

REF: BID Document for Supply, Installation and Maintenance of Servers, Operating Systems, Database, SAN Storage with replication software, SAN Switch, Tape Library with Backup software and Rack dated 17.12.2012.

**NOTICE-3****Clarifications to the Pre-bid Queries.**

SI No.	Clause No & Page No	Clause as per RFP	Clarifications Sought by the bidders	Our Clarifications
1	Server Specification: Page No:25	2 X 8 GB DDR3, expandable up to 32 GB or higher, high performance, new-generation DDR-3, RDIMMs / UDIMMs with atleast 2 free slots	For 5500 series Chispet: 32 GB Expandability; for 5520 Chipset: 192 GB & for 600 series 256 GB/ 512 GB/768 GB	Please adhere to the tender specifications
2		Supported Disks-SAS, SATA, SSD, Fibre Channel	SAS, NL SAS, SSD. Fibre channel has lesser roadmap on HDD for SAN Storage and SAS has better roadmap and able to handle enterprise workloads	Clarified as SAS, NL SAS, SSD support required.
3		Usable Cache: 4 GB scalable to 8 GB Mirrored across two storage controllers for disk I/O operations.	Kindly remove the same. For the Current req., of 3 TB SAN scalable to 5TB entry level Storage with 2 GB cache / Controller is much sufficient and 8 GB will move the requirement for midrange SAN which will increase the Bank investment for 5 TB SAN.	Clarified as Minimum 4 GB per controller is required

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4	<b>SAN Storage Specifications</b> Page No:27	Replication software for replication between SAN Storage at DC and DR site should also be supplied as part of the solution.	Is the bank looking for storage based replication or Host based replication software? Also please specify the RPO and RTO if any.	Clarified as given below: Host based replication
5	<b>Operating System Software</b>  Page No:26	Operating System- Red Hat Enterprise Linux Version 5.6 with HA (with 6 yrs comprehensive (24*7) support)	HA meaning- between servers or between DC and DR	Clarified as given below: HA between servers.

## Clarifications to Commercial Queries

SI No	Clause and Page No	Clause as per RFP	Clarifications sought by the bidders	Bank's clarification
	<p data-bbox="183 1035 391 1098">Indemnification</p> <p data-bbox="183 1129 347 1192">Clause No: 10</p> <p data-bbox="183 1224 362 1266">Page No:16</p>	<p data-bbox="414 411 776 1465">10 INDEMNIFICATION 10.1. The Supplier shall, at its own expense, defend and indemnify the Purchaser against all third-party claims of infringement of Intellectual Property Rights, including patent, trademark, copyright, trade secret or industrial design rights arising from use of the Products or any part thereof in the Purchaser's country. 10.1.1. The Supplier shall expeditiously extinguish any such claims and shall have full rights to defend itself there from. If the Purchaser is required to pay compensation to a third party resulting from such infringement, the Supplier shall be fully responsible there for, including all expenses and court and legal fees. 10.1.2, The Supplier shall have sole control on the conduct of such proceedings or claim and any negotiations for the settlement of any such proceedings or claim and the Purchaser shall provide the Supplier with the assistance, information, and</p>	<p data-bbox="797 411 1170 1402">Requesting certain amendments in the indemnification clause, which are as under-  (1) The indemnity for IPR shall be only with regards to direct claims of third party for any infringement of IPR (arising out of the use of Bidder supplied products). (2) The refund of fees shall become applicable only in case if the same has been paid in advance to bidder. Such refund shall be only to the undelivered portion of products and services. (3) No indemnity of bidder on the products and services obtained by Indian Bank from such independent contractors, who have been aligned to bidder, so as to provide materials and services.</p>	<p data-bbox="1193 411 1575 474">Please adhere to RFP Terms</p>

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		authority reasonably necessary to perform the above and the Purchaser shall at no time admit to any liability for or express any intent to settle the claim.		
Delays in the Supplier's Performance Clause 15.2 Page No: 18	15.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.	Requesting the Bank for amendment /change on grounds as under- (i) the exceptions of Force Majeure conditions and any delay or non-performance due to the same shall not be covered under non-performance of bidder (ii) The delay or failure to perform due to reasons directly attributable to Bank, its employees or agents etc, shall not be considered as failure in performance by bidder.	Please adhere to RFP Terms	

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	<p>Termination for Default Clause 17.2 Page 19</p> <p>Termination for Convenience Clause 19.1 Page No:20</p>	<p><b>TERMINATION:</b> In the event the Purchaser terminates the Contract in whole or in part, the Purchaser 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 Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.</p> <p>Termination for convenience: The Purchaser, by issuing notice seven days in advance to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.</p>	<p>Requesting the bank to amend the termination clause as under-</p> <p>(i) On willful termination of the Contract by Bank (i.e. for no fault of bidder), the bidder shall have the right to recover full BG amount along with pending dues payable by Bank to bidder and liquidated damages for any losses suffered to it</p> <p>(ii) In case of any default or alleged breach by bidder, Bank shall provide reasonable notice period of at least 30 days to bidder to cure such defect. If bidder fails to cure such defect even after lapse of 30 days, only then Bank shall entitled to forfeit any BG.</p> <p>(iii) Termination notice of 90 days should be communicated to the vendor.</p>	<p>Please adhere to RFP Terms</p>

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		In case vendor fails to meet the above standards of maintenance, there will be a penalty of Rs.20,000/- per day per each such occasion	Please mention the maximum (upper cap) for the penalty.	Please adhere to the RFP terms
	Page No:45	Format for Non-Disclosure Agreement	(i) Requesting the bank to amend the NDA form to include mutual confidentiality clause (obligation of non-disclosure liable upon both Parties). (ii) We request that confidentiality obligation should be limited to the contract periods and at most two years after termination.	Please adhere to RFP Terms
			Requesting the bank to include the following Limitation of Liability clause.  It is suggested that the limitation of liability of the bidder should be capped. Bidder, the total aggregate and cumulative liability towards Indian Bank / any third party, arising from or relating to this agreement, whether in law , in contract, in negligence, in tort, statute, under a theory of strict liability or other legal theory or otherwise, will be limited to 10% of the amount of the contract value actually received by the bidder . "Under no circumstances and notwithstanding anything contained	Please adhere to RFP Terms

			<p>herein, shall the vendor be liable for any special, indirect, incidental, exemplary, special or consequential loss or damages, inter alia including, downtime, downtime costs, loss of profit, loss of use, loss of revenues or damages to business or reputation arising from the performance or non-performance of any aspect of this agreement even if the party has been advised of the possibility of such damages;</p> <p>Vendor's total aggregate and cumulative liability towards indian bank/ other party, arising from or relating to this agreement, whether in law , in contract, in negligence, in tort, statute, under a theory of strict liability or other legal theory or otherwise, will be limited to actual amount of the contract value actually received by the vendor from iocl under the terms of this agreement , during the period of three (3) months immediately preceding the month in which the event giving rise to the claim first occurred.</p>	
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SI No	Clause and Page No	Clause as per RFP	Clarifications sought by the bidders	Bank's clarification
			<p><b>NO WARRANTY AND DISCLAIMER OF WARRANTY:</b>  "Indian Bank acknowledges and is aware that the Bidder does not manufacture the Products (or where the Products comprise computer software does not publish or license the software) and subject to the conditions set out in this Clause, the Bidder only sells the Products with the benefit of the manufacturer's or publisher's or licensor's ("publisher's") warranty (as the case may be). The Bidder will accept liability for defective Products only to the extent that the Bidder is entitled to make a claim under the manufacturer's or publisher's, Dead on Arrival, warranty or other defective goods terms and actually obtains from the manufacturer or publisher a refund credit repair or replacement in respect of the defective Products and the claims for the same shall be made according to the manufacturer's procedure and the instructions only.</p>	Please adhere to RFP Terms



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			<p><b>CONSEQUENCES OF TERMINATION:</b>  Post the termination of the Contract due to any reasons mentioned in the Contract, the right of the Company to claim and receive any payment as dues upon Indian Bank, shall subsist. In case of any further delay, the bidder shall have the right to claim interest @ 15% upon such dues till the final recovery from Indian Bank.</p>	Please adhere to RFP Terms
			<p><b>ASSIGNMENT RIGHTS:</b>  The Company/ the bidder shall have the rights to assign any of its obligation to its contractors, sub-contractors, subsidiaries and affiliates , provided (i) a prior information in writing has been given by the company to Indian Bank (ii) such assignment shall not impair the right of Indian Bank to make the company responsible for any breach of the terms of the contract.</p>	Please adhere to RFP Terms
			<p><b>ARBITRATION :</b>  "The Parties agree that in the event any Dispute is not resolved in the ordinary course of business, the Parties shall in good faith attempt to resolve the Dispute through negotiation by their representatives. Each</p>	Please adhere to RFP Terms

			<p>Party agrees to use reasonable efforts to resolve any disputes or disagreements as soon as possible. Any dispute between the Parties arising out of or in connection with this Agreement or any Statement of Work, which is not resolved by the Parties' respective project managers, will be promptly escalated to their respective senior managers or equivalent level for resolution. Each senior manager shall make himself or herself available for conference calls and, if necessary, face to face meetings. If the dispute is not resolved by the senior managers within two weeks, the dispute will be promptly escalated to each party's respective Vice President or equivalent level ("VPs") for resolution. Each VP shall make himself or herself available for conference calls and, if necessary, face to face meetings.</p> <p>If a Dispute cannot be resolved by negotiation within 1 (one) month of commencement of negotiations, the Dispute may be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act 1996. The proceedings of the arbitration shall be English language and the venue shall be at New Delhi.</p>	
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SI No	Clause and Page No	Clause as per RFP	Clarifications sought by the bidders	Bank's clarification
			<p><b>INDEMNITIES</b> 1.1 Both Parties hereby undertake to indemnify and keep indemnified, (and where a Party is so indemnifying it shall be the "Indemnifying Party") the other Party (a Party being indemnified shall be the "Indemnified Party") from and against any and all claims, requests for injunctive relief, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to any of the following: (i) actual or alleged use of the Services in violation of: (A) this Agreement, (B) any applicable Statement of Work, or (C) violation of applicable law; (ii) against any Losses suffered by the Indemnified party, arising out of any unaffiliated third party claim that the Services, Software and Materials or any part thereof provided by the Indemnifying Party constitutes an infringement or alleged infringement of the IPRs of a third party. 1.2 Provided that the</p>	<p>Please adhere to RFP Terms</p>

			<p>Indemnified Party shall:</p> <p>1.2.1 provide a prompt written notice, of its claim for indemnification to the indemnifying party, but no later than thirty Business Days before the date on which any response to legal process is due of such claim.</p> <p>1.2.2 provide the Indemnifying Party with reasonable assistance in defending the claim;</p> <p>1.2.3 make no admission/ settlement without Indemnifying Party's prior written consent;</p> <p>1.2.4 give the Indemnifying Party sole control of the litigation/ defense;</p> <p>1.2.5 not settle, agree to settle, or compromise any such claim, suit or proceeding without the prior written permission of Indemnifying Party.</p> <p>1.2.6 In the event that an indemnifying party is obliged to indemnify an Indemnified Party pursuant to this Agreement, the Indemnifying Party shall, upon fulfilment of its obligations with respect to the indemnified claim, be subrogated to the rights of the Indemnified Party with respect to the Claim.</p>	
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It may please be noted that this Notice-3 forms part of the RFP document and copies of the RFP document , Notice -1,Notice -2 and Notice -3 are to be used as Tender Document and submitted as such duly signed by the vendors' authorized official on each page. All the vendors are requested to please note accordingly.

ASST. GENERAL MANAGER (TMD)  
INDIAN BANK