

**DEVELOPMENT OF A MODEL
CONCESSION AGREEMENT FOR SCHOOL EDUCATION**

The following are the modifications to the Request for Proposal dated March 26, 2010 and Addendum 1. The referenced provisions are to be read in the amended form as set out below. **The deletions from the earlier text of the RFP uploaded on the website are indicated as strikethroughs and the additions are underlined.**

Sl. No.	Clause No.	Modified Provision of the Request For Proposal																		
1.	1.8	<table border="0"> <thead> <tr> <th align="left">Event Description</th> <th align="left">Date</th> </tr> </thead> <tbody> <tr> <td>1. Last date for receiving queries/clarifications</td> <td>April 1, 2010</td> </tr> <tr> <td>2. Pre-Proposal Conference</td> <td>April 7, 2010</td> </tr> <tr> <td>3. Authority response to queries</td> <td>April 9<u>13</u>, 2010</td> </tr> <tr> <td>4. Proposal Due Date or PDD</td> <td>April 16<u>23</u>, 2010</td> </tr> <tr> <td>5. Opening of Proposals</td> <td>On Proposal Due Date</td> </tr> <tr> <td>6. Letter of Award (LOA)</td> <td>June 3<u>10</u>, 2010</td> </tr> <tr> <td>7. Signing of Agreement</td> <td>Within 7 days of LOA</td> </tr> <tr> <td>8. Validity of Applications</td> <td>90 days of Proposal Due Date</td> </tr> </tbody> </table>	Event Description	Date	1. Last date for receiving queries/clarifications	April 1, 2010	2. Pre-Proposal Conference	April 7, 2010	3. Authority response to queries	April 9 <u>13</u> , 2010	4. Proposal Due Date or PDD	April 16 <u>23</u> , 2010	5. Opening of Proposals	On Proposal Due Date	6. Letter of Award (LOA)	June 3 <u>10</u> , 2010	7. Signing of Agreement	Within 7 days of LOA	8. Validity of Applications	90 days of Proposal Due Date
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2.	4.1(B)(iii) of TOR (Schedule 1)	<p><i>Draft Documents</i> ((iii) review of the Manuals as specified in Clause 3.73.6;</p>																		

CLARIFICATIONS ON QUERIES RAISED BY BIDDERS

S. No.	Clause no.	Clarification Requested	Clarification by Planning Commission
1.	2.3.2 and 2.3.4 of RFP, 3.2.2 of Schedule 2, and Schedule 3	<p>With reference to Clause 3(a)(ii) and (iii) of Schedule 3 relating to the <i>Guidance Note on Conflict of Interest</i>. It may be clarified that since the Services outlined in the RFP involve assistance in drafting of a model concession agreement, assignments undertaken by the Applicant with the Authority which involve reviewing/drafting of model concession agreements in other sectors, will not fall within the ambit of ‘project’ within the meaning of Clause 3(a)(ii) and (iii).</p> <p>Also, with respect to Clause 3(b)(ii) and (iii) of Schedule 3, since the Services outlined in the RFP and the TOR involve assistance in drafting of a model concession agreement and not in relation to a specific ‘project’, it may be considered whether the concerns that appear to be addressed thereunder may not apply in the case of the instant assignment.</p>	Refer to Clause 2.3.4 OF RFP. The language is clear and self-explanatory.
2.	Clause 3.1.3	Clause 3.1.3 of the RFP states that the Legal Expert should account for “at least 20% of the total professional fee received by the firm for the relevant assignment”. Kindly clarify how the same is proposed to be computed? For example, in a transaction where the firm has billed on a lumpsum basis, how will the contribution of the	Applicant may certify on the basis of records kept by it.

		Legal Expert vis a vis the professional fee charged by the firm be ascertained?	
3.	3.2 (b) of TOR (Schedule 1)	<p>The Scope of Services includes preparation of a consolidated list of approvals/ consents/ clearances required from government instrumentalities.</p> <p>In this regard the following may be noted: The reporting mechanism relating to local laws is not entirely systematic and laws may be published in publications not having wide circulation and not necessarily in a timely manner. There are limited facilities for verification of state and local laws pertaining to the various approvals required for undertaking the Project (at state level). Further, the compilation of exhaustive list of approvals including approvals granted by local authorities would be a time consuming exercise. Hence, it is suggested that the requirement relating to compilation of approval required for the Project be limited to <i>material approvals</i>.</p> <p>The Authority is also requested to clarify whether the scope of the same relates to the key approvals required <i>by the Authority</i> for undertaking the Project.</p> <p>Further, the Authority may wish to clarify the specific deliverable (in the chart of deliverables at Clause 5.4 of Schedule 1: TOR) under which the said compilation would be billed, since Deliverable A, which has an allocation of 60 Man Hours, may not suffice to accommodate the</p>	<p>The MCA proposed to be drafted is for schools to be set up by the Central Government, hence, the Clause will be applicable with respect to approvals/ consents/ clearances required for such schools by the Authority as well as the private entity. Due diligence is expected only with respect to material approvals.</p> <p>No change in the RFP is contemplated.</p>

		<p>said <i>compilation of approvals</i>. It is also suggested, in the interest of greater clarity, that a separate deliverable may be specified for the same.</p>	
4.	3.3 of TOR (Schedule 1)	<p>The clause indicates that in addition to review of the draft MCA, the Legal Adviser would need to assist the Authority in the preparation of Model Bid Documents, which shall be based on the Model RFP to be provided by the Authority. The Legal Adviser is also required to review draft the Bid Documents (which includes draft Concession Agreement and Feasibility Report), offer comments, and assist in finalization of the same. As the selection of the legal Adviser is for development of the model concession agreement, preparation of model bid document appears to be an inadvertent error and the same may be reviewed and clarified.</p> <p>If the Legal Adviser is required to prepare / review Bid Documents, the same may be identified as a “deliverable” at Clause 5.2 and allotted “Maximum Man Hours” at Clause 5.4 of TOR. The payment for the same may also be provided. Further, it is provided that “Bid Documents would include the draft Concession Agreement and the Feasibility Report”. The Authority is requested to clarify the meaning of capitalized terms and confirm that reference to “the draft Concession Agreement” is a reference to the draft Model Concession Agreement, in case the Legal Adviser is required to review Bid</p>	<p>Besides the Model Concession Agreement, the Legal Adviser is expected to review the RFQ and RFP for this sector, which will be based on the Model RFQ and RFP already published by the Planning Commission.</p>

		Documents.	
5.	4.1 (B) (III) of TOR (Schedule 1)	The said sub-clause (iii) refers to <i>Clause 3.7</i> . However, there is no such clause in Schedule 1. The Authority is requested to clarify the same. Also, we note that “Manuals” is not a defined term and its scope is uncertain. The same may be clarified.	Refer Addendum
6.	5.5 of TOR (Schedule 1) and 4.2.2 of Schedule 2	The Authority may kindly clarify that the reference to “estimated periods of engagement” in Clause 5.5 of TOR and 4.2.2 of Schedule 2 is intended to refer to aggregate Maximum Man Hours given in the table at Clause 5.4 of TOR. It is noted that though maximum increase of 30% of the aggregate Maximum Man Hours is permitted, the payment obligations of the Authority cannot increase by more than 25% of the Agreement Value. The Authority may kindly review and confirm the same.	The language is clear and self explanatory.
7.	5.7 of TOR (Schedule 1) and 10.2 of TOR (Schedule 1)	It is provided that 20% of the Agreement Value (the Lump Sum Payment) would not be payable if the MCA is not finalized within 1 (one) year of the Effective Date. It appears that the Legal Adviser is expected to risk forfeiture of 20% payment (Final Payment / Lump Sum Payment). Since the finalization of the MCA is not dependant on the Legal Adviser, it may be clarified that the forfeiture would apply only if the MCA is not finalized within 1 (one) year of the Effective Date <i>solely due to reasons attributable to the Legal Adviser</i> . Also, while such a provision is seen in cases	No change is contemplated.

		<p>where the consultant is required to assist in concluding a subsequent bid process and execution of the concession agreement, for which purpose a percentage of payment is earmarked, the services to be provided by the Applicant in the instant case includes the drafting of a model concession agreement, and not assistance on a specific project. Hence this provision does not appear to be relevant and the same may be reviewed.</p> <p>It is also noted that the word “personnel” appearing in the last line of Clause 5.7 is a defined term; and hence, the same should be capitalized.</p>	
8.	8 of TOR (Schedule 1)	<p>The reference to a minimum of 45 days as the minimum time required for the project (in the last row of the table pertaining to Legal Expert) appears ambiguous. The Authority may kindly clarify the reference to 45 days.</p> <p>Further, total man hours estimate per Clause 5.4 of TOR is 400 hours and the total time estimate per Clause 5.2 of TOR, with Key Dates, is 24 weeks. It may be clarified on what basis 45 days is provided as the minimum time required.</p>	The Legal Expert is expected to provide 45 man days for this assignment.
9.	6.3 (A)(I) of Schedule 2	<p>It is provided that no payment would be made for the next stage of the work, until work for the previous stage has been completed to the satisfaction of the Authority. This is subject to the proviso that for KD3, KD4 and KD5, payment shall be due and payable by the Authority for the man hours spent during each</p>	The language is clear and self-explanatory.

	<p>calendar month. The Authority is requested to confirm that the payment for KD3, KD4 and KD5 would be as per man hours spent each calendar month, even if there is an overlap, although the same appears to be unlikely.</p> <p>The deliverables indicated as KD2 may overlap with / spill-over to subsequent stages. The Authority is requested to confirm that in either scenario, payment would be made for KD2 and subsequent stages also, as per the man hours spent. The Authority is also requested to confirm that KD2 need not be completed as a pre-requisite to subsequent stages.</p>	
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