

## Responses to Queries of bidders-Pre-bid Meet held on 03-12-2012

Sl. No.	Reference	Specific Clause	Observations/Comments/Queries	Reply
1.	Form 1- Technical Proposal, Point 15/ Page 33	We agree not to seek any changes in the aforesaid draft (agreement) and agree to abide by the same	<ul style="list-style-type: none"> <li>The draft agreement and Performance Guarantee Format etc not yet being uploaded</li> </ul>	<ul style="list-style-type: none"> <li>Uploaded at website on 29-11-2012 more than a week ago the PDD</li> </ul>
2.	Clause 2.29.1 Page 19	If the progress of assignment is found to be non-satisfactory or delayed at any point of time, Udyog Bandhu reserves the right to impose penalty. The total amount of penalty shall not exceed 25% of total assignment fee.	<ul style="list-style-type: none"> <li>The penalty is too high and poses considerable financial risk</li> <li>Project may be delayed due to circumstances beyond the Knowledge Partner's control/ at clients end</li> </ul>	<ul style="list-style-type: none"> <li>Penalty clause has been reduced from 25% of total assignment fee to 10%. Accordingly clause no. 2.29.1 of RFP and clause no. 10 of Agreement has been modified.</li> </ul>
3.	New clause	Limitation of Liability	Doesn't exist	Not considered for modification
4.	Clause 2.36, Page 21	Termination of Agreement	The bidder is not authorized to terminate the agreement before its maturity.	This clause exists at point no. 2.9.2 of Agreement
5.	Clause J, Page 24: .	Payment to Selected Bidder	As Bid demands 10% performance security in advance. Moreover, the bidder has to immediately mobilize whole team right at the beginning and the first payment will be coming	Not considered for modification

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			by 4 <sup>th</sup> month only. This will cause cash flow issue at bidder's end	
6.	Clause 3.4(ii)	2 road shows abroad	We have been asked to budget in the cost of travel for road shows abroad. The cost of these road shows will vary significantly, if we travel to the US and Singapore.	<p>Considering the constraints on the part of bidders to assess their likely expenditure involved in lodging, fooding, travelling excluding DA and other incidental charges during international roadshows in view of not defining of name of countries at the stage of RFP, the bidders are required not to account for such expenditure in their financial bid, which otherwise would be met by Udyog Bandhu as per the norms of Govt. of UP.</p> <p>Hence, point no.2 of Form-1 of Appendix-II has been modified as " This financial proposal covers remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), equipment, surveys, third party services, overhead charges viz. travelling, boarding and lodging (other than international roadshows) and out of pocket expenses, etc. as would be required for meeting out the objective of assignment."</p>

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7.	Clause 4.1 1 . (iii)	Experience of conducting at least one Global Investment Summit in India in 5 years as Lead Consultant/Consultant/ Knowledge Partner involving Investment Promotion Program.	<ul style="list-style-type: none"> <li>It seems that experience of one Global Investment Summit would get 12 marks while any additional experience would get only 4 marks per project. We would request this to be suitably modified.</li> </ul>	Not considered for modification
8.	Form 4(A)	Year 2012-13	<ul style="list-style-type: none"> <li>Only experience of upto 31.10.2012 is acceptable</li> </ul>	Not considered for modification
9.	Clause 2.3(c): (page 9)	Relationship with Employer's staff	<ul style="list-style-type: none"> <li>This clause states that the Bidder may not be awarded a contract if the Bidder (including their personnel and sub-consultants) have a business or family relationship with such members of the Employer's staff or with the staff of the project implementing agency who are involved in (i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) supervision of such contract.</li> </ul>	Clause no. 2.3 (c) of RFP and Clause no. 3.2 (iii) has been deleted.
10.	Clause 2.41 at page 24		<ul style="list-style-type: none"> <li>The clause releases Udyog Bandhu from all claim/loss/damages arising out of their rights and obligations under the Agreement, and requires us to waive all claims we may have against Udyog Bandhu.</li> </ul>	It is clarified that compensation shall be binding to both the parties under the Arbitration & Reconciliation Act, 1996 .

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11.	Clause 2.2.2 (2)	Eligibility of the bidder		Not considered for modification

Agreement related issues

1.	Clause 2.2	Commencement of Services: The Knowledge Partner shall commence the Services immediately from the Effective Date.	The Knowledge Partner needs to be given some time for team mobilization	<p>1. In Clause no. 3.5 of RFP, "Day Zero shall be a week after the Award of Contract" has been modified as "Day Zero shall be 7<sup>th</sup> day after date of execution of Agreement."</p> <p>2. Clause no. 2.2 of Agreement, may be read as "The Knowledge Partner shall commence the services within seven days from the effective date".</p>
2.	Clause 2.3	Termination of Agreement: If the Knowledge Partner does not commence the Services within the period specified in Clause 2.2 above, the UDYOG BANDHU may, by not less than seven day's notice to the Knowledge Partner, call upon it to commence the work. If the Knowledge Partner fails to commence the work within	When read with Clause 2.2 (immediate commencement from effective date) this clause is extremely severe in terms of penalties ( forfeiture of EMD and invocation of BG)	Clause no. 2.2 has accordingly been modified.

		<p>stipulated time, UDYOG BANDHU, may terminate this</p> <p>Agreement, and in that event, the Earnest Money Deposit (if not returned/refunded to Knowledge Partner) would be forfeited and the Performance Security in the form of Bank Guarantee shall be invoked by the UDYOG BANDHU.</p>		
3.	Clause 2.4	Expiration of Agreement) -- 18 months from date of LoA	The expiration of agreement 18 months from LoA date would imply that a part of the service delivery period at the end of the assignment (10-14 days) would not be covered by a valid contract	Clause no. 2.4 has been modified as "Unless terminated earlier this agreement shall expire after 18 months from the effective date".
4.	Clause 2.7.1	Force Majeure - d) The UDYOG BANDHU will decide the eventuality of Force Majeure which will be binding on both the parties.	The interpretation of a Force Majeure eventuality cannot be subjective or decided on unilaterally	Being unilateral Clause 2.7.1 (d) has been deleted.
5.	Clause 3.2	<p>Conflict of Interest</p> <p>- The Knowledge Partner and its affiliates shall not engage in consulting activities that conflict with the interest of the UDYOG BANDHU under this Agreement and shall be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a</p>	As clarified in the earlier prebid meeting, the intent of Udyog Bandhu is only to ensure that the dedicated team of the Knowledge Partner is not assigned on any other assignment and confidential information is not used for the benefit of another client, however this clause goes much beyond that and restricts the Knowledge Partner from doing its business in normal course	<p>Clause no. 3.2 has been modified as under:-</p> <p>3.2 Conflict of Interest</p> <p>The Knowledge Partner shall not receive any remuneration in connection with the assignment except as provided in this Agreement. The dedicated team deployed by Knowledge Partner shall not engage in consulting activities that conflict with the</p>

continuation of the Services under the ongoing contract.

**(i) Conflict between assigned works and services:** Knowledge Partner hired to provide Services and each of its affiliates, shall be disqualified from subsequently providing Services to Third Party during the subsistence of this Agreement.

**(ii) Conflict among assignments:** Neither Knowledge Partner (including their personnel) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the Knowledge Partner.

interest of the UDYOG BANDHU under this Agreement and shall be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the Services under the ongoing contract. The dedicated team engaged for this assignment should not be deployed in similar nature of assignment of any other state. It should be the requirement of the assigned works that the Knowledge Partner should provide professional, objective and impartial advice and at all times hold the UDYOG BANDHU's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Knowledge Partner shall not be hired for any assignment that would be in conflict with their prior or current obligations to the UDYOG BANDHU, or that may place them in a position of being unable to carry out the assignment in the best interest of the Udyog Bandhu. Without limitation on the generality of the foregoing, Knowledge Partner agrees and

				declares as below:-  (i) Conflict between assigned works and services: Knowledge Partner hired to provide Services and each of its affiliates, shall be disqualified from subsequently providing Services to Third Party during the subsistence of this Agreement (Here the third party means all other associates engaged by Udyog Bandhu selected with the assistance of selected bidder during the tenure of this assignment).
6.	Clause 3.4.1	Liability of the Knowledge Partner) -- The Knowledge Partner's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.	There is no cap/limit on bidder's professional liability and this amounts to unlimited liability	This Clause is being modified as "The aggregate liability of the Consultant under this agreement, or otherwise in connection with the services to be performed hereunder, shall in no event exceed the total assignment fee hereunder unless otherwise it is decided by any competent court or under arbitration."
7.	Clause 3.8	Accuracy of Documents	This clause states that Knowledge Partner has to indemnify Udyog Bandhu against inaccuracy in our work, subject to Clause 3.4. This kind of an indemnity is subjective and poses a substantial financial risk	It is clarified that this clause will not apply to accuracy of information provided by any department of Uttar Pradesh or Udyog Bandhu.

8.	Clause 5.2	Payment to the knowledge partner - On successful completion of assignment for the last quarter	Successful completion has not been defined. No mobilization advance Payment timeline for Udyog Bandhu for honouring invoices not indicated	Clarified that the Parameter of satisfactory performance would be identified at the time of finalization of action plan.
9.	Clause 11	Indemnity -- The Knowledge Partner will indemnify the UDYOG BANDHU for any direct loss or damage that is caused due to deficiency in services	This indemnity is too wide and generic, and exposes the Knowledge Partner to financial risk, unless the indemnity is either capped (through the use of a liability cap in clause 3.4) or made more specific by using the following wording instead:	Clause no. 11 has been modified as "The Knowledge Partner will indemnify the UDYOG BANDHU for any direct loss or damage that is caused due to the Knowledge Partner's fraud, willful misconduct, gross negligence, breach of confidentiality or breach of third party intellectual property rights in the performance of the services."  Clause no. 2.25 of RFP also stands modified accordingly .