



Nepal Electricity Authority
(A Government of Nepal Undertaking)
Finance Directorate
INSTITUTIONAL STRENGTHENING PROJECT

Ref. No: 2079/80 - १९

Date: Sunday, 28 August 2022

To:
All Shortlisted Consultants,

Subject: Issuance of Clarification-1

OCB No. and Title: ICB/FD/EGMPAF/PMC-078/79-C1 Selection of Project Management Consultant for Supervision of Implementations of Enterprise Resources Planning (ERP) and Revenue Management System (RMS) at Nepal Electricity Authority

Project Title: Electricity Grid Modernization Project - Additional Financing

Dear Sir/Madam,

With reference to the RFP issued on 1st August 2022, we would like to inform all our shortlisted consultants about the issuance of Clarification-1 according to the ITB clause 13.1 of the RFP.

Kindly acknowledge the receipt of the same at the project office.

Best regards,

Chandha Neupane

Chandha Neupane,
(Project Director)

OCB No. and Title: ICB/FD/EGMPAF/PMC-078/79-C1 Selection of Project Management Consultant for Supervision of Implementations of Enterprise Resources Planning (ERP) and Revenue Management System (RMS) at Nepal Electricity Authority

Project Title: Electricity Grid Modernization Project - Additional Financing

CLARIFICATION -1

S#	Page No (in RFP)	Reference Clause of the RFP	Existing Clause in the RFP	Query	NEA Response
1	Page No. 22, 51	Appendix 1 E Summary Evaluation Sheet for Full Technical Proposals	<u>Summary Evaluation Sheet for Full Technical Proposals</u> B. Qualifications/Experience Requirements for the Experts: Team Leadership	Please clarify if there is any specific qualification and experience criteria for evaluation Team Leadership Expert.	The Qualification and Experience requirements for the Team Leadership Expert will be as mentioned in the Terms of Reference.
2	Page No. 50	Appendix 1 E Summary Evaluation Sheet for Full Technical Proposals	<u>Team Composition and Qualification Requirements for the Key Experts</u> A. Team Composition It is estimated that minimum inputs of 60 person-months are required from International Key Experts. Details on expertise and person-months requirements including 19 person-months inputs for Non-Key Experts (International and National) are in Table 1.	Given the scope of work involved to execute this project, It is requested to allow a minimum input of 120 person-months (including the International and National Key experts person months) for the project supervision services.	As per the RFP
3	Page No. 29, 8-17	Form TECH-1: Joint Venture and Sub-Consultant Information Sheet II. General Conditions of Contract D. Consultant's Experts and Sub-Consultants	Joint Venture and Sub-Consultant Information Sheet , and CVs of National Key Experts	With reference to the clause in Form TECH -1, the Bidder needs to provide the Sub-Consultant Information Sheet. As the National Key Experts would be resourced from the Sub-Consultant firm, and as these National Key Experts are not being considered for the evaluation criteria for selction of PMC, It is requested to consider that for proposal submission Sub-Consultant Information Sheet is provided, while the CVs of the National experts can be submitted later on PMC selection.	As per the RFP requirements, CVs of the National experts are required to be submitted during the proposal submission.
4	Page No. 8-21	II. General Conditions of Contract, Clause 45 Mode of Billing and Payment	<u>Mode of Payment</u>	As the consultant services are mentioned as time based and will be billed on T&M basis, pls specify on the minimum days of commitment for field visit for international consultant during a particular trip. For eg: if Team leader's field visit is for 6 months out of 18 months, how many minimum days per trip are envisaged. This will help in planning for OPE.	As per the RFP
5	Page No. 8-1, 8-2	Section 8 Conditions of Contract and Contract Forms	Conditions of Contract and Contract Forms Type of standard Contract forms for Consulting Services	As per our understanding this is a Time-based contract , please confirm.	Yes, this is a Time-Based Contract.
6	Page No. 8-11	II. General Conditions of Contract, Clause 17 Force Majeure	<u>Force Majeure</u> 17.1. For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements. Examples include, but are not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, and lockouts or other industrial action confiscation or any other action by Government agencies.17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-	It is recommended to add below clause to under Force Majeure to facilitate remote working : "(i) To the extent that the provision of the Services is impacted by a pandemic (including COVID-19) and any reasonable concerns or measures taken to protect the health and safety interests of either Party's personnel, the Parties will work together to amend the Agreement to provide for the Services to be delivered in an appropriate manner, including any resulting modifications with respect to the timelines, location, or manner of the delivery of Services.(ii) Where EY Personnel are required to be in present at Client's premises, EY will use reasonable efforts to provide the Services on-site at [Client] offices, provided that, in light of a pandemic the parties agree to	As per the RFP



			Consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder. 17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder	cooperate to allow for remote working and/or an extended timeframe to the extent (i) any government or similar entity implements restrictions that may interfere with provision of onsite Services; (ii) either party implements voluntary limitations on travel or meetings that could interfere with provision of onsite Services, or (iii) an EY resource determines that he or she is unable or unwilling to travel in light of a pandemic-related risk.”		
7	Page No. 8-12	II. General Conditions of Contract Clause 19	<u>Termination</u> 19.1.1 The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause occurs. In this case, the Client shall give at least 30 calendar days’ written notice of termination to the Consultant for events referred to in (a) to (d); at least 60 calendar days’ written notice in case of the event referred to in (e); and at least 5 calendar days’ written notice for the event referred to in (f): (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18; (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members) becomes insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;	EY proposed to please add the following termination language under Clause 19 (b) -Termination by the Consultant: “EY may terminate this Agreement, or any particular Services, immediately upon written notice to Client if EY reasonably determine that EY can no longer provide the Services in accordance with applicable law or professional obligations.”	As per the RFP	
8	Page No. 8-15	II. General Conditions of Contract, Clause 22 Confidentiality	<u>Confidentiality</u> 22.1 Except with the prior written consent of the Client, the Consultant and the Experts 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 the Experts make the recommendations formulated in the course of, or as a result of, the Services public.	EY proposes to please add this in Clause – “Except as otherwise permitted by this Agreement, neither of the parties may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Parties may, however, disclose such confidential information to the extent that it: (a) is or becomes public other than through a breach of this Agreement, (b) is subsequently received by the receiving party from a third party who, to the receiving party’s knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information, (c) was known to the receiving party at the time of disclosure or is thereafter created independently, (d) is disclosed as necessary to enforce the receiving party’s rights under this Agreement, or (e) must be disclosed under applicable law, legal process or professional regulations. These obligations shall be valid for a period of 1 year from the date of termination of this Agreement.”	As per the RFP	
9	Page No. 8-15, 8-28	II. General Conditions of Contract, Clause 24 Insurance to be Taken out by the Consultant	<u>Insurance to be Taken out by the Consultant</u> 24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at its (or the Sub- Consultants’, as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the provide evidence to the Client showing that the insurance has been taken out and maintained and that the current premiums have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13	<u>Insurance Coverage</u> The insurance coverage against the	Please note that EY India can only maintain professional indemnity insurance as required by applicable law and professional obligations in India.	As per the RFP



			risks shall be as follows: (a) Professional liability insurance, with a minimum coverage of (b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Client's country by the Consultant or its Experts or Sub-Consultants, with a minimum coverage of [insert amount and currency or state "in accordance with the applicable law in the Client's country"];(c) Third Party liability insurance, with a minimum coverage of [insert amount and currency or state "in accordance with the applicable law in the Client's country"]; (d) employer's liability and workers' compensation insurance of the Experts and Sub-Consultants in accordance with the relevant provisions of the applicable law in the Client's country, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and (e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Service		
10	Page No. 8-15, 8-27	III. Special Conditions of Contract, Clause 23 Consultant's Liability	<u>Liability of the Consultant</u> 23.1 Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law. <u>23.1 Consultant's Liability</u> The following limitation of the Consultant's Liability towards the Client can be subject to the Contract's negotiations: "Limitation of the Consultant's Liability towards the Client: (a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client, shall not be liable to the Client: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract; (b) This limitation of liability shall not (i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; (ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the [insert "Applicable Law," if it is the law of the Client's country, or insert "applicable law in the Client's country," if the Applicable Law stated in Clause SCC 1.1(c) is different from the law of the Client's country].Please Check Page No. 74 clause 23 for more details	For clause 23.1 (a) (i): Please note for gross negligence and willful misconduct, consultant's liability is unlimited for indirect or consequential liability and should not be acceptable. Approval is required for that as per LOL matrix. For clause 23.1 (a) (ii): Per GCO perspective the cap on direct damages should not exceed one times of the total value of contract. In case the Cap increases 1X of the value, the said request is subject to following approvals:1. LOL Matrix2. Engagement Partner3. Service Line Quality	As per the RFP
11	Page No. 8-16	II. General Conditions of Contract, Clause 25 Accounting, Inspection and Auditing	<u>Accounting, Inspection and Auditing</u> 25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-Consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs. 25.2. The Consultant shall permit and shall cause its Sub-Consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site, assets and/or all accounts and records relating to the performance	EY can provide the client or its auditor (bound by respective confidentiality obligations) upon request of the latter with all the information and documents directly related to the engagement, without granting access to the EY Firm's premises.	As per the RFP



			of the Contract and the selection process to provide the Services, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Consultant's attention is drawn to Clause GCC 10 which provides, among others, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Clause GCC 25.2 constitute an integrity violation subject to contract termination (as well as to a determination of ineligibility under the Bank's Anticorruption Policy and Integrity Principles and Guidelines).		
12	Page No. 8-16	II. General Conditions of Contract, Clause 27 Proprietary Rights of the Client in Reports and Records	<u>Proprietary Rights of the Client in Reports and Records</u> 27.1 Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, or supporting records or materials compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall deliver all such documents to the Client, together with a detailed inventory thereof not later than the date of termination or expiration of this Contract. The Consultant may retain a copy of these documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client. 27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and at its discretion the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.	EY Proposes this language as "Intellectual Property Rights", to be included in the GCC of the RFP- "EY may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that EY own in performing the Services. Notwithstanding the delivery of any Reports, EY retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers that EY compile and retain in connection with the Services (but not Client Information reflected in them). Upon payment for the Services, Client may use any Materials included in the Reports, as well as the Reports themselves as permitted by this Agreement."	As per the RFP
13	Page No. 8-22	II. General Conditions of Contract, Clause 48. Amicable Settlement	<u>Settlement of Disputes</u> 48. Amicable Settlement 48.1 The Parties shall seek to resolve any dispute amicably by mutual consultation. 48.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GCC 49.1 shall apply. 49. Dispute Resolution 49.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication or arbitration in accordance with the provisions specified in the SCC	EY adheres to Indian laws as governing laws as our activities are subject to local legal and regulatory requirements and our work typically involves the application or assessment of local laws and regulations. The application of foreign law to events / work performed within the local legal and regulatory framework creates additional uncertainty in that our engagement will be examined simultaneously under two legal frameworks (e.g. the law under which the work was performed and the law governing our contract). Hence it is suggested to replace this clause with the below language: "1. Any dispute arising out of or in connection with this Agreement shall be referred by written notice: a. first to the Service Manager of each Party who shall meet and endeavour to resolve the dispute between them within five (5) Business Days of such notice; and b. failing resolution of the dispute, to a senior Service Manager of the Supplier and a senior Service Manager of EY (together the "Senior Service Managers") who shall meet and endeavour to resolve the dispute between them within ten (10) Business Days of such notice (the "Senior Service Managers' Meeting"). The joint written decision of those Senior Service Managers shall be binding on the Parties 2. If the Service	As per the RFP



				Managers or Senior Service Managers are unable to resolve the dispute, the Parties shall, refer the dispute to arbitration and shall be governed by the provisions of the Arbitration & Conciliation Act, 1996 (as amended). The arbitration proceedings shall be adjudicated by a sole arbitrator appointed by mutual consent of both the Parties, and the arbitration proceedings shall be held in New Delhi. The language of arbitration shall be English. The decision of the arbitrator shall be final and binding upon the Parties."	
14	Page No. 3	Section 2. Instructions to Consultants (ITC) including Data Sheet (DS), A. General Provisions	(a) "Affiliate(s)" means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the consultant.	The use of word Affiliates throughout this RFP in connection to KPMG would not be relevant as KPMG has a very distinct organisational structure. Therefore, in terms of KPMG, following definition should be used instead of Affiliates: "KPMG Persons" means KPMG, and each and all of our partners, directors, members, employees and agents together with KPMG International Limited and other KPMG International entities and other member firms of KPMG global organization of independent firms affiliated with KPMG International Limited a private English company limited by guarantee (each a "Member Firm") and any entity associated with us or a Member Firm, and each and all of its personnel including partners, directors, employees and agents, and "KPMG Person" means any one of them."	As per the RFP
15	Page No. 3	Section 2. Instructions to Consultants (ITC) including Data Sheet (DS), A. General Provisions	(c) "Applicable Law" means the laws and any other instruments having the force of law in the Client's country, or in such other country as may be specified in the Data Sheet, as they may be issued and in force from time to time.	We request you to kindly consider Governing law to be Indian laws.	As per the RFP
16	Page No. 3	Section 2. Instructions to Consultants (ITC) including Data Sheet (DS), A. General Provisions	h) "Contract" means a legally binding written agreement signed between the Client and the Consultant and includes all the attached documents listed in its Clause 1 of the Form of Contract.	May we request kindly modify this clause as : "Contract" means a legally binding written agreement signed between the Client and the Consultant on mutually agreed between both the parties.	As per the RFP
17	Page No. 4	3. Conflict of Interest,	Conflicting activities 3.3.1 Conflict between consulting activities and procurement of goods, works, or nonconsulting services. A firm that has been engaged by the Client to provide goods, works, or nonconsulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or nonconsulting services. Conversely, a firm hired to.....	We request you to kindly restrict this clause to the Engagement Team only. Any such conflict should be restricted only to the Engagement Team who will be providing services to the client and not to the entire firm. Also, the restriction shall apply to the engagement team during the term of the engagement only.	As per the RFP
18	Page No. 5	5. Corrupt and Fraudulent Practices.	5.1 The Bank requires compliance with its Anticorruption Policy as set forth in Section 6.5.2 In further pursuance of this policy, the Consultant shall permit and shall cause its sub-consultants and sub-contractors to permit the Bank or its representatives to inspect their site, assets, accounts, records and other documents relating to the submission of the Proposal and execution of the contract, and to have the accounts and records audited by auditors appointed by the Bank.	We request you to kindly consider any such compliance will be restricted to the Engagement Team only. Further, any such audit should be restricted to this engagement only and the individuals or representatives who will come to audit are required to sign the NDA and reasonable written notice to be provided before such audit. Also, this policy shall be complied with to the extent it is applicable to the service provider.	As per the RFP



19	Page No. 7	Substitution of Key Experts at Validity Extension 12.7.	If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Client together with the substitution request. In this case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert.	We understand that, in case replacement of an Expert, the same proposal CV evaluation criteria will be used to decide whether the proposed replacement resource has equal or better qualifications. Kindly confirm.	Yes, confirmed. Your understanding is correct.
20	Page No. 12	25. Taxes	Except as set out in the Data Sheet, all taxes are deemed included in the Consultant's Financial proposal, and, therefore, included in the evaluation.	Any variance in the prevailing tax rate during the project duration shall be borne by client, kindly confirm.	As per the RFP Clause 16.3 and 25. Any variance in the prevailing tax rate for VAT only during the project duration shall be borne by NEA.
21	Page No. 14	Section 2. Instructions to Consultants (ITC) including Data Sheet (DS), E. Data Sheet, A. General,	Country of Applicable Law Nepal	We request you to kindly consider Governing law to be Indian laws.	As per the RFP
22	Page No. 15	Section E. Data Sheet. 3.3.1 Conflicting Activities.	Conflict between consulting activities and procurement of goods, works, or nonconsenting services: A consulting firm submitting proposals for this consulting services assignment will be allowed to participate in the bidding for either or both the Procurement of Information Technology Products and Services Supply and Installation of RMS and ERP systems. In case the firm is awarded contract in either of the 3 procurement assignments, whichever comes first, the firm nullifies its bid/s on the remaining assignment/s or work/s and thus no further evaluation will be conducted.	We request you to restrict the requirement to the engagement team only.	As per the RFP
23	Page No. 18	Data Sheet, Section C. Section 17.4, Section 17.7 and 17.9	Submission of Proposals The Consultant must submit: (a) Technical Proposal: i. one (1) original and 1 copy to the Client; and ii. one (1) softcopy in PDF format to ADB Headquarters, Manila at loanconsultingproposals@adb.org and include the following information on the subject line of the email: Client, Country, Project, name of consultant). The FINANCIAL PROPOSAL SHALL NOT BE INCLUDED (b) Financial Proposal: one (1) original to the Client.	Kindly confirm, whether hardcopy or softcopy of proposal is submitted ADB Resident Mission in the Country. Kindly provide email ID for submission of softcopy submission.	As per the RFP, hardcopy submission is required at the address mentioned in ITC clause 17.7 and 17.9.
24	Page No. 8-21	45. Mode of Billing and Payment.	45.1 Billings and payments in respect of the Services shall be made as follows:	Considering the project duration is more than 90 days, we shall be allowed to bill through firms' s existing PE (Permanent Establishment) in Nepal.	Allowed, if the Permanent Establishment is duly registered and authorized to issue invoice in Nepal.
25	Page No. 22	E. Summary Evaluation Sheet for Full Technical Proposals [ALL SELECTIONMETHODS]	EVALUATION CRITERIA, I. Qualification	May we request to confirm the number of projects required for full score criteria, also provide the details for projects evaluation for experience.	As per the EoI published, five projects experience details sought in the project information sheet. The evaluation for experience will be considered both for IFMIS and



					RMS either integrated or separated.
26	Page No. 22	E. Summary Evaluation Sheet for Full Technical Proposals [ALL SELECTION METHODS]	EVALUATION CRITERIA, II. Approach and Methodology. g. Proposal Presentation	Kindly confirm the mode of this presentation.	Will be confirmed at the time of confirming the dates for presentation.
27	Page No. 22	E. Summary Evaluation Sheet for Full Technical Proposals [ALL SELECTION METHODS]	Rating: Excellent: 100% Very Good: 90 - 99% Above Average: 80 - 89% Average: 70 - 79% Below Average: 1 - 69% Non-complying: 0%	Kindly confirm, how the rating will be provided to the CVs.	As per the RFP
28	Page No. 43	FORM FIN-4 BREAKDOWN OF OTHER EXPENSES, PROVISIONAL SUMS AND CONTINGENCY	Type of Expenses, Provisional Sums and Contingency	Expense type, unit cost and quantities shall be dependent on the project delivery arrangements and the provided type of expense, unit cost and quantities are only representative. Hence, consultant shall be allowed to bill the reimbursable expenses without limiting to the above-mentioned expense type, unit cost and quantity. However, the overall reimbursable expenses shall be limited to the above total reimbursable expenses cost. Kindly confirm.	As per the RFP
29	Page No. 45	Section 6. Bank's Anticorruption Policy,	Section 6. Bank's Anticorruption Policy	We request you to kindly amend the clause, so that, only the Engagement Team to comply the policy, and to the extent it is applicable to the service provider.	As per the RFP
30	Page No. 45	Section 6. Bank's Anticorruption Policy,	All bidders, Consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contract with its sub-consultants, Subcontractors, and other third parties engaged or involved in ADB-related activities, such sub-consultants, Subcontractors, and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.	May we request to incorporated following clause with this: Any such investigation should be done with prior written notice and the NDA needs to be signed by the investigators with KPMG.	As per the RFP
31	Page No. 48	SCOPE OF THE SERVICES, TASKS (COMPONENTS) B. 10.1 Project Implementation Support.	Support in designing/drafting/validating agreements (Project agreements, contract agreements, service-level agreements, operating-level agreements etc.)	We understand that scope of this activity will be limited to the technical and functional /management aspects of the projects, however we do not provide direct or indirect legal services. Kindly confirm.	Yes, the scope of this activity will be limited to the technical and functional/management aspects of the projects.
32	Page No. 50	TEAM COMPOSITION & QUALIFICATION REQUIREMENTS FOR THE KEY EXPERTS A. Team Composition.	Key Experts – IFMIS Functional	Kindly confirm, whether NEA is looking for COTS product or BESPOKE IFMIS system.	NEA is looking for COTS ERP product for IFMIS
33	Page No. 48	SCOPE OF THE SERVICES, TASKS (COMPONENTS)B. 10.1 Project	Review, suggest improvements and recommend for approval to NEA, the various documents submitted by different SIs (Inception report, Project implementation plan, blue-print document, As-Is/To-Be reports,	Kindly clarify1. Whether an SI has already appointed for this project. If not whether PMC scope include support for onboarding an SI.2. Is the ERP solution already identified, if yes kindly provide the solution	1. No, the selection of SI is yet to be done. Onboarding an SI is not in the scope of PMC.2. No, the ERP solution is yet to be



		Implementation Support.	Functional Requirement Specifications, System Requirement Specifications, Test Plan/test cases, As-Built reports etc.)	details?3. If not, whether PMC scope included, study of existing system and recommendation new system requirements?	identified.3. No, PMC scope does not include the study of existing system and recommendation for new system requirements.
34	Page No. 8-13	B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT,	19. Termination, b. By the Consultant	May we request to include the following as the rights of termination: "We may terminate this Agreement immediately if: (i) there is a change of law, rule, regulation or professional standard, or circumstances arise that we reasonably believe would cause the relationship between the Parties to violate such law, rule, regulation or professional standard or would prejudice any KPMG Person's ability to comply with applicable independence requirements; or (ii) we believe a conflict of interest cannot be managed, but in that case we shall consult you before we do so.	As per the RFP
35	Page No. 8-14	C. OBLIGATIONS OF THE CONSULTANT,	Law Applicable to Services: 20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Client's country when	Since, we are based in India, we are asking for governing law to be Indian laws. Accordingly, please change this as: The bidder will comply with laws which are applicable in India.	As per the RFP
36	Page No. 8-15	C. OBLIGATIONS OF THE CONSULTANT,	21. Conflict of Interests	May we request to include following: Any such restriction shall be restricted to the engagement team only and this restriction shall persist for the term of this agreement.	As per the RFP
37	Page No. 8-15	C. OBLIGATIONS OF THE CONSULTANT,	22.1 Except with the prior written consent of the Client, the Consultant and the Experts 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 the Experts make the recommendations formulated in the course of, or as a result of, the Services public.	May we request to modify and incorporate the Following in this clause as: 22.1 Except with the prior written consent of the Client or as agreed in this Agreement, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services "You" means Client and "we" means bidder "Confidential Information" means any information that has been or will be made available, directly or indirectly, by one Party to the other Party in connection with the Services, that is marked or communicated as confidential or whose nature is such that a recipient would reasonably consider it confidential, including, without limitation, business plans, proposals, product development details, methodologies, software code and specifications, and financial information. Confidential Information excludes Excluded Information. The Parties shall keep each other's Confidential Information confidential and use it only to perform or receive the Services or for exercising their rights or performing their obligations under this Agreement. We shall not disclose your Confidential Information beyond bidder Persons or subcontractors who are involved in delivery of Services unless permitted by you or by this clause. The Parties may disclose Confidential Information if required by applicable law or regulation but only to the extent required by such law or regulation. The Parties may disclose Confidential Information to their insurers in relation to any dispute relating to this Agreement, in which event such disclosure shall be done privately and in confidence only. Subject to our confidentiality obligations herein, we will retain your Confidential Information in accordance with our document retention	As per the RFP



policy. We shall be entitled to use your Confidential Information and to provide such information to (i) bidder Persons and/or their external legal advisers (ii) other parties who facilitate the administration of our business or support our infrastructure in both cases in order to (a) perform client and engagement acceptance procedures (including but not limited to the identification of potential conflicts of interest or compliance with independence requirements), (b) perform internal risk assessments and (c) support the maintenance of quality and professional standards in the conduct and delivery of services (e.g., quality reviews of the services delivered, to identify and mitigate any bidder quality, conduct or related risk management issues, facilitate requests by regulators, or the establishment and maintenance of knowledge databases). We are still responsible for ensuring confidentiality if Confidential Information is shared with or accessed by such parties. Where you are a listed entity in India or shall disclose to us any information related to a listed entity in India, the provisions of this clause shall apply. You shall comply with the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015, including amendments thereof, ("Regulations") and the restrictions imposed thereby. You agree to use all our oral and written reports and all other communications and advice, strictly in accordance with the Regulations. You shall inform us in writing, in advance in case the information supplied to us will include Unpublished Price Sensitive Information ("UPSI") pertaining to you or any other listed company / companies along with the name of such company / companies to enable us to comply with our obligations under the Regulations. You acknowledge and agree that we shall not be responsible for determining the difference between price sensitive and nonprice sensitive information that would form part of the information disclosed to us. All information supplied to us (in whatever form) which is not in the public domain will be treated as Confidential Information. We recommend that you obtain legal advice to ensure that the information supplied to us is not in contravention of any applicable laws and regulations. "Excluded Information" means information that: (i) is or becomes generally available in the public domain through no fault of either the receiving Party or those to whom the receiving Party has disclosed the Confidential Information; or (ii) was previously known to the receiving Party free of any obligation of confidence; or (iii) becomes available to the receiving Party free of any obligation of confidence from a third party who to the reasonable belief of the receiving Party is entitled to make such disclosure; or (iv) was developed by the receiving Party independently of the disclosing Party's Confidential Information. "Unpublished Price Sensitive Information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available is likely to materially affect the price of the securities and shall, ordinarily include, but not be restricted to, information relating to the following: (i) financial results; (ii) dividends; (iii) change in capital structure; iv) mergers, de-

				mergers, acquisitions, delistings, disposals and expansion of business and such other transactions; (v) changes in key managerial personnel.	
38	Page No. 8-16	C. OBLIGATIONS OF THE CONSULTANT,	25. Accounting, Inspection and Auditing	May we request to add following with clause: “The Audit shall happen with prior reasonable notice . Also client or its authorized representatives shall execute a Non-Disclosure Agreement before such Audit. The auditors or the representatives of client for the audit shall not be bidders competitors. The audit shall not be conducted more than once in a calendar year and twice in entirety. Any findings during the audit, shall be shared with bidder and be discussed and agreed mutually with bidder for its closure. The auditors visiting bidder’s premises shall abide by its IT and security policy. Will be restricted to the engagement in question. Accordingly, changes need to be incorporated over here.	As per the RFP
39	Page No. 8-18	E. OBLIGATIONS OF THE CLIENT	E. OBLIGATIONS OF THE CLIENT	May we request to add following clauses in this section:You shall provide (and procure that your personnel and representatives provide), in a timely manner, such cooperation, information, documents and access to personnel, premises, systems and facilities, as we reasonably need or request and you shall obtain all necessary licences and permissions. You shall provide a safe and appropriate working environment and perform any actions that are to be performed by you under this Agreement.You are responsible and accountable for managing your affairs, deciding on what to do after receiving any Deliverable and implementing any advice or recommendations.	As per the RFP
40	Page No. 8-18	E. OBLIGATIONS OF THE CLIENT	34. Working Hours, Overtime, Leave, etc.	May we request to clarify the leave , holiday and working time for composite team.	As per the RFP
41	Page No. 8-25	III. Special Conditions of Contract	Applicable Guidelines	We understand that “we shall comply with applicable policies communicated to us and agreed in writing and such policies shall be considered as a part of this Agreement.	As per the RFP
42	Page No. 8-27	III. Special Conditions of Contract	23.1 Consultant’s Liability The following limitation of the Consultant’s Liability towards the Client can be subject to the Contract’s negotiations: “Limitation of the Consultant’s Liability towards the Client: (a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client, shall not be liable to the Client: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract; (b) This limitation of liability shall not (i) affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; (ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the [insert “Applicable	May we request to modify this clause as: The following limitation of the Consultant’s Liability towards the Client can be subject to the Contract’s negotiations: “Limitation of the Consultant’s Liability towards the Client: (a) The Consultant, with respect to damage caused by the Consultant to the Client, shall not be liable to the Client: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract; (b) Our liability and that of any KPMG Person, in aggregate, to you and to Other Beneficiaries for direct losses or damages under this Agreement and for all claims connected to it, in contract, tort (including negligence), statutory liability or otherwise, shall be limited to the fees paid to us for the Services in last twelve (12) months preceding the claim. Nothing in this Agreement limits our liability for direct losses or damages arising from our fraud or deliberate breach of duty or any other liability which cannot be limited by law. <i>Any claim from you or Other Beneficiaries in respect of loss or damage</i>	As per the RFP



			Law," if it is the law of the Client's country, or insert "applicable law in the Client's country," if the Applicable Law stated in Clause SCC 1.1(c) is different from the law of the Client's country].	<i>suffered as a result of, arising from or in connection with the Agreement must be made as per the provisions of the Limitation Act, 1963, India.</i>	
43	Page No. 8-31	III. Special Conditions of Contract	<p>49. Dispute Resolutions: Disputes shall be settled by arbitration in accordance with the following provisions:1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the Fédération Internationale Des Ingénieurs-Conseils (FIDIC) of Lausanne, Switzerland for a list of not fewer than five (5) nominees and, on receipt of the list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, Fédération Internationale Des Ingénieurs-Conseils (FIDIC) of Lausanne, Switzerland shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the second arbitrator named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the Secretary General of the Permanent Court of Arbitration, The Hague.(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party that has named an arbitrator may apply to the Secretary General of the Permanent Court of Arbitration, The Hague to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.2. Rules of Procedure. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.3. Substitute Arbitrators. If, for any reason, an arbitrator is unable to perform his or her function, a substitute shall be appointed in the same manner as the original arbitrator.4. Nationality and Qualifications of Arbitrators. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) to 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a</p>	<p>May We request to modify this clause as: 49. Dispute Resolutions: Disputes shall be settled by arbitration in accordance with the following provisions:1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or the arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre which are in force at the date of applying for arbitration ("SIAC Rules"). The seat of the arbitration shall be Singapore provided that for the sake of convenience the venue of arbitration shall be Mumbai, India. The language of the arbitration shall be English and the award passed by the arbitrator shall be final and binding on the parties. Each party shall bear its own costs. (b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. 2. Rules of Procedure: The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre which are in force at the date of applying for arbitration ("SIAC Rules")3. Substitute Arbitrators. If, for any reason, an arbitrator is unable to perform his or her function, a substitute shall be appointed in the same manner as the original arbitrator.</p>	As per the RFP



			national of the Consultant's home country [Note: If the Consultant consists of more than one entity, add:] or of the home country of any of their members or Parties or of the Government's country. For the purposes of this Clause, "home country" means any of: (a) the country of incorporation of the Consultant [Note: If the Consultant consists of more than one entity, add:] or of any of their members or Parties; or (b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or (c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or (d) the country of nationality of the Sub-Consultants concerned, where the dispute involves a subcontract.		
44	Page No. 8 Page No. 8-27	ITC 16.2, Price Adjustment & Special Conditions on contract, 14.1, Contract Period	For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates applies if so, stated in the Data Sheet. & Expiration of Contract: The time period shall be 24 months after the effective date of Contract	As per the given clause" we request you to kindly share the exact duration of the Contract"	The Duration of this contract shall be 24 months after the effective date of Contract.
45	Page No. 52, Clause – 8 Page No. 54, Clause 8 & 9	TEAM COMPOSITION & QUALIFICATION REQUIREMENTS FOR THE KEY EXPERTS, Qualifications/ Experience Requirements for the Experts, & C: Responsibilities of the Experts	Qualifications/Experience Requirements for the Experts 8. 1.MBC, NC, DC, Dismantling Expert: He/she preferably have a bachelor's degree in Electrical/Electronics/IT/Computers with master's in business administration and preferably 10 years of proven experience in consultancies in area of revenue management in power utilities. 8. MBC Expert is responsible for:(i) Identification of Utility Business Requirements, Mapping of Existing Business Process, Alignment of Software Solution with Utility Business needs and Overall implementation / usability of RMS Software Solution Stack. 9. NC, DC, Dismantling Expert is responsible for:(i) Identification of Utility Business Requirements, Mapping of Existing Business Process, Alignment of Software Solution with Utility Business needs and Overall implementation / usability of New Connection, Disconnection and Dismantling Solution Stack.	As per clause, "MBC, NC, DC, Dismantling Expert", we would like to request you to clarify whether we need separate expert for MBC & separate expert for NC, DC Dismantling, or just one would do.	One expert would do.
46	Page No. 22	E. Summary Evaluation Sheet for Full Technical Proposals	Evaluation Criteria: Key Experts (International) Team Leadership	Total 162 marks are allocated to Team Leadership, however the evaluation parameters are not mentioned. We request you to kindly clarify.	The evaluation parameters and respective weightages are provided in the Personnel Evaluation Sheet. Also, the required Qualifications/Experience requirements are stated in TOR. In the EoI published 5 project experience details were sought. The format of the CV has been provided. Required to provide the necessary documentary evidences to substantiate the same.
47	Page No. 22	Summary Evaluation Sheet for Full Technical Proposals	g. Proposal presentation	Presentation is to be submitted as part of the proposal or would it be delivered as a presentation to NEA? Please clarify.	The presentation is to be delivered to NEA. Presentation



					slides are required to submit after delivering the same.
48	Page No. 48	ToR B. Detailed Tasks	Tasks: Consultant has to co-ordinate with various stakeholders (NEA, ERP Implementing Partner (SI) etc.) and would assist NEA in key decision-making and review of the work being undertaken during implementation and rollout.	We understand that the duration of consulting project would be 2 years from date of signing of contract irrespective whether SI for both IFMIS or RMS are onboarded or not.	The duration of this assignment is 2 years from the date of signing of contract. The scope of work of the consultant will start once either or both of the SIs are onboarded. This is a time and effort-based contract. The efforts of the respective experts will be required at the appropriate timings.
49	Page No. 48,49	10.1 Project Implementation Support	vi) Provide User Acceptance Test (UAT)/ System Integration Testing (SIT) Strategy Review Report including suggestions on UAT/SIT Test Scenarios. Review the UAT/SIT Strategy proposed by SIs. Check comprehensiveness of test scenarios and create additional scenarios, if required.(xii) Third-party software integration support: Support for reviewing, testing, and validating the third-party components being integrated with the core technology solutions	The SI is responsible for preparing the test scenarios, providing the UAT / SIT reports and ensuring third party software integration support. We believe the PMC's task is to review the test scenarios, review the testing reports and provide comments on their completeness, comprehensiveness and need for additional testing. The above statement in the scope gives an impression that the PMC has to provide the reports as well as the test scenarios.	PMC will review the UAT/SIT Strategy proposed by SIs. Check comprehensiveness of test scenarios and create additional scenarios, if required. PMC will also provide the UAT/SIT Strategy Review Report including suggestions on Test Scenarios.
50	Page No. 8-27	23.1 Consultant's Liability	The following limitation of the Consultant's Liability towards the Client can be subject to the Contract's negotiations: "Limitation of the Consultant's Liability towards the Client: (a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client, shall not be liable to the Client: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract;	Kindly note that there is no clause which limits the firm's liability. We request to incorporate the below clause in the contract, regarding the liability. "Notwithstanding anything contained in the contract, Client agrees that the Vendor/ Bidder / Consultant shall not be liable to Client, for any losses, claims, damages, liabilities, cost or expenses ("Losses") of any nature whatsoever, for an aggregate amount in excess of the fee paid under the contract for the services provided under the contract, except where such Losses are finally judicially determined to have arisen primarily from fraud or bad faith of the Vendor/ Bidder / Consultant. In no event shall the Vendor/ Bidder / Consultant, be liable for any consequential (including loss of profit and loss of data), special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to the services provided pursuant to this Contract."	As per the RFP
51	Page No. 22	Appendix 1 : Summary Evaluation Sheet for Full Technical Proposals	Presentation – 10 marks are allocated to proposal presentation.	We request clarification on what bidder needs to do to comply with this ask in the RFP.	This is the presentation of the Technical Proposal submitted.
52	Page No. 39	FORM FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM	We agree to permit ADB7 or its representative to inspect our site, assets, accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB. We understand that failure to comply with this obligation may constitute "obstructive practice" that may result in debarment and/or contract termination, if awarded	May we request to incorporated following clause with this: Any such audit needs to be done with prior written notice to us and the representatives who will come to audit need to sign an NDA with us.	As per the RFP

53	Page No. 42	Consultant's Representations Regarding Costs and Charges	the basic fees indicated in the attached table are taken from the firm's payroll records and reflect the current rates of the Experts listed which have not been raised other than within the normal annual pay increase policy as applied to all the Consultant's Experts;	Kindly note that, employee's payroll records are confidential details, hence we won't be able to provide this confirmation. Hence, we request you to kindly delete the criteria.	As per the RFP
54	Page No. 4, 51	ToR, Qualifications/ Experience Requirements for the Experts	Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-Consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually although the Client retains the prerogative to approve or reject the CV of the Non-Key Expert based on the proposed approach and methodology.	We request to clarify, whether we need to provide CVs for non-key experts at this stage or we can give an indicative pool of experts, since they are not being evaluated.	CVs for non-key experts are required to be submitted along with the proposal.