

Appraisal of Standard Agreements and Contractual Documents for Projects under National Infrastructure Pipeline to Achieve Disaster Resilience Goals

Pre-Proposal queries and replies

Reference No: 02/12/2021-DIR_HR-OPS

RFP Title: Appraisal of Standard Agreements and Contractual Documents for Projects under National Infrastructure Pipeline to Achieve Disaster Resilience Goals

Name of the Organisation: Coalition for Disaster Resilient Infrastructure (CDRI)

The following table collates the comments/queries/requests received by CDRI till 27.09.2021 from all consultants and replies of CDRI thereon. This document is being shared with all the consultants along with the Requests for Proposal revised based on suggestions and comments in this document.

S. No.	Page No.	Clause/Reference Page	Comments / Query / request from consultant(s)	CDRI Reply / clarification
1.	17	Date and Time and address for submission of proposals/bids	Generally, as a practice, minimum 21 days' time from the date of issue of clarification of pre-bide queries are given to the bidders for submitting the bids. Keeping in view the same, it is suggested that date of submission of bids may be reconsidered and revised accordingly.	Extended till 15 November 2021
2.	18	Performance Guarantee Amount = 5 percent of total cost of project	It is submitted that considering current pandemic crisis, the Ministry of Finance, Government of India vide circular dated 12.11.2020 has decided to reduce the Performance Guarantee from 5-10% to 3% for all existing contracts and upcoming procurement till 31.12.2021. Considering the same, it is requested that CDRI may also relax and reduce the performance guarantee amount from 5% to 3%.	As per RFP
3.	20	Evaluation Criteria for Qualification Documents 2. Financial Eligibility: a. The Agency should have a minimum average turnover of USD 600,000 (or equivalent) for the last 3 financial years. Academic and research institutions may be exempted.	<ul style="list-style-type: none"> Considering the expanse of this assignment and quality of work desired, we request to increase the turnover criteria to minimum INR 50 crore for last 3 years. Our understanding is that Statutory auditor certificate has to be enclosed in the proposal certifying the figures. Please confirm It may also be clarified that the turnover requirement needs to be met by the bidding entity and not affiliates or member firms. 	As per RFP
4.	20	Evaluation criteria for technical bids: Consultancy firms specific experience	Under the consultancy firm's specific experience there is a specific mention of projects related to disaster management, infrastructure planning and development support of various utilities and international projects. While the main aim of the study is to appraise standard agreements and contractual documents related to infrastructure financing and implementation, to enable incorporation of resilience features and parameters into projects under NIP. Hence, this can be fulfilled with the organization having relevant experience of policy formulations, PPP, bid process management services/PMU kind services too. So, we would recommend making the evaluation criteria regarding consultancy experience more specific to the ToR.	Agreed. RFP revised accordingly.

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5.	20	Method of Selection 75 percent weightage will be awarded for Technical Proposal and 25 percent weightage will be awarded for Financial Proposal	We request CDRI to please consider QCBS with 80:20:Technical: Financial for the tender.	As per RFP.
6.	20	Evaluation Criteria for Technical Bids	We request CDRI to please consider Average Annual Turnover as evaluation criteria with minimum 10 marks to ensure that the bidder is financially capable to deliver the solution for this assignment.	As per RFP
7.	20	Evaluation Criteria for Technical Bids	It is submitted that some government Clients and their funding institutes like USAID, BMGF, Geohazard don't issue completion certificates. In view of this, it is requested to consider a certification from statutory auditor stating that fees for a specified project has been received for successful delivery as a proof of completion of the project.	Accepted.
8.	20	Minimum Eligibility Criteria a. Agency should have a registered office and team members in India to be able to conduct the study in Odisha, Himachal Pradesh, Gujarat and Tamil Nadu India despite travel restrictions in place due to COVID19.	We believe the envisaged engagement is centred around the line ministries identified in the RFP document and engagement shall essentially be serviced at New Delhi only. We request you to kindly modify the articulation of the clause as follows: <i>"Agency should have a registered office in India and should be able to travel to Delhi for necessary coordination during the course of engagement."</i> Our request may please be considered and confirmed via corrigendum.	Accepted. RFP revised accordingly.
9.	20	Evaluation Criteria of Technical Bids a. Number of completed/ ongoing (>50 percent completed*) Projects in disaster risk management of infrastructure. Minimum Value = INR 15,00,000/-	It is to note that studies around disaster risk management / resilience studies previously conducted in India are essentially centred around specific risks within certain catchment. The project values of these engagements are generally lower than assigned commercial benchmark in the RFP. The authorities are requested to kindly reduce the Minimum Value to INR 10,00,000 only to enable more firms adequately participate in the process.	Accepted. RFP revised accordingly.
10.	20	Evaluation Criteria of Technical Bids	For the purpose of evaluation under technical eligibility, it is understood that a project duly covering aspects of multiple criterions can be repeated to showcase bidders' experience. Authorities are requested to kindly confirm upon our understanding	Yes, same project may be repeated.

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11.	21	Evaluation criteria of technical bids: Number of completed/ongoing (>50 percent completed*) International Projects related to infrastructure sector (outside India)	We would like to understand the significance of adding international projects as part of evaluation criteria	Consulting agencies are expected to bring in international knowledge and best practices.
12.	22	Sub criteria for evaluation of qualifications and relevant experience of Key Staff: Professional project experience	The sub criteria include 50% points for project experience (in the required area of assignment) for every expert. Under this the required area of assignment is uniform but the expertise for every staff differs. This implies that the expertise criteria for every staff does not have any marks. We propose to make the evaluation criteria clear for key staff.	RFP revised. Projects should be as per expertise noted in the ToR, page 47.
13.	22	Sub criteria for evaluation of qualifications and relevant experience of Key Staff: International experience	The sub criteria include 25% points for international experience for every key staff. We propose this to be limited only to team leader as team leader has the maximum points under evaluation criteria. This sub criteria marking shall be replaced by year of experience for all other staff.	As per RFP.
14.	22	2: The Qualifications and relevant experience of Key Staff will be evaluated based on the following sub-criteria International Experience: 5 + years – 100 percent 3 to 5 years – 75 percent 1 to 3 years – 50 percent 0 years – 0 percent	We request the authorities to kindly remove the requirements of international experience for key staff. The proposal field of study is essentially centred in Indian context, so it is advisable that national experience is sought in the RFP. Authorities are requested to kindly consider our request.	As per RFP.
15.	45	Timelines for deliverables Within a total expected duration of six months the approximated timeline for various milestones and the payment schedule is given below.	Keeping in mind the complexity of the scope at hand and involvement of several stakeholders, along with factors like COVID-19 related restrictions on travel that are affecting organizations and people everywhere, we suggest that an extended timeline of a year would be more prudent to implement and actualize the given scope of work.	As per RFP.
16.	47	Staffing requirements	We propose to mention minimum essential educational and qualification requirements for every staff. Also, the expertise mentioned for every key staff are too vague. As the expertise for each staff proposed does not have any evaluation marks then this can be kept open with options in the expertise.	Refer to point 12 above.
17.	47	Staffing requirements: Infrastructure advisor	We propose to reduce the number of infrastructure advisor to only urban infrastructure advisor and this can include experience of such expert working in any of the mentioned utility field. As even an experienced urban infrastructure advisor is capable of carrying out such studies.	Accepted. RFP revised accordingly.

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18.	47	Staffing requirements: Team expertise under staffing requirements	We propose to make the expertise requirements for each team member more specific to the ToR as one individual which is a power infrastructure advisor cannot have expertise in all the mentioned fields (Design and planning of power infrastructure, Transmission and Distribution, operations and maintenance. Expertise in standards, technology selection and deployment).	Accepted. RFP revised accordingly.
19.	48	Additional Information: Please note that CDRI may facilitate the process of data collection and meetings with the requisite stakeholders. But the primary responsibility for these will lie with the Agency.	As the project is of 6 months and the inception report and first workshop needs to be organized in T0+25 days. It is assumed that CDRI will facilitate all the secondary data and initiate the initial discussion with stakeholders as this may fasten the process for the consultant.	As per RFP.
20.	50	Section 5: Standard form of Contract	It is suggested that following clause related to Limitation of Liability may be added: Limitation of Liability: The Client shall not recover from the Consultant, in contract or tort, under statute or otherwise, any amount with respect to loss of profit, data or goodwill, or any other consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated. The Client shall not recover from the Consultant, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services.	As per RFP.
21.	58	Force Majeure	It is recommended to add below clause to under Force Majeure to facilitate remote working considering current pandemic situation in the country: 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 Team Personnel are required to be present at Client's premises, the agency will use reasonable efforts to provide the Services on-site at [Client] offices, provided that, in light of a pandemic the parties agree to 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 agency resource determines that he or she is unable or unwilling to travel in light of a pandemic-related risk.	As per RFP.

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22.	60	2.9 Termination 2.9.2: By the Agency	<p>It is recommended to add below clause:</p> <p>The Agency may terminate this Agreement, or any particular Services, immediately upon written notice to Client if the Agency reasonably determine that the Agency can no longer provide the Services in accordance with applicable law or professional obligations.</p>	As per RFP.
23.	Clause 3, page 61	<p>Intellectual property:</p> <p>3.1. The Consultant acknowledges and agrees that all Intellectual Property Rights ("IPR") in relation to Arising IP belongs to CDRI, for perpetuity, and for all territories of the world. The Consultant acknowledges that the Arising IP is a work for hire for which adequate compensation has been paid to it and all IPR in the same vests with CDRI and no one else. Page 62-75</p> <p>3.2. Parties acknowledge the IPR in the Background IP belong to each party who owns it prior to the Agreement and does not include Arising IP. A breach of the same shall be construed as a material breach of the Agreement and dealt with as per provisions given herein under and applicable laws.</p> <p>3.3. Consultant agrees to promptly provide its necessary 'Background IP' to CDRI, upon CDRI's request, which is essential and required for the purpose of this Agreement. The Consultant shall give a license of use to CDRI in respect of the Background IP so requested in so far as found necessary by CDRI for the purpose of completion of this Agreement to the satisfaction of CDRI.</p> <p>3.4. Neither party shall assume any rights in the Other Party's Background Intellectual Property provided for this project other than the right to use as given under clause 3.3 herein above.</p> <p>3.5. Upon prior written permission of CDRI (upon request raised by the Consultant), the Consultant may anonymize the data which forms part of the Arising IP as contemplated in the present Agreement, which has been or will be generated as a result of the performance of the services, and to use such data to provide, manage, support and improve Consultant's services.</p> <p>3.6. The Consultant agrees that during the subsistence of the present Agreement, it could come across or be handed over the material, data, etc., where the intellectual property rights in the same would be the sole property of CDRI. Consultant agrees that he shall not, directly or indirectly, use, publish, communicate, copy or in any manner whatsoever disclose said material, whole or in part, the said material, data, information belonging to CDRI, to any entity in any manner or medium whatsoever, for any reasons whatsoever.</p> <p>3.7. Surrender of material which belong to CDRI upon Termination of Agreement: Upon termination of this Agreement, Consultant shall return immediately to the CDRI all Background IP which belongs to CDRI (including all books, records, notes, data, and information relating to CDRI or its business and all other CDRI property) and will so certify in writing that it has done so, to the satisfaction of CDRI.</p>	<p>It is suggested to modify this clause as per below:</p> <p>3.1. The Consultant acknowledges and agrees that all Intellectual Property Rights ("IPR") in relation to Arising IP belongs to CDRI, for perpetuity, and for all territories of the world. The Consultant acknowledges that the Arising IP is a work for hire for which adequate compensation has been paid to it and all IPR in the same vests with CDRI and no one else. Page 62 of 75</p> <p>3.2. Parties acknowledge the IPR in the Background IP belong to each party who owns it prior to the Agreement and does not include Arising IP. A breach of the same shall be construed as a material breach of the Agreement and dealt with as per provisions given herein under and applicable laws.</p> <p>3.3. Consultant agrees to promptly provide its necessary 'Background IP' to CDRI, upon CDRI's request, which is essential and required for the purpose of this Agreement. The Consultant shall give a license of use to CDRI in respect of the Background IP so requested in so far as found necessary by CDRI for the purpose of completion of this Agreement to the satisfaction of CDRI.</p> <p>3.4. Neither party shall assume any rights in the Other Party's Background Intellectual Property provided for this project other than the right to use as given under clause 3.3 herein above.</p> <p>3-5: Upon prior written permission of CDRI (upon request raised by the Consultant), the Consultant may anonymize the data which forms part of the Arising IP as contemplated in the present Agreement, which has been or will be generated as a result of the performance of the services, and to use such data to provide, manage, support and improve Consultant's services.</p> <p>3-6: The Consultant agrees that during the subsistence of the present Agreement, it could come across or be handed over the material, data, etc., where the intellectual property rights in the same would be the sole property of CDRI. Consultant agrees that he shall not, directly or indirectly, use, publish, communicate, copy or in any manner whatsoever disclose said material, whole or in part, the said material, data, information belonging to CDRI, to any entity in any manner or medium whatsoever, for any reasons whatsoever.</p> <p>3-7: Surrender of material which belong to CDRI upon Termination of Agreement: Upon termination of this Agreement, Consultant shall return immediately to the CDRI all Background IP which belongs to CDRI (including all books, records, notes, data, and information relating to CDRI or its business and all other CDRI property) and will so certify in</p>	As per RFP.

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		3.8. Moral Rights: Consultant hereby waives all moral rights relating to the Intellectual property which may be developed by it during the performance of the present contract (including any rights (a) of identification of authorship, (b) of approval, restriction, or limitation on use, and (c) to subsequent modifications.	<p>writing that it has done so, to the satisfaction of CDRI.</p> <p>3.8. Moral Rights: Consultant hereby waives all moral rights relating to the Intellectual property which may be developed by it during the performance of the present contract (including any rights (a) of identification of authorship, (b) of approval, restriction, or limitation on use, and (c) to subsequent modifications.</p> <p>4.3.9 The Agency may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that the Agency own in performing the Services. Notwithstanding the delivery of any Reports, the Agency retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers that the Agency 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.</p>	
24.	63	4.3: Confidentiality	The confidentiality period is not mentioned. It is recommended that confidentiality period should be considered as maximum 3 years.	As per RFP.
25.	63	4.3: Confidentiality	<p>It is suggested that the following clause may be added:</p> <p>"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 3 years from the date of termination of this Agreement."</p>	As per RFP.
26.	64	4.4: Insurance to be taken out by the Agency	In general, the consultancy organizations maintain professional indemnity insurance only. Such professional indemnity insurance covers all professional liability up to an appropriate level sufficient for the purposes of this engagement. Since the PII policy is confidential, the terms of the policy are not recommended to be disclosed.	Agreed. The agency can submit a self-declaration to this effect.

Requests for Information:

1. Legal name of the entity which will be signing the contract: **Coalition for Disaster Resilient Infrastructure (CDRI)**
2. Ownership/Structure of Business of the entity signing the contract (Private, Public, Partnership, Proprietorship, Individual, Others): **Society registered under Society Registration Act, 1860.**
3. Key management personnel of the entity signing the contract (Chairman, Managing Director, Board of Directors, etc.): **Director General, CDRI**
4. Parent Company of the entity signing the contract: **NA**
5. Ultimate Parent Company of the entity signing the contract: **NA**
