

CLARIFICATION TO PROSPECTIVE BIDDER'S QUERIES
ANNEXURE-II

Sl.No	Request/ Query of Prospective Bidders.	NEEPCO's Reply/Clarification
1	With regards to the scope of the opportunity encompassing DC Build, DR, Hardware and Networking it would really help US to bid if the same can be removed from the scope and taken up as a separate tender. Our earnest request to NEEPCO would be to change the scope accordingly,	Bid Stipulation shall prevail.
2	<p>Tax As suggested by Corporate Tax team WE can go ahead and bid only when the following clauses are accepted by NEEPCO in written form:</p> <p>1.WE will supply the material required from outside the state by charging CST.</p> <p>2.Customer is to arrange for road permits for the supply.</p> <p>3.Being interstate contract Customer should not deduct WCT TDS from payments to be made to us.</p> <p>4.We will not asked to get registered under Meghalaya VAT for execution of this project.</p> <p>5.C Form will not be given by the customer</p>	Bid stipulation shall prevail.
3	<p>Limitation of Liability We request to add the following clause– Contractor shall be excused and not be liable or responsible for any delay or failure to perform the services or failure of the services or a deliverable under this Agreement, to the extent that such delay or failure has arisen as a result of any delay or failure by the NEEPCO or its employees or agents or third party service providers to perform any of its duties and obligations as set out in this Agreement. Neither party shall be liable to the other for any special, indirect, incidental, consequential (including loss of profit or revenue), exemplary or punitive damages whether in contract, tort or other theories of law, even if such party has been advised of the possibility of such damages. The total cumulative liability of either party arising from or relating to this agreement shall not exceed amount paid to the Contractor by the NEEPCO for the services</p>	Bid Stipulation and subsequent clarifications/Amendments shall prevail.
4	<p>Intellectual Property Rights Request to insert a clause wherein the intellectual property of any third party products shall be owned by the respective third party rights and NEEPCO shall have user rights in accordance with end user license agreement (EULA) as applicable to use of such software. Each Party shall be entitled to use in the normal course of its business and in providing same or similar services or development of similar deliverables for its other clients, the general knowledge and experience gained and retained in the unaided human memory of its personnel in the performance of this Agreement and statement of work(s) hereunder. For the purposes of clarity the Contractor shall be free to provide any services or design any</p>	<p>Not agreed.</p> <p>Bid Stipulation shall prevail.</p>

	<p>deliverable(s) that perform functions same or similar to the deliverables being provided hereunder for the NEEPCO, for any other client or customer of the Contractor (including without limitation any affiliate, competitor or potential competitor of the NEEPCO). Nothing contained in this section shall relieve either party of its confidentiality obligations with respect to the proprietary and confidential information or material of the other party.</p>	
5	<p>Termination and Foreclosure Clause 42.1, Page No. 24 & Clause 57, Page No. 28 – Termination for insolvency/winding up should be mutual; Clause 42.2, 46 of Page No. 25, 26 Termination clause is already covered under clause 17. This is a repetition. Request to delete; Clause 17.1, Page No. 11 – We need provision for a cure period of 30 days in case of termination for breach. Similarly we need to have a provision for right to terminate the contract in case of breach by the Customer. Risk purchase clause is not acceptable to us; Clause 20.1, Page No.14 – We request that termination for convenience shall be invoked after providing 90 days prior written notice to us along with payments for services rendered, adequate compensation and work in progress cost incurred by us. Clause 31.1, Page No. 18 – We request that suspension of the contract be invoked only after providing 90 days prior written notice to us along with payments for services rendered up to the date of suspension; Clause 49, Page No. 26 - We request that foreclosure of contract shall be invoked after providing 90 days prior written notice to us along with payments for services rendered, adequate compensation and work in progress cost incurred by us;</p>	<p>Bid Stipulation shall prevail.</p>
6	<p>Confidentiality Clause 47, Page No. 26 – Need to have a clause on definition of Confidential Information, standard exceptions to confidentiality and the obligation period shall be for 2 years;</p>	<p>Bid Stipulation shall prevail.</p>
7	<p>Indemnity Clause 10.3, Page No. 8 – We need the inclusion of standard exceptions and exclusions to the indemnity provision, remedy for infringement, procedure for indemnification and an additional provision for Customer indemnity in case of infringement arising from Customer material; Clause 13.4, Page No. 10 – We shall provide indemnity only in case of gross negligence and willful misconduct Clause 36, Page No. 19 & Clause 43.3, Page No. 25 – Blanket indemnity is not agreeable to us since general indemnity is already covered under clause 13.4;</p>	<p>Bid Stipulation shall prevail.</p>
8	<p>Risk Purchase Clause 34, Page No. 18 – We request that warranty period shall begin from the date of acceptance by the Customer. Provision for</p>	<p>Bid Stipulation and subsequent corrigendum/</p>

	remedies to re-perform/ refund the fees paid by the Customer during the warranty period. We need to have standard exceptions and exclusions to warranty clause. Risk purchase reference under this clause is not agreeable;	clarifications shall prevail.
9	Defect Free Guarantee Clause 43,44 of Page No.25 - We does not agree to provide a defect free guarantee;	Bid Stipulation shall prevail.
10	Arbitration Clause 18.4, 24, 25, Page No. 12, 14, 15 – We request that disputes be resolved through a board of arbitration as proposed by us;	Bid Stipulation shall prevail.
11.	Insurance Clause 13.2, Page No. 10 – We is not agreeable to have insurance in the joint name of the Customer; We request to delete this provision as the same is not acceptable to the Contractor.	Bid Stipulation shall prevail.
12	Force Majure Clause no. 19.1 (j), Page no. 13 We request to delete the word ‘satisfactory’ from the last sentence as the same is subjective in nature. Clause 18.1, Page No.12 – We request the force majeure clause be kept mutual	Bid Stipulation shall prevail.
13	Payment of Invoices Clause 38, Page No. 19 – Payments shall be made by the Customer within 30 days of receipt of invoice. Need to have a provision for interest and withholding of services in case of delay/default in payments;	Bid Stipulation and subsequent clarifications/ amendments shall prevail.