

Amendments for Queries - Ref: CO/ITD/1083/R2:2018-19 dated 24/12/2018–Request for Quotation (RFQ) for Supply, Configuration and Maintenance of Oracle Database, Oracle Database Options and Weblogic Licenses

S. No.	Page#/ Clause No.	Point	Description	Clarifications Sought	Bank's Response
1.	Pg. No. 13/ Clause No. 3.9	Limitation of Liability	<p>Supplier's aggregate liability under the contract shall be limited to a maximum of the contract value. This limit shall not apply to third party claims for</p> <p>IP Infringement indemnity.</p> <p>Bodily injury (including Death) and damage to real property and tangible property caused by Supplier's gross negligence. For the purpose for the section, contract value at any given point of time, means the aggregate value of the purchase order placed by bank on the Supplier that gave rise to claim, under this tender.</p> <p>Supplier shall not be liable for any indirect, consequential, incidental or special damages under the agreement/ purchase order.</p> <p>For (a) and (b) above, the liability is limited to the Compensation awarded by court of law. The liability is capped to Contract value.</p> <p>The down time due to nonfunctioning of software</p>	NA	<p>Amended Clause:</p> <p>Supplier's aggregate liability under the contract shall be limited to a maximum of the contract value. This limit shall not apply to third party claims for</p> <p>IP Infringement indemnity.</p> <p>Bodily injury (including Death) and damage to real property and tangible property caused by Supplier's gross negligence. For the purpose for the section, contract value at any given point of time, means the aggregate value of the purchase order placed by bank on the Supplier that gave rise to claim, under this tender.</p> <p>Supplier shall not be liable for any indirect, consequential, incidental or special damages under the agreement/ purchase order.</p> <p>For (a) and (b) above, the liability is limited to the Compensation awarded by court of law.</p>

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			attributable to Oracle is considered for delay or failure.		The down time due to nonfunctioning of software attributable to Oracle is considered for delay or failure.
2.	Pg. No. 19/ Clause No. 5	Eligibility Criteria	<p>5.2. The Bidder should be Net profit earning organization in the last three financial years of the bidder.</p> <p>5.4. The Annual turnover should be more than Rs. 40 crores for the last three financial years of the bidder.</p>	NA	<p>Amended Clause:</p> <p>5.2 The Bidder should be Net profit earning organization in the last three audited balance sheets of the bidder.</p> <p>5.4 The Annual turnover should be more than Rs. 40 crores for the last three audited balance sheets of the bidder.</p>
3.	Pg. No. 31/ Clause No. 14 Para 4	Non-Disclosure Agreement	The parties intend to engage in discussions and negotiations concerning establishment of business relationship between them. In the course of discussions and negotiations, it is anticipated that the parties may disclose or deliver to the other certain or some of its trade secrets or confidential or proprietary information for the	NA	<p>Amended Clause:</p> <p>The parties have entered in to contract on..... for the purpose of and established business relationship between them. In the course of business relationship it is anticipated that the parties may disclose or deliver to the other certain</p>

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			purpose of business relationship.		or some of its trade secrets or confidential or proprietary information for the purpose of business relationship.
4.	Pg. No. 32/ Clause No. 4 Para 4	Non-Disclosure Agreement 4. Term	This agreement shall be effective from the date of the execution of this agreement and shall continue till expiration or termination of this agreement due to cessation of the business relationship between the parties. Upon expiration or termination as contemplated herein the Receiving party shall immediately cease any or all disclosures or uses of confidential information and at the request of the disclosing party, the receiving party shall promptly return or destroy all written, graphic or other tangible forms of the confidential information and all copies, abstracts, extracts, samples, note or modules thereof. The obligations of the receiving party respecting disclosure and confidentiality shall continue to be binding and applicable without limit until such information enters the public domain.	NA	Amended Clause: This agreement shall be effective from the date of the execution of this agreement and shall continue after expiration or termination of this agreement due to cessation of the business relationship between the parties. Upon expiration or termination as contemplated herein the Receiving party shall immediately cease any or all disclosures or uses of confidential information and at the request of the disclosing party, the receiving party shall promptly return or destroy all written, graphic or other tangible forms of the confidential information and all copies, abstracts, extracts, samples, note or modules thereof. The obligations of the receiving party respecting disclosure and confidentiality shall continue to be binding and applicable without limit until such information enters the public domain.



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5.	Pg. No. 9/ Clause No. 2.13.2	Commercial Evaluation	<p>a) Technically qualified Bidders alone will be intimated to participate in the Reverse Auction process to identify L1 (lowest quoted) Bidder for awarding contract.</p> <p>b) Total Price as given in Part II to be quoted in the reverse auction. The price should be:</p> <p>(i) Inclusive of all Duties, Levies, Delivery, installation and support etc.</p> <p>(ii) Exclusive of Taxes only. TDS, if applicable, will be deducted as per the applicable rates from the payment.</p> <p>Arithmetical errors will be rectified on the following basis.</p> <p>(i) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected.</p> <p>(ii) If there is a discrepancy between words and figures, the amount in words will prevail.</p> <p>If the Supplier does not accept the correction of the errors, such</p>	<p>1. Bidder would like to submit that all fees payable to Bidder are exclusive of any sales, use, value added tax, service taxes or taxes of a similar nature measured by the services, deliverables or charges thereon, imposed by any applicable taxing jurisdiction and where such taxes are applicable, Buyer shall be responsible to pay or reimburse Bidder the amount of such taxes. Where applicable, Bidder shall invoice such taxes as a separate line item in applicable invoices and shall pay such amount of tax to the appropriate taxing authority upon receipt of such amount from Buyer. Each party is responsible for its own income taxes, corporate taxes and franchise taxes.</p> <p>2. Bidder will monitor the cost components related to this assignment. At each milestone and at the time of periodic reviews, in case of variances against its budget for reasons not attributable to Bidder like delays in inputs/approvals by the Buyer, non-availability of facilities at the Buyer, increase in the scope of the agreed Change-Requirements or increase in the Buyer's Implementation support requirements etc., Bidder will bring this to the attention of Buyer. All such cost increases will be discussed and</p>	Please adhere to tender's terms and conditions.

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			quote will be rejected and they shall forfeit the Bid Security.	mutually agreed upon. Bidder will then raise invoices, payment period and other conditions for such invoices, which will be similar to those for payments laid out in the proposal.	
6.	Pg. No. 12/ Clause No. 3.5	Payment	<p>3.5.1. License Cost with ATS covering onsite support and updates: 100% payment (cost of licenses, 1st year ATS, onsite support and maintenance cost) will be made after delivery of Licenses and on submission of Bank Guarantee, Contract Form, Service Level Agreement (SLA), Non-Disclosure Agreement (on Individual capacity and on behalf of the organization). The payment will be released within 15 days of submission of a request letter along with Invoice and delivery challan duly acknowledged by official of the Bank.</p> <p>3.5.2. Subsequent ATS Payment: Subsequent ATS Payment for 2nd and 3rd year will be made annually in advance. Bank reserves the right to renew the ATS for the software from the OEM through the other vendor or the same vendor (successful bidder) at mutually agreed rate after contract period as detailed in the</p>	<p>2. Bidder would like to submit that all invoices and bills raised by Bidder will become due for payment within fifteen (15) days of presentation. All payments are to be made by demand draft/cheque favouring bidder. All payments due for more than thirty (30) days will attract an interest at the rate of 2 percent per month on the invoice amount calculated from the date the payment became due until the recovery is made in full with interest. Without prejudice to the other rights available, Bidder also reserves the right to withhold the provision of services till such time all the payments due to it under this Agreement have been made by Buyer and any such withholding by the Bidder shall not be treated as breach by it of the provisions of this Agreement.</p>	Please adhere to tender's terms and conditions.

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			report.		
7.	Pg. No. 13/ Clause No. 3.8	Liquidated Damages	<p>If the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Bank shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5% of the Invoice price of systems to a location for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of 10%. If the Licenses are not delivered in time, the Bank may consider termination of the contract.</p> <p>The down time due to non-functioning of software attributable to Oracle is considered for calculation of Liquidated Damages.</p>	Bidder requests the Buyer to consider revising the maximum penalty to be levied to 5% of Quarterly Payout and in no event the overall punitive penalty shall exceed 1% of the total contract value. Bidder would like to further submit that it shall not be liable for any penalties if the performance or delay issues is caused by actions or inactions of Buyer or attributable to the Buyer.	Please adhere to tender's terms and conditions.
8.	Pg. No. 13/ Clause No. 3.8	Limitation of Liability	Supplier's aggregate liability under the contract shall be limited to a maximum of the contract value. This limit shall not apply to third party claims for	1. Bidder shall be excused and not be liable or responsible for any delay or failure to perform the services or failure of the services or a deliverable under this Agreement, to the extent that such delay or failure has arisen as a result of any delay or failure by BUYER or its employees or agents or	Refer to amended Clause at S.No. 1 and Please adhere to tender's terms and conditions.

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			<p>a) IP Infringement indemnity.</p> <p>b) Bodily injury (including Death) and damage to real property and tangible property caused by Supplier's gross negligence. For the purpose for the section, contract value at any given point of time, means the aggregate value of the purchase order placed by bank on the Supplier that gave rise to claim, under this tender.</p> <p>c) Supplier shall not be liable for any indirect, consequential, incidental or special damages under the agreement/ purchase order.</p> <p>For (a) and (b) above, the liability is limited to the Compensation awarded by court of law. The liability is capped to Contract value.</p> <p>The down time due to nonfunctioning of software attributable to Oracle is considered for delay or failure.</p>	<p>third party service providers to perform any of its duties and obligations as set out in this Agreement. In the event that Bidder is delayed or prevented from performing its obligations due to such failure or delay on the part of or on behalf of BUYER, then Bidder shall be allowed an additional period of time to perform its obligations and unless otherwise agreed the additional period shall be equal to the amount of time for which Bidder is delayed or prevented from performing its obligations due to such failure or delay on the part of or on behalf of BUYER. Such failures or delays shall be brought to the notice of BUYER and subject to mutual agreement with BUYER, then Bidder shall take such actions as may be necessary to correct or remedy the failures or delays. Bidder shall be entitled to invoice BUYER for additional costs incurred in connection with correction or remedy as above at time & material rate card as agreed upon between the parties.</p> <p>2. The total cumulative liability of either party arising from or relating to this Agreement shall not exceed the total amount paid to Bidder by the BUYER in the preceding twelve months under that applicable work that gives</p>	

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				<p>rise to such liability (as of the date the liability arose).</p> <p>3. Neither party shall be liable to the other for any special, indirect, incidental, consequential (including loss of profit or revenue), exemplary or punitive damages whether in contract, tort or other theories of law, even if such party has been advised of the possibility of such damages.</p>	
9.	Pg. No. 13,14/ Clause No. 3.8	Termination for Default	<p>The Bank, without prejudice to any other remedy for breach of contract, by Thirty (30) days written notice of default sent to the Supplier, may terminate this Contract in whole or in part :</p> <p>if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Bank;</p> <p>if the Supplier fails to perform any other obligation(s) under the Contract.</p> <p>If the Supplier, in the judgment of the Bank has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.</p>	<p>The Agreement resulting from this proposal may be terminated:</p> <p>(a) by either party by giving the other party not less than ninety (90) days written notice of termination;</p> <p>(b) forthwith if either party commits any material breach of any term of this contract and which in the case of a breach capable of being remedied shall not have been remedied within thirty (30) working days of written notice to remedy the same;</p> <p>(c) forthwith by either party if the other party shall convene a meeting of its creditors or if a proposal is made for a declaration as insolvent or a proposal for any other composition scheme or arrangement (or assignment for the benefit of its creditors), or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business assets of the</p>	Please adhere to tender's terms and conditions.

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			<p>For the purpose of this clause:</p> <p>"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and</p> <p>"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Bank, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Bank of the benefits of free and open competition</p> <p>In the event the Bank terminates the Contract in whole or in part, the Bank may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Bank for any excess costs for such similar</p>	<p>other party or if an order is made or a resolution is passed for the purpose of the winding-up of the other party or for the making of an administration order (otherwise than for the purpose of amalgamation or reconstruction); (d) by either party pursuant to Force Majeure.</p> <p>Termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or continuation in force of any provision hereof which is expressly intended to come into force or continue in force on or after such termination.</p> <p>In the event of this assignment being terminated, the BUYER shall be liable to make payments of all the amount due under this assignment for which services have been rendered by Bidder's Consultant's. Forthwith on the expiry or earlier termination of this agreement, each party shall, return to the other party all documents and materials, belonging to the other party with regard to this assignment, or shall at the option of the disclosing party destroy all documents or materials in connection with this assignment.</p>	

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10.	Pg. No.17/ Clause No. 4.6	Service Level Agreement (SLA):	<p>Software implementation and maintenance including 24*7 onsite support on call basis. Uptime of 99.5% to be maintained, calculated on a 24*7 basis per quarter for every installation. The penalty applicable for every 0.1% drop in uptime is 0.1% of the total cost of software whichever is impacted, up to a maximum deduction of ten percent (10%). This penalty is exclusive of other penalties and reinstatement charges if any, levied by the OEM.</p> <p>The down time due to nonfunctioning of software attributable to Oracle is considered for calculation of penalty.</p>	<p>1. Bidder submits that it shall be excused and not be liable or responsible for any delay or failure to perform the services or failure of the services or a deliverable under this Agreement, to the extent that such delay or failure has arisen as a result of any delay or failure by Buyer or its employees or agents or third party service providers to perform any of its duties and obligations as set out in this Agreement. In the event that Bidder is delayed or prevented from performing its obligations due to such failure or delay on the part of or on behalf of Buyer, then Bidder shall be allowed an additional period of time to perform its obligations and unless otherwise agreed the additional period shall be equal to the amount of time for which Bidder is delayed or prevented from performing its obligations due to such failure or delay on the part of or on behalf of the Buyer. Such failures or delays shall be brought to the notice of the Buyer and subject to mutual agreement with Buyer, then Bidder shall take such actions as may be necessary to correct or remedy the failures or delays. Bidder shall be entitled to invoice the Buyer for additional costs incurred in connection with correction or remedy as above at time & material rate card</p>	<p>Please adhere to tender's terms and conditions.</p>

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				<p>as agreed upon between the parties.</p> <p>2. Bidder requests Buyer to consider revising the maximum penalty to be levied to 5% of Quarterly Payout and in no event the overall punitive penalty shall exceed 1% of the total contract value. Bidder would like to further submit that it shall not be liable for any penalties if the performance or delay issues is caused by actions or inactions of Buyer or attributable to Buyer.</p> <p>3. Bidder requests Buyer to take into account the time lost due to any of the following reasons while calculating the availability/ uptime requirement: (a) Time lost due to power or environmental failures; (b) Time taken to recover the system because of power or environmental failures; (c) Time lost due to damage or malfunction in the system or any units thereof due to causes attributable to Buyer such as attachment of additional devices, making alteration to the system, maintenance of the system, etc. without Supplier's consent and/ or failure to maintain the site as required by MSP; (d) Time taken for scheduled maintenance/ troubleshooting either for preventive purposes or improvement in function or other purposes; (e) Time taken for reconfiguration or other planned</p>	

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				downtime situations; (f) Scheduled shutdowns as required by Buyer; (MSP may also request Buyer for a shutdown for maintenance purpose, which request will not be denied unreasonably by Buyer); (g) Time taken for booting the system (h) Time lost due to unavailability of links.	
11.	Pg. No. 23/ Clause No. 8	Bid Security Form	Bid Security Form	Bidder would like to add the following bank clause as last para in the EMD format: "Notwithstanding anything contained herein: - Our liability under this bank guarantee shall not exceed Rs. <Insert Value> (Rupees <Insert Value in Words> only. - This bank guarantee shall be valid up to <Insert Expiry Date> - It is condition of our liability for payment of the guaranteed amount or any part thereof arising under this bank guarantee that we receive a valid written claim or demand for payment under this bank guarantee on or before <Insert Expiry Date> failing which our liability under the guarantee will automatically cease.	Please adhere to tender's terms and conditions.
12.	Pg. No.24/ Clause No. 9	Contract Form	Contract Form	Bidder request Buyer to consider the attached Additional terms document consisting Bidder's standard contract terms	Please adhere to tender's terms and conditions.
13.	Pg. No.24/ Clause No. 9	Performance Guarantee	Performance Guarantee	Bidder would like to add the following clause in the form: "This Bank Guarantee issued by _____ Bank, on _____	Please adhere to tender's terms and conditions.

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				<p>behalf of MSP in favor of the Buyer is in respect of a new Contract dated _____.</p> <p>As communicated by MSP on the date of execution of this Bank Guarantee an amount of Rupees _____ (Rupees _____ only) is outstanding and payable to MSP, in respect of pervious contracts between MSP and the Buyer. As communicated by MSP on the date of execution of this Bank Guarantee, there are no outstanding disputes related to any pervious contracts between MSP and the Buyer.</p>	
14.	Pg. No.24/ Clause No. 4.7	Deliverables	Separate customer support identifier (CSI) number to be provided for Oracle Database Enterprise Edition, Oracle Diagnostics Pack, Oracle Tuning Pack, Weblogic Enterprise Edition licenses and Oracle Database Standard Edition licenses	Does bank require individual CSI number for category wise or each line item?. Oracle has confirmed that, they would not be able to provide separate CSIs for each line item.	Please adhere to tender's terms and conditions. Further, it is clarified that separate CSI Number are required for each line item i.e. 1) Oracle Database Enterprise Edition, 2)Oracle Diagnostics Pack, 3)Oracle Tuning Pack, 4) Weblogic Enterprise Edition licenses and 5)Oracle Database Standard Edition licenses
15.	Pg. No.24/ Clause No. 4.6	Service Level Agreement (SLA)	Software implementation and maintenance including 24*7 onsite support on call basis. Uptime of 99.5% to be maintained, calculated on 24*7 basis per quarter for every	Please remove this clause as this tender is for supply of Oracle licenses so providing uptime, guarantee for availability of the Oracle software is not relevant in this case.	

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			<p>installation. The penalty applicable for every 0.1% drop in uptime is 0.1% of the total cost of software whichever is impacted, up to a maximum deduction of ten percent (10%). This penalty is exclusive of other penalties and reinstatement charges if any, levied by the OEM.</p> <p>The down time due to nonfunctioning of software attributable to Oracle is considered for calculation of penalty. Further, SLA is limited to the licenses supplied under this RFQ.</p>		
16.	Pg. No.7/ Clause No. 2.4.1 (e)	Documents constituting the bid	An undertaking from the bidder that he will extend support for a period of one (1) year from the date of delivery.	Amended Clause	An undertaking from the bidder that he will extend support for a period of three (3) year from the date of delivery.

