



## Chhatrapati Shahu Maharaj Research, Training and Human Development Institute, Pune

(An Autonomous Institute of Other Backward Class, Social & Educational Backward Class, VimuktJati & Nomadic Tribes and Special Backward Class Welfare Department, Government of Maharashtra)



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**Subject** : Response to Clarification for Tender Reference Number 283

**Tender**

**Notice No** : E-TenderNotice/SARTHI/RFPforSlec.OfAgencytoD/2019

**Tender** : SELECTION OF AGENCY TO DEPLOY EXPERIENCED PROFESSIONALS FOR SKILL DEVELOPMENT ACTIVITIES of Chhatrapati Shahu Maharaj Research, Training and Human Development Institute (SARTHI)

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1.	6	Scope of Work	Newly setup organization like SARTHI will also require technology consultant/s advising in the e-governance and automation domain. Further, multiple skill development initiatives also entail design, development, implementation and monitoring of a robust skill development MIS.  Hence, we request you to accordingly amend the Scope of Work and include Technology initiatives as a separate track.	The tender clause remains unchanged. The scope of the Agency would be primarily assisting SARTHI in various skill development activities/initiatives.
2.	6	Clause 1.3 Scope of Work Assist SARTHI in raising funds under CSR	The role of the consultant shall be restricted/ limited to supporting SARTHI considering the independence restrictions and Conflict of Interest.	The tender clause remains unchanged.
3.	-	Geographical Scope	Please confirm if there are any other locations to be covered as a part of Scope. Need clarity if there are other regions/locations involved	The target geography for SARTHI is entire Maharashtra.
4.	-	Geographical Scope	If the project involves travel / visit to any other location (than Pune), the expenses including travel, accommodation, etc. be paid by SARTHI on	The tender clause remains unchanged.

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			actuals.	The agency should submit the cost inclusive of all the project related costs
5.	7	Clause 1.3 (4) Scope of Work	The SoW states "To support SARTHI on <b>any other specific task</b> pertaining to skill development, as given by MD, SARTHI"  Request you to kindly clarify, since this is an open-ended requirement	The agency also needs to work on any new initiative, as proposed by MD SARTHI, related to Skill Development Activities at SARTHI.
6.	9	Clause 1.11 (2) – Average Annual Turnover	Request you to kindly raise the average annual turnover criteria to Min 500 Cr to ensure the competitive firms to participate the bidding process	The tender clause remains unchanged.
7.	4	Section – Tender Notice	Section tender notice specifies total number of resources required on the project as 14 whereas section 2.14.2 specifies the same as 16. The award of mark is done for the 8resources.  Request you to please clarify the total number of resources.	Total 16 resources are to be provided, evaluation would be done for 8 resources as per the criteria mentioned in the clause 2.14.
8.	6	Clause 1.3, pt (4) To support SARTHI on any other specific task pertaining to Skill Development, as given by MD, SARTHI	We would like to seek clarity on client support and assistance required for this activity. The consultant shall not be responsible for conducting the training.	The Agency shall not be responsible for conducting the trainings.
9.	26	Clause 3.6 Several conflict of interest related obligations on us	We wish to highlight that we are a large organization providing various services to various state and central government departments, PSUs, international organizations and private clients. We wish you to note that while we have a mechanism in place to identify patent and direct conflict of interests, it may not always be possible to identify any or all indirect or remote conflict of interests. Kindly appreciate that our no conflict confirmations will be subject to the foregoing.	The tender clause remains unchanged.
10.	28	Clause 3.12 (4) Liability is limited to 100% of the contract value	Client is requested to limit consultant's liability to 1Xof the total contract value. This is as per GFR and the guidelines issued by MEITY, Gol. It is also the normal industrypractice.  The insurance clause makes the 1Xliability ineffective as it increases to	The tender clause remains unchanged The limitation of liability of 1x of total contract value and 100% of the contract

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			multiple times of total contract value.	value are one and the same thing.
11.	28	Clause 3.10 Exceptions to confidential information are not provided	Client is requested to allow standard exceptions to confidential information, which is industry standard and reasonable. Not all information can be regarded as confidential. For eg., if the information is in public domain, we cannot be expected to keep it confidential at our end. Similarly, if any information is liable to be disclosed under the RTI, giving it a confidential status and obliging us to keep such information confidential is not correct. We request inclusion of following clause: Confidential information does not include any information which (i) is rightfully known to the recipient prior to its disclosure; (ii) is independently developed by the recipient without use of or reliance on confidential information; or (iii) is or later becomes publicly available without violation of this agreement or may be lawfully obtained from a third party; or (iv) which would be required to be disclosed under the (Indian) Right to Information Act.	The tender clause remains unchanged.
12.	28	Clause 3.11 Subcontracting by PwC is not allowed without the prior written consent of the Client	We may take assistance from our contractors or other PwC firms (each of which is a separate and independent legal entity) and may share confidential information with them in connection with this engagement. However, we remain solely liable to the Client for their acts; claims (if any) in relation to this engagement will be routed solely through Client and us.	The tender clause remains unchanged.
13.	28	Clause 3.12 No arbitration clause	We request client to consider referring the disputes to arbitration as per Indian laws. It is easier, faster and less cumbersome. With the recent amendments, it has become even more effective. GFR and MEITY guidelines also encourage arbitration. We therefore request you to kindly consider the below clause inclusion:  In case, a dispute is not amicably resolved within forty five (45) days of referral by one party to another, it shall be resolved through arbitration, in India, in accordance with the provisions of Arbitration and Conciliation Act 1996 (and any amendments thereto). The venue of such arbitration in India shall be Pune.	Please refer corrigendum.
14.	29	Clause 3.15 Delay in providing professionals	We request client to provide overall penalty capping on this clause.	The tender clause remains unchanged.

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15.	29	Clause 3.15 Indemnities for bodily injury and damage to property	Request client to kindly delete these. Alternatively, kindly cap these indemnities to limitation of liability cap or one time the fees payable to us under this Agreement.	The tender clause remains unchanged.
16.	29	Clause 3.15 Uncapped LDs / LDs capped at higher percentage	We request client to cap the liquidated damages (LD)/penalties cumulatively to 5% of the total contract value.	Please refer corrigendum.
17.	29	Clause 3.15 Not sole and exclusive remedy	We understand that as per Contract Act, where LDs are stipulated, generally any other damages cannot be claimed. Therefore, we request you to kindly make imposition of liquidated damages as sole and exclusive remedy for corresponding breaches.	Please refer corrigendum.
18.	30	Clause 3.15 Wide insurance procurement obligations	We wish to clarify that we maintain insurances, at the firm level, which are required to be maintained by us as per the provision of laws. Separate insurances for this project may not be required in light of such firm level insurance. We can provide you with a confirmation about our firm level insurance and that to the extent required by law, this project will also be covered under that insurance. We hope that should suffice. Please confirm.	The tender clause remains unchanged.
19.	30	Clause 3.16 Indemnity for breach of applicable laws	There are several remedies available under law and contract to you for such breach of obligations. For eg, there are penalties and LDs that may be imposed for some of these breaches. We understand that remedies other than indemnity will be sufficient for such breaches. We request you to kindly delete this section.  If you still insist on retaining this section, then we request you to at least make them subject to overall cumulative liability cap of total contract value and subject to final determination of court/arbitrator.	The tender clause remains unchanged.
20.	31	Clause 3.16 Indemnity for any offence committed by PwC. PwC to execute an Indemnity Bond for the same.	There are several remedies available under law and contract to you for such breach of obligations. For e.g., there are penalties and LDs that may be imposed for some of these breaches. We understand that remedies other than indemnity will be sufficient for such breaches. We request you to kindly delete this section.  If you still insist on retaining this section, then we request you to at least make them subject to overall cumulative liability cap of total contract value and subject to final determination of court/arbitrator.	The tender clause remains unchanged.
21.	31	Clause 3.16	To uphold the principles of natural justice, we request client to notify us and	The tender clause

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		Termination without notice and rectification period	give us a rectification period of at least 30 days, prior to invoking this clause.	remains unchanged.
22.	31	Clause 3.16 We do not have any right to terminate	To uphold the principles of natural justice and to bring parity in the contract, we request client to give us the right to terminate the contract in case client breaches any of its material obligations under the contract, provided a notice for such breach is given to client along with a rectification period of 30 days.	The tender clause remains unchanged.
23.	No clause in RFP.	There is no restriction on the usage of deliverable. No third-party disclaimers.	We will be providing services and deliverables to you under the contract. We accept no liability to anyone, other than you, in connection with our services, unless otherwise agreed by us in writing. You agree to reimburse us for any liability (including legal costs) that we incur in connection with any claim by anyone else in relation to the services. Please confirm our understanding is correct.	SARTHI will not reimburse any liability (including legal costs) that incur in connection with any claim by anyone else in relation to the services.
24.	No clause in RFP.	No acceptance criteria	If the project is to be completed on time, it would require binding both parties with timelines to fulfill their respective part of obligations. We request you that you incorporate a deliverable acceptance procedure, perhaps the one provided by Meity in their guidelines, or the one suggested below, to ensure that acceptance of deliverables is not denied or delayed and comments, if any, are received by us well in time. You may consider including the below simple clause: Within 10 days (or any other agreed period) from Client's receipt of a draft deliverable, Client will notify Consultant if it is accepted. If it is not accepted, Client will let Consultant know the reasonable grounds for such non acceptance, and Consultant will take reasonable remedial measures so that the draft deliverable materially meets the agreed specifications. If Client does not notify Consultant within the agreed time period or if Client uses the draft deliverable, it will be deemed to be accepted.	The terms and conditions have been specified in the tender, no additional criteria would be accepted.
25.	No clause in RFP.	No protection to our pre-existing IPRs	There are innumerable IPRs that exist with us which we would like to use to your benefit while delivering our services to you. These are our pre-existing IPRs and we use it for all clients. We will not be able to give ownership in such IPRs to you just because we are using them for providing services to you, like we use these for other clients. We request that we are allowed to retain ownership of our pre-existing IPRs, else we might be not be able to use these in providing services to you in order to protect our ownership in them. We request you to kindly include the below clause. This is also the standard mentioned by Meity in its guidelines.	Acceptable, unless there will be no cost incurred to SARTHI.

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			Notwithstanding anything to the contrary in this agreement, Consultant will retain the ownership of its pre-existing intellectual property rights (including any enhancement or modification thereto) even if such IPRs are used for creating deliverables, are incorporated in the deliverables, etc. To the extent such pre-existing IPRs are included/incorporated in the deliverables, upon receipt of all due and payable payment in full, the Consultant shall grant a non-exclusive, perpetual and fully paid up license to the Purchaser/Client to use such pre-existing IPRs for use of deliverables for the purpose for which such deliverables are meant for client's internal business operations.	
26.	No clause in RFP.	Indirect and consequential losses are not excluded from liability	Client is requested to include to clause to state that we will not be liable for any indirect and consequential losses or damages. This is as per GFR and Meity guidelines and also the industry standard. Even the law, Contract Act, stipulates and remote and consequential damages are not payable. SARTHI may consider including the following language: <i>Purchase/ Client agrees that Consultant will not be liable for (i) loss or corruption of data from your systems, (ii) loss of profit, goodwill, business opportunity, anticipated savings or benefits or (iii) indirect or consequential loss.</i>	The tender clause remains unchanged.
27.	No clause in RFP.	Indemnities for bodily injury and damage to property	Request client to kindly delete these. Alternatively, kindly cap these indemnities to limitation of liability cap or one time the fees payable to us under this Agreement.	Please refer corrigendum.
28.	No clause in RFP.	Indemnities not subject to final determination by court/ arbitrator	We agree to indemnify to the extent the damages/losses are finally determined by a competent court or arbitration. Please make indemnities subject to final determination by court/arbitrator. This is also the industry standard and prescribed by MEITY in its guidelines.	Please refer corrigendum.
29.	No clause in RFP.	No process for indemnity	The indemnities set out in this agreement shall be subject to the following conditions: (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise; (ii) the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense; (iii) if the	Please refer corrigendum.

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			<p>Indemnifying Party does not assume full control over the Defense of a claim as provided in this clause, the Indemnifying Party may participate in such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in losses; (iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party; (v) all settlements of claims subject to indemnification under this Clause will: a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement; (vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings; (vii) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings; (viii) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this clause, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and (ix) if a Party makes a claim under the indemnity set out under Clause above in respect of any particular loss or losses, then that Party shall not be entitled to make any further claim in respect of that loss or losses (including any claim for damages).</p>	
30.	6	1.3 Scope of Work point 1	<p>It is mentioned that Agency will be supporting SARTHI on other initiatives. Request clarification on the other initiatives and associated scope.</p>	<p>The details of the existing projects and proposed activities under skill development initiative shall be provided to the selected firm.</p>
31.	6	1.3 Scope of Work point 3	<p>It is mentioned that Agency will evolve and prescribe standards for evaluation and monitoring of various projects and schemes and will help</p>	<p>The list of projects and schemes for which</p>

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			conduct evaluations of the various projects & schemes being implemented for the development of targeted groups. Request clarification on the various projects and scheme for which the activity is required to be carried and associated scope.	evaluation is to be done are not finalized yet. Nevertheless, the schemes and projects for evaluation will be among the ones being undertaken by SARTHI.
32.	8	1.9 Key Events & dates	In our continuous endeavor to prepare a quality proposal, the firm follows a diligent Quality and Risk Management process which includes, quality, legal and financial reviews and approvals at different stages. Given the size and complexity of this RFP, the process is expected to take around 2-3 weeks. As there is very limited time between receipt of pre-bid queries responses and bid submission, we would request to kindly extend the submission due date of the proposal by three weeks.	Please refer corrigendum.
33.	13	2.8 Technical Bid Point 5	Please share the format and content for the Power of Attorney	The agency can use their own format.
34.	13	2.9 Financial Bid	Please clarify if the man-month rate of Project Director and Chief Expert - Skill Development needs to be specified separately or can be included in lump sum cost as specified in 'FIN-II: Summary of Costs'	The cost to be included in lumpsum cost.
35.	15,16	2.14 Technical and Financial Bid Criteria, point 3 (Resource requirement) and 2.14.2.1 Description of Personnel	Please clarify whether interview will be conducted for 8 resources as per point 3 of evaluation criteria or of all 16 resources as per 2.14.2.1 description of personnel.	Interview of all the 16 resources would be conducted.
36.	15	2.14 Technical and Financial Bid Criteria, point 3 (Resource requirement)	Please clarify whether CVs of resources for which there is no evaluation criteria needs to be shared or not	Yes, CVs of all the 16 resources needs to be submitted along with the proposal.
37.	18	Assignments of personnel	Supervisory staff and Senior Key Resource Personnel are senior resources and are generally manage project with large mandate and involves long-term implementation, therefore, considering the duration of 5 years within which number of assignments need to be given, request to relax the number of assignments to minimum 3 and maximum 5 assignments and more	Tender clause remains unchanged.
38.	18	Assignments of personnel	Request to relax the criteria of experience of working in Maharashtra to Maharashtra and Other States for the specified resources	Tender clause remains unchanged.
39.	23	2.22 Deployment/	Request to increase the deployment of resources within 2 weeks to 4	Tender clause

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		Removals/Replacement of Personnel	<p>weeks.</p> <p>Request to please remove the compensation amount of Rs 1000/- per person per week till the deployment of the personnel as professionals might be deployed on some other project so it will take time to get them deployed on SARTHI post contract is awarded.</p> <p>Request to remove the penalty from Supervisory Support, Key and non-key personnel as due to personal circumstances or causality a resource may not be able to continue</p>	remains unchanged.
40.	28	3.12 Resolution of Disputes, point 4 – Limitation of Liability	<i>from EY, 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 the likelihood of such loss or damage was contemplated. The Client (and any others for whom Services are provided) shall not recover from EY, in contract or tort, including indemnification obligations under this contract, 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. ‘</i>	Tender clause remains unchanged.
41.	28	3.15 Liabilities, Control etc. of the persons’ deployed	Request to please add following clause with reference to confidentiality <i>‘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.’</i>	Tender clause remains unchanged.
42.	29	3.15 Liabilities, Control etc. of the persons’ deployed	As per the clause, a point is mentioned that delay in providing professionals demanded or a substitute beyond seven working days would attract a penalty @ Rs.50/- per day/per professional on the	Tender clause remains unchanged.

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			Agency. It is requested to please consider relaxing the penalty as to deploy a relevant resource or provide replacement the applicable experience and education qualification needs to be considered and may take time	
43.	-	Intellectual property rights	Request to please add following clause with reference to Intellectual property rights <i>'EY may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that EY own in performing the Services. Notwithstanding the delivery of any Reports, EY retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers that EY 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.'</i>	Tender clause remains unchanged.
44.	-	Termination	Request to please add following clause with reference to termination <i>'EY may terminate this Agreement, or any particular Services, immediately upon written notice to Client if EY reasonably determine that EY can no longer provide the Services in accordance with applicable law or professional obligations.'</i>	The tender clause remains unchanged.
45.	7	Bid security/EMD	In most government bids, the EMD is restricted to under 5 lakhs which the security deposit varies. Request if the EMD can be lowered to less than 5 Lakhs.	The tender clause remains unchanged.
46.	22	2.14.3	The combined evaluation will be carried out as below:  $STech = \text{Technical Score of the Applicant} * 75\%$ $SFinancial = (\text{Lowest financial quote amongst the applicants} / \text{Financial quote of the applicant}) * 25\%$ $SFINAL = STech + Sfinancial$ <p>We need more clarity on this point. <b>Because, the value for SFinancial will always be less than 1. Adding this value to Stech will lead to virtually negligible change.</b></p> <p>We recommend that Stech is calculated as: Stech = (technical score of the applicant/highest technical score amongst qualified bidders) * 75%</p>	Please refer the corrigendum.
47.	45	4.11	Since the CVs of Technical Officers are not being considered for marking in technical qualification, are their CV also required to be submitted at bid submission stage?	Yes. CV of all the proposed resources, including the Technical Officers are

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				required to be submitted at the bid submission stage.
48.	14	2.14.1	For the technical marking each resource will be required to give individual presentation along with the interviews? If yes, what should be the flow of the presentation?	Presentation needs to be provided by the agency on the approach and methodology. Interview of each proposed resource would be taken.