

Sr. No	Clause Reference	Clause description	Clarification requested / suggestions	Comments of CERC
1	Clause 4.9 Page 3	4.9. No abnormal delay would be acceptable. In case of any such contingency, the study may be conducted from an alternate source at the Risk and cost of the bidder.	It is requested to limit the liability under this clause to 10% of the value of corresponding goods/services not delivered by the consultant. Further, it is also requested to confirm that government procurement norms (including price discovery) will be used for procurement of such services from third parties.	These are standard clauses and do not warrant any change.
2	Clause 4.1 Page 3	4.1. The assignment shall be completed within a period of 120 days from the date of signing of the agreement.	By making time of essence of the contract, CERC retains the right to void the contract ab initio in case timelines are not met. There are various dependencies on the client and other third parties for completing the project. There may be delays on part of CERC and other parties also. Thus, contract can be voided by CERC, even if the fault is not entirely with the consultants. We understand that it is not the intention to make the agreement void ab initio in case of any delay in achieving the timelines. Further, since there are LDs for delay in achieving the timelines, it does not look legally feasible to have time as essence of the contract. Thus, it is requested to kindly delete this clause.	Time is the essence of the contract and thus the study needs to be completed within the time duration prescribed in the RFP.
3	6. Eligibility Criteria Page 3	6.3. The Consultant should have completed at least 10 (ten) assignments in the last 5 (five) years of assisting the Electricity Regulatory Commissions and/or Electricity utilities on matters involving tariff petitions, tariff orders, SERC/CERC regulations, business plan, especially in respect of generation and transmission projects.	We have been working with a number of clients (Utilities and ERCs) either on Retainership basis or on a long-term engagement. Therefore, we request CERC to kindly allow to consider the ongoing Assignments also; e.g. which have been ongoing for a period of exceeding one year, apart from the 'completed' assignments.	Under Retainership projects there are various tasks or assignments to be completed. The tasks which have been completed can be considered.

4	6. Eligibility Criteria Page 3	6.6. The Consultant organization should not have been blacklisted/debarred for conducting studies or consultancy services, by any Government/semi government/quasi-judicial agency from conducting studies or consultancy services within last three years <b><u>nor is there any pending dispute in this regard.</u></b> An undertaking in this regard shall be given by the consultant in the format at Annexure-III.	It is requested to revise the pre-qualification regarding black listing/ 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. Additionally, please remove the verbiage “ <b><u>nor is there any pending dispute in this regard</u></b> ”. Please modify the clause in the following language :  <i>"The Consultant organization is not blacklisted/debarred for conducting studies or consultancy services, by any Government/semi-government/quasi-judicial agency from conducting studies or consultancy services within last three years. An undertaking in this regard shall be given by the consultant in the format at Annexure-III."</i>  Alternatively, it is requested to relax this criteria to the extent that if blacklisting was subsequently revoked, than an entity should be eligible to bid.	These are standard clauses and do not warrant any change.
5	Annexure III and Page 12	..... “I hereby declare that my firm has not been debarred / blacklisted by any reputed	It is requested to allow us to submit the blacklisting declaration based on the present status of our backlisting / debarment as on	These are standard clauses and do not warrant any change.

	(Declaration on blacklisting / debarment)	Government / Semi Government Organizations / quasi-judicial agency from conducting studies or consultancy services within last three years nor is there any pending dispute in this regard. I further certify that I am an authorised signatory of my company/firm and therefore competent to make this declaration.”	date of submission of the bid. Additionally, please remove the verbiage nor is there any pending dispute in this regard. Please modify the clause in the following language : " I hereby declare that my firm is not debarred / blacklisted by any reputed Government / Semi Government Organizations / quasi judicial agency from conducting studies or consultancy services within last three years. I further certify that I am an authorised signatory of my company/firm and therefore competent to make this declaration."	
6	6. Eligibility Criteria Page 4	6.7. The minimum average annual turnover of the Consultant for the last three financial years (2017- 18,2018-19 & 2019-20 OR 2018-19,2019-20 & 2020-21) should be a minimum of Rs.10 crore. The consultant should submit audited balance sheet and profit & loss account of these years in support of their bids.	To ensure participation of quality and capable consultancy organisations only, the Turnover and Net worth requirement should be increased. The Minimum Average Annual Turnover (MAAT) and Minimum Average Net worth (MAN) Requirement for immediately three preceding FYs (2018-19 to 2020-21) may be kept as to Rs. 50 Crore.	These are standard clauses and do not warrant any change.
7	7. Application and Evaluation Criteria Page 5	The Consultant’s relevant experience for the assignment 1 (a) Experience in regulatory assignments involving preparation of Tariff Models/ Tariff Petitions/ Tariff Orders other regulatory assistance for a generation company in India in the last five years.	It is submitted that in many instances, the Utilities/Regulators appoints the consultant for issuance of Regulations and also for Tariff Orders for the entire MYT Period through a single Work Order / Contract / Assignment.  In such instances, it is requested to consider such Assignments simultaneously in Sr. No. 1 (a), 1 (b) and 1 (c), as the case may be.	The clause is clear and does not need any change.

		<p><u>1 mark for each assignment which is to be evidenced by letter of award/contract agreement/ completion certificate.</u> Max 10 marks</p> <p>1 (b) Experience in regulatory assignments involving preparation of Tariff Models/ Tariff Petitions/ Tariff Orders other regulatory assistance for a transmission company in India in the last five years. <u>1 mark for each assignment which is to be evidenced by letter of award/contract agreement/ completion certificate</u> Max 10 marks</p> <p>1 (c) Experience in undertaking regulatory/ consultancy projects for CERC/SERCs <u>1 mark for each assignment which is to be evidenced by letter of award/contract agreement/completion certificate</u> Max 10 marks ....</p> <p><b>Note :</b> a) Same assignment/ project cannot be used under Evaluation (Sl.No.1 a, b and c) for more than one criteria.</p>	<p>Further, support in Tariff filings / support in issuance of Tariff Orders for more than one year under the same Work Order / Assignment should also be counted as multiple assignments; e.g. separate tariff filings/tariff orders for 3 years to considered as 3 separate assignments, even if the same is being undertaken under a single Work Order/LoA/Contract.</p> <p>Further, as the assignments to be considered are restricted to last five years, it is submitted that weightage of 2 marks for each assignment (against 1 mark for each assignment) should be allowed, i.e. Max 10 marks can be awarded based on 5 assignments.</p>	
8	7. Application and Evaluation Criteria Page 5	3. The Qualification and experience of the key staff (who would actually be working on the proposed project) .....	In the qualification criteria for Project Manager and Financial Team Member, apart from Chartered/Cost & Management Accountant, the qualification 'Company Secretary' should also be considered to be added.	The criteria have been finalized with due regard to the requirement for the assignment, and do not warrant any change.

9	Last date of submission of RFP Page 7	7.12. Interested and eligible bidder may send their proposal, in the prescribed format by 25 <sup>th</sup> March, 2022 up to 5.00 P.M.	Considering the Holi festivities in this week, financial year closing, it would be difficult for us to prepare and submit a detailed proposal on the abovesaid RfP in the specified timeline, i.e. 25 <sup>th</sup> March, 2022. Therefore, we request CERC to kindly consider extending the last date of Proposal submission by at least two weeks, from the date of providing clarifications on the abovesaid RfP.	The last date has been extended till 1 <sup>st</sup> April 2022
10	Clause 6 (ii) Page 15	Confidentiality Obligations a) Exceptions to confidential information are not provided b) Parties to whom information can be disclosed is not documented	<i>or later becomes publicly available without violation of this agreement or may be lawfully obtained from a third party; or (iv) which would be required to be disclosed under the (Indian) Right to Information Act.”</i>	The clause is clear and does not need any change.
			It is requested 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. Client is therefore requested to kindly include the following clause: <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</i>	The clause is clear and does not need any change.



13	No clause in the RFP	No protection to our pre-existing IPRs	<p>There are innumerable IPRs that exist with us which we would like to use to CERC's benefit while delivering our services to CERC. 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 CERC just because we are using them for providing services to CERC, like we use these for other clients. We request that we are allowed to retain ownership of our pre-existing IPRs, else we might be not be able to use these in providing services to CERC in order to protect our ownership in them. We request CERC 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 nonexclusive, 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>	The RFP is clear and does not need any change.
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14	Clause 12 Page 17	<p>Arbitration</p> <p>Non-independent arbitrator. In the event of arbitration, CERC shall appoint sole arbitrator which shall be binding on the Consultant.</p>	<p>In order to uphold the principles of natural justice (Nemo judex in causa sua- no one should be judge in ones 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. Please confirm.</p>	<p>The clause is clear and does not need any change.</p>
15	No clause in RFP	<p>No third party disclaimer</p> <p>There is no restriction on the usage of deliverable.</p> <p>No third party disclaimers.</p>	<p>We will be providing services and deliverables to CERC under the contract. We accept no liability to anyone, other than CERC, in connection with our services, unless otherwise agreed by us in writing. CERC agree to reimburse us for any liability (including legal costs) that we incur in connection with any claim by anyone else in relation to the services. Please confirm our understanding is correct.</p>	<p>The RFP is clear and does not need any change.</p>
16	No clause in RFP	No acceptance criteria	<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 CERC to 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. CERC may consider including the below simple clause:</p> <p>Within 10 days (or any other agreed period) from Client's receipt of a draft deliverable,</p>	<p>The suggested clause can not be included at this stage.</p>

			<p>Client will notify Consultant if it is accepted. If it is not accepted, Client will let Consultant know the reasonable grounds for such non acceptance, and Consultant will take reasonable remedial measures so that the draft deliverable materially meets the agreed specifications. If Client does not notify Consultant within the agreed time period or if Client uses the draft deliverable, it will be deemed to be accepted.</p>	
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