOI. Generally, we understand that during the Contract finalization (despite the fact that 'draft contract' is proposed to be prepared before pre-bid meeting) there will be certain changes required to capture the mutual understandings, the terms used will be harmonized and made uniform to bring consistency in the final Contract documentation and	No change

			amendments/ clarifications including changes mutually agreed will be addressed wherever relevant in the different documents/ clauses. Hence please confirm that the EMD will not be forfeited during the process of contract finalization	
	6	Liquidated Damages: In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc. as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The BUYER may also deduct from the SELLER as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores/services.	Please clarify that LD for breach of SLA shall be the sole and exclusive remedy. This obligation shall not apply to delays arising from actions or inactions of the Purchaser or any third party. Payment of liquidated damages under the agreement shall be in full and final satisfaction of all claims and liabilities arising from lateness or defective performance. LD should be on the delayed portion only. LD should be subject to excusable events/ force majeure etc. after deduction of LD/penalties, No other deduction or remedy is allowable under equity and law. Bidder shall be paid for services and equipment delivered till date of such termination.	No change
	7	Termination of Contract: The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases: The Seller is declared bankrupt or becomes insolvent. The Buyer has noticed that the Seller has utilized the services of any Indian/Foreign agent	please include a prior written Notice of 30 days	No change

		in getting this contract and paid any commission to such individual/company etc. With mutual agreement As per decision of the Arbitration Tribunal		
	9	<p>Patents and other Industrial Property Rights: The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.</p>	PLEASE AMEND THIS CLAUSE AS Service Provider cannot be responsible for IP infringement as OEM and Licensors give such Indemnities for their products and SI can only pass through the same on AS-IS BASIS, If SI gives its own manufactured goods, it shall give such Indemnity and open ended liability. The Indemnity for Goods be checked on a back to back basis with OEM, and the Service Provider will pass-through this Indemnity on AS-IS BASIS.	No change
			We disclaim all warranties implied by law, Expressly disclaim implied warranties as to quality not expressly stated in the contract and fitness for purpose. All the warranties shall be on back to back basis with OEMs	No change
			Supplier shall not be responsible for any implied warranties including warranties of merchantability, fitness for a purpose.	No change
			We will be including out Trade Control Clauses in the bid. Please confirm your acceptance.	No change
	1	Advance Payments: No advance payment(s) would be made OR Advance payments may be made upto 30% against appropriate Bank guarantee or any	There is no Appendix given in tender for Bank Guarantee format	Attached with this corrigendum-Appendix-I

Special Conditions of RFP		authorised guarantee, as acceptable to the Buyer. The specimen of BG for Advance Payments is given in Appendix		
	3	AMC	AMC period is not clear. Page 11 talks for 2 years and page 68 talks for 1 year warranty + 4 years of AMC.	All the material/software supplied should be supplied with initial warranty of 2 years and 3 years AMC after expiry of initial 2 years warranty. (Except Network Switches component – they should be with 5 Years warranty)
	3.f	AMC: The Buyer reserves its right to terminate the maintenance contract at any time without assigning any reason after giving a notice of 2 months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the Seller for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms.	Request to add this clause: the Supplier shall be entitled to receive: the outstanding balance of the Contract value of the Goods which have been delivered or the Services performed up to the effective date of such termination, and of those Goods which are then capable of being delivered, and the costs incurred by the Supplier up to the date of notice of termination in performing work on Services and /or Goods or the Goods that have been ordered for delivery up the date of such termination.	No change
			This clause of termination should be linked / subject to : Material Breach of SLA and therefore a breach of cap of 10% of LD/penalties for four successive quarters; Only the affected portion of the Contract/ Order should be terminated Notice of default has to specify the reasons and should allow a cure period of 90 days. Only if The Customer fails to give a satisfactory reply and fails to proceed with remedial steps, the Customer can terminate the portion of the	No change

			Contract affected by Supplier's wilful default.	
Instructions to bidder	5 (3)	Retention amount for 12 months from handover date (5%)	Payment terms as mentioned on page 74 is inclusive of AMC as well. Will Exim Bank withheld 5% (retention) for the AMC? Is PBG required to submitted for this. If yes, Is there a format available.	<p>The Bank will withheld 5 % retention money of GRAND TOTAL (A+B+C) (PPrice Bid)</p> <p>PBG format is attached at Appendix-II</p>

BANK GUARANTEE FOR ADVANCE PAYMENT

(To be stamped in accordance with Stamp Act)

The non-judicial stamp paper should be in the name of issuing Bank

Ref.....

Bank Guarantee No.....

Date.....

To

Export-Import Bank of India,
Floor No.21, World Trade Centre Complex, Cuffe Parade, Mumbai-400025

Dear Sirs,

1. In consideration of the Export-Import Bank of India, on behalf of the President of India, (hereinafter referred to as the 'Owner' which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s..... with its Registered/Head office at (hereinafter referred to as the "Contractor" which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Notification of award No..... dated..... and the same having been acknowledged by the Contractor, resulting in a Contract, bearing No..... dated.....valued at.....for..... (scope of work) and the Owner having agreed to make an advance payment to the Contractor (specify nature of work for which advance is given) not exceeding Rs. (in words & figures) as an advance against Bank Guarantee to be furnished by the Contractor.
2. We.....(Name & Address) having its Head office at(hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the amounts due and payable under this guarantee without any demur, reservation, context, recourse or protest and/or without any reference to the Contractor merely on a demand from the Owner stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said supplier(s)' failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive and binding notwithstanding any difference between the Owner and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Owner discharges this guarantee.
3. The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee, from time to time to vary the advance or to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Owner and the Contractor or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under these presents by any exercise by the Owner of its liberty with reference to the matters

aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Owner or any other indulgences shown by the Owner or by any other matter or thing, whatsoever which under law would, but for this provision have the effect of relieving the Bank.

4. The Bank also agrees that the Owner at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Owner may have in relation to the Contractor's liabilities.
5. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Service Provider(s).
6. Notwithstanding anything contained hereinabove:
 - (1) Our liability under this guarantee is restricted to ` (in words & figures).
 - (2) This Bank Guarantee will be valid upto; and
 - (3) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only upon service of a written claim or demand by you on or before

In witness whereof the Bank, through its authorised officer, has set its hand and stamp on this.....day of.....20.....at.....

WITNESS

.....
(Signature)

.....
(Signature)

.....
(Name)

.....
(Name)

.....
(Official Address)

.....
(Designation with Bank Stamp)

Attorney as per Power of Attorney No.....

Dated.....

PERFORMANCE BANK GUARANTEE

(To be stamped in accordance with Stamp Act)

The non-judicial stamp paper should be in the name of issuing Bank

Ref.....

Bank Guarantee No.....

Date.....

To

Export-Import Bank of India,

Floor No.21, World Trade Centre Complex, Cuffe Parade, Mumbai-400025

Dear Sirs,

1. In consideration of the Export-Import Bank of India, on behalf of the President of India, (hereinafter referred to as the 'Owner' which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s..... with its Registered/Head office at (hereinafter referred to as the "Contractor" which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Notification of award No..... dated and the same having been acknowledged by the Contractor, resulting in a Contract, bearing No..... dated.....valued at.....for..... (scope of Contract) and the Contractor having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract not exceeding Rs. (in words & figures).
2. We.....(Name & Address of Bank Branch) having its Head office at (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the amounts due and payable under this guarantee without any demur, reservation, context, recourse or protest and/or without any reference to the Contractor merely on a demand from the Owner stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Owner by reason of breach by the said Contractor(s) of any of the terms or conditions contained in the said Agreement or by reason of the Contractor(s)' failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive and binding notwithstanding any difference between the Owner and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Owner discharges this guarantee.
3. The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee, from time to time to extent the time for performance of the Contract by

the Contractor. The Owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner,

and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Owner and the Contractor or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under these presents by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other

act of omission or commission on the part of the Owner or any other indulgences shown by the Owner or by any other matter or thing whatsoever which under law would, but for this provision have the effect of relieving the Bank.

4. The Bank also agrees that the Owner at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Owner may have in relation to the Contractor's liabilities.
5. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Service Provider(s).
6. Notwithstanding anything contained hereinabove:
7.
 - (1) Our liability under this guarantee is restricted to `..... (in words & figures).
 - (2) This Bank Guarantee will be valid upto; and
 - (3) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only upon service of a written claim or demand by you on or before

In witness whereof the Bank, through its authorised officer, has set its hand and stamp on this.....day of.....20.....at.....

WITNESS

.....
(Signature)

.....
(Signature)

.....
(Name)

.....
(Name)

.....
(Official Address)

.....
(Designation with Bank Stamp)

Attorney as per Power of Attorney No.....

Dated.....