

Request for Proposal (RFP)

Assignment Title: Monitoring of Financial and Technical Performance of NSDC projects

Date of issue: 25th July 2011

Due Date of Submission: 5th September 2011

Time (IST): 12 noon

Dear Sir/ Madam,

The National Skill Development Corporation (NSDC) intends to enter into an arrangement for the provision of services outlined in the Terms of Reference (ToR) through a competitive bidding process. In this respect, NSDC would like to invite your organization to submit a technical and financial proposal as outlined in this RFP.

Any questions regarding the RFP must be received in writing (fax or e-mail) to the undersigned at least seven (7) days prior to the last date for submission of proposal. Thereafter, no request for information will be considered.

The proposal (technical and financial) should be submitted in a sealed envelope or through email latest by the date and time mentioned above. Any proposals received after the stipulated date and time shall not be considered.

Yours sincerely,

Name: Dilip Chenoy

Designation: CEO & MD

Instruction to bidders

This section outlines the format for submission of proposals and criteria for evaluation of proposals

1. Format for submission of proposals

The pre-qualification, technical and financial proposals should be submitted in the format attached in Annexure I, II and III respectively. Submission of proposals in the wrong format may result in invalidation of such proposals. Changes to the proposals shall not be permitted once they have been submitted to the NSDC.

2. Important details for submission of proposals

The proposals should be clearly marked as 'Pre-qualification Proposal', 'Technical Proposal' and 'Financial Proposal' and should be submitted in a single sealed envelope or through email no later than the date and time mentioned on the first page. The sealed envelope should indicate the name and address of the bidder and should be addressed to:

Head – Monitoring & MIS,
National Skill Development Corporation
D-4, Clarion Collection (Qutab Hotel)
Shaheed Jeet Singh Marg,
New Delhi 110016
jaikant.singh@nsdcindia.org

The schedule for the bidding process is highlighted in the table below:

S. No.	Information	Details
1.	Release of Request for Proposal (RFP)	25 th July 2011
2.	Last date and time for submission of written queries for clarifications	1 st August 2011
3.	Pre bid conference	5 th August 2011
4.	Release of response to bidder queries	10 th August 2011

5.	Last date and time for submission of bids	12 noon on 5 th September 2011
6.	Place, date and time of opening of Pre-Qualification bid	NSDC, D-4, Clarion Collection Shaheed Jeet Singh Marg, New Delhi 110016 3 pm on 5 th September 2011
7.	Presentation – by shortlisted vendors	9 th 10 th & 12 th September
8.	Opening of Financial Bid	16 th September 2011

3. Proposal Preparation Cost

The Proposer shall bear all costs associated with the preparation and submission of its proposal, and NSDC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the proposal process.

4. Right To Termination/Cancellation

Notwithstanding anything contained in this document, NSDC, reserves the right to cancel/terminate the proposal process without assigning any reason whatsoever, at any time prior to signing the contract and NSDC shall have no liability for above-mentioned actions.

5. Corrupt Or Fraudulent Practice

In the event of the Proposer engaging in any corrupt or fraudulent practices during the proposal process, as per the judgment of NSDC, the proposal will be rejected. Any decision in this regard will be final and binding on the Proposer.

For the purpose of this clause: “Corrupt Practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of NSDC in the selection process. It also includes bringing undue influence through any quarter or interfering directly or indirectly in the selection process to affect its outcome.

“Fraudulent Practice” means a misrepresentation of facts in order to influence selection process to the detriment of NSDC.

6. Late Proposals

Any proposal received by NSDC after the deadline for submission of proposals prescribed in RFP will be summarily rejected and will be returned unopened to the Proposer.

7. Evaluation of proposals

The proposals will be evaluated by a NSDC team based on the pre-qualification, technical and financial details submitted by the bidder.

NSDC will first open only the pre qualification proposals which shall be evaluated as per the criteria specified below:

S.No.	Parameters	Marks
1.	The bidder must be incorporated & registered in India, under the India Companies Act, 1956 and should be in operations in India for minimum of 3 years	Certificate of incorporation and Service Tax Registration Certificate
2.	The bidder shall not be blacklisted by any Central / State Government (Central/State Government and Public Sector)) or under a declaration of ineligibility for corrupt or fraudulent practices.	A self certified letter by the designated official of the responding Company/ Form1
3.	The bidder must have minimum annual revenue of INR 50 lakh in project management during the three last declared Financial years. This must be the individual Company's turnover for program management of relevant projects and not that of group of Companies	Copy of the audited profit and loss account/ balance sheet/ annual report of the last three financial years. In the absence of audited statements for the last year, provisional statements may be considered.
4.	The responding Company should have made net profit for the last three(3) financial Years (FY 09-10, FY 08-09, FY 07-08,) as	Same as in point no 3

	revealed by audited balance sheet	
5.	Bidder should have experience of at least one project involving project management/ monitoring for a Central Government department or State Government or World Bank funded programmes.	Copy of contract/ client letter
6.	The responding Company must have on its rolls consulting staff of at least 20 technically qualified personnel in the area of consulting services for Program / Project Management, Financial Management, Capacity Building, Security and IT procurement and who possess relevant degrees/credentials with prior experience in providing the above consultancy services. as on March 31, 2011	Certificate from Head (HR) or company secretary for number of technically qualified professionals employed by the company and appropriate supporting undertakings.
7.	Bidder should have an office in Delhi or NCR for close coordination with NSDC	Self declaration

The Technical Proposal of only those bidders, who qualify in the Pre Qualification stage, shall be opened. The technical evaluation criteria for selection of nodal agency are given in the table below:

Evaluation Criterion – Technical		Max. Score
1. Firm Profile		20
1.1	Average annual turnover from Indian Operations from consulting services in last 3 years (Turnover in Rs Crores)	5
1.2	Full-time professional staff engaged in Consulting (Number of Staff)	5
1.3	Relevant Quality Certifications	5
1.4	Offices of the Firm across different States and central coordination office in NCR	5
2. Experience of the Firm / India Operations		25
2.1	Experience in Programme Management of large Projects.	10
2.2	Experience of preparing RFP, bid process management for a Central/State Government department or a large private organization	5
2.3	Experience of consulting assignments in Education and Capacity Building in India/Outside India	5
2.4	Experience of providing services in Capacity Building/Skills building/Training in	5

Evaluation Criterion – Technical		Max. Score
	India/Outside India	
3. Proposed methodology and Work Plan		25
3.1	Understanding of the objectives of the assignment: The extent to which the consultant's approach and work plan respond to the objectives indicated in this RFP.	5
3.2	Methodology for conducting the assignment	5
3.2	Completeness and responsiveness: The extent to which the proposal responds exhaustively to all the requirements of all the Terms of Reference	5
3.3	Proposed Project Plan detailing out dependencies and assumptions with action plan. proposed Tools and Templates and most cost effective monitoring frame work	5
3.4	Technical Presentation by the bidder on Approach and Methodology	5
4. Profiles proposed for key roles		30
4.1	<p>Team proposed</p> <ul style="list-style-type: none"> The team proposed will be evaluated on the following parameters: Skill set mix proposed Number of consultants in the team Presence of experts in the team 	
	<p>Profiles of proposed Team Members</p> <p>The bidder shall provide CVs of personnel for key roles required to be staffed by the Consultant</p> <p>For the purposes of evaluation, please provide CVs of the following profiles:</p> <ol style="list-style-type: none"> Project Management Expert (1)- 05 Finance Specialist(1) -05 M&E Expert(1) -05 Institutional Strengthening and Capacity Building Expert(1) -05 Procurement Specialist(1) – 05 Consultants/Analyst(3) –05 <p>Each CV will be evaluated on the basis of the following parameters. Percentage credit for the parameter is provided in parentheses.</p> <ul style="list-style-type: none"> Academic qualifications – degrees and academic institutes (20%) International Experience – 10% Years of total program management and consulting experience (30%) Number of relevant projects worked in (20%) Breadth of experience (breadth of roles served in relevant projects) (20%) 	
Total Points		100

Only those bids with a technical score of ≥ 70 shall be considered for financial evaluation. QCBS method shall be adopted for selection of the nodal agency. Bidder with the lowest evaluated Financial Proposal (F_m) will be given the maximum financial score (S_f) of 100 points. The formula for determining the financial scores is the following: $S_f = 100 \times F_m / F$, in which S_f is the financial score, F_m is the lowest price and F is the price of the proposal under consideration.

The formula for determining the technical score is as follows: $S_t = T$, in which S_t is the technical score of the proposal under consideration.

Proposals will be ranked according to their combined technical (S_t) and financial (S_f) scores using the weights (W_t = the weight given to the Technical Proposal; W_f = the weight given to the Financial Proposal; $W_t + W_f = 1$) indicated below. The combined score (S) will be calculated as follows: $S = S_t \times W_t + S_f \times W_f$.

The weights given to the Technical and Financial Proposals are:

- $W_t = 60\%$
- $W_f = 40\%$

Terms of Reference

1. Introduction

The National Skill Development Corporation (NSDC) is a Public-Private Partnership (PPP) initiative focused on promoting development and upgrading of skills, especially in the unorganized sector, by fostering private sector participation and investment. NSDC was set up in 2008-09, as part of the National Skill Development Mission, to meet the need for skilled workforce in a growing economy as well as to reduce the existing gap between demand and supply of skilled manpower. NSDC is registered under Section 25 of the Companies Act, 1956 and falls under the purview of the Ministry of Finance. The National Skill Development Fund (NSDF), a 100% government-owned trust, invests in NSDC to meet part of the funding requirements.

NSDC supports skill development by identifying skill gaps in the workforce, funding skill training & development programs, creating vocational institutions and developing accreditation norms. Currently, NSDC provides support to 21 sectors with critical skill gap by:

- Financing and incentivizing select private sector players.

- Facilitating support services to skill development institutes such as training curriculum, faculty, technology platforms, student placement mechanisms and accreditation systems.
- Developing viable models for skill development and encouraging large scale private participation for reducing skill gap.
- Establishing Sector Skills Councils for conducting research, improving delivery mechanism and building quality assurance.

The objective of NSDC is to contribute significantly (about 30 per cent) to the overall target of skilling / up-skilling 500 million people in India by 2022, mainly through “market making” initiatives that foster private sector involvement in skill development programs. For this purpose, it supports initiatives that have a “multiplier” effect on skill development and target sectors/ segments with huge unmet needs.

2. Setting the context

In the above context, NSDC provides funding to the private sector enterprises, training & skill development organizations, industry bodies/ associations, social entrepreneurs and NGOs (hereinafter referred to as “Partners”) for building scalable & for-profit vocational/ skills training initiatives and promoting innovative models in the skill development space. Additionally, it supports fiscal incentives (tax breaks) to select private sector initiatives. The financing initiatives provide viability gap funding to private players through:

- Loans
- Equity
- Grants

NSDC invites proposals from private organizations/ NGOs for funding their skill development initiatives and training programs in the 21 sectors identified by it. The proposals are evaluated on the following criteria and final selection is subject to clearance from the NSDC Board:

- Sustainability of the business model in the medium to long term
- Partnerships with prospective employers, state governments, ITI/ ITC and financial institutions
- Employer’s view of demand for the specific skills
- Alignment with the NSDC's mission
- Robustness of overall plan and operating model
- Ability to leverage partnerships
- Ability to leverage financial requirements
- Ability to leverage management capability

3. Assignment

3.1 Background

Till date, NSDC has approved over 36 projects across India including tier II & tier III cities and towns that would skill approx. 55m people and create a training capacity of 11m in next 10 years. About 20 Partners have started their operations and others are likely to start soon. NSDC Partners are likely to train approx. 5lakh people this financial year and may setup 2500 centres approx. during this period (out of which some may be mobile in nature). NSDC now intends to engage a **Program Management Agency** to facilitate technical and financial monitoring of the ongoing projects as “Project Monitor”. The Agency shall set up the monitoring methodologies, create baseline templates, identify and select & engage suitable regional and technical agencies, as required for implementing the monitoring process, coordinate with the same and present the consolidated evaluation reports.

It shall bring in requisite tools and infrastructure for project planning and monitoring along with a dashboard for collation and consolidation of information received from regional agencies and presenting the information after needful business intelligence analysis to the management of NSDC with their overall views and recommendations.

Financial sustainability of the Programs funded by NSDC is important for the success of overall strategy for large scale skill development in the country. To achieve sustainability, it is essential that the vocational training Programs funded by NSDC are developed, marketed, delivered and assessed in accordance with current international best practice. Specifically, NSDC has identified the following as key outcome areas for projects financed by it:

1. **Relevance:** Extent to which the courses offered, training methodology, standards & quality, tools and approach remain relevant to the targeted stakeholders viz. trainees and industry
2. **Effectiveness:** Extent to which the ground implementation is meeting the overall objectives
3. **Efficiency:** Appropriateness of resources invested as compared to outputs
4. **Impact:** Extent to which the project is successful in creating sustainable employment, livelihood, enhancing industry competitiveness, etc
5. **Scalability and Sustainability:** Whether the positive results are scalable and sustainable

The activity of monitoring needs to support the above organizational objectives of NSDC, specifically by fulfilling the following objectives:

- Tracking performance of projects/ programs through regular and close consultations with Partners and independent research / diligence, since NSDC is not involved in day-to-day management of its investee companies
- Identifying and resolving problems at an early stage
- Discussing monitoring and evaluation results and preventive measures with NSDC and Partners to find / recommend the best solutions

- Achievement of balance between quality / accuracy of monitoring (through mechanisms such as statistically significant sampling of data) and cost effectiveness

3.2 Purpose

Main objectives of the monitoring exercise

- 1 Monitor - performance outcome and their variability relative to planned outcomes**, across parameters such as:
 - Number of People trained
 - Number of people placed
 - a) new job ,
 - b) entrepreneur
 - c) increase in wage in existing job
 - d) higher education
 - No. of centres opened, districts covered, states covered
 - No. of courses
 - No. of sectors
 - Financial Review – Quarterly Utilization Certificate
 - a) Capex
 - b) Opex
 - c) Per trainee cost of training and revenue
- 2 Monitor - operational development of the project** with a view to assessing its health, across parameters such as:
 - Adherence to other terms and conditions of NSDC's loan agreement, such as
 - security / collaterals,
 - escrow accounts,
 - Charge on assets / Insurances
 - Submission of various reports, etc.
 - Disbursements
 - Repayments
 - Debt Service Coverage ratio,
 - Risk assessment with respect to the project
 - Any other issues – litigations, industrial relations, intellectual property matters, etc.
 - Quality of Training
 - a) Train the Trainer's Manual
 - b) Trainer's Manuals
 - c) Other Training Materials.

Note: the above is not a comprehensive listing of parameters to be monitored, and additional suggestions will be expected from Bidders.

3.3 Scope of Work

The scope of the nodal agency would include the following:

I. Development of a comprehensive framework for monitoring of individual projects as well as NSDC's overall program (the 'Monitoring Framework'). The Monitoring Framework will address aspects such as:

- Definition of data needs for the purpose of project and Program monitoring:
 - Specific data to be collected for the purpose of monitoring
 - Sources for each data requirement
 - Periodicity / frequency of data collection
 - Development / specification of formats within which the data is to be collected
 - If data collection is to be based on a sampling methodology, the size of samples and the sampling methodology
- The processes by which data sourced will be verified
 - Verification of data submitted, to test for completeness, errors, data duplication, etc.
 - Independent verification of data content, through physical surveys and the like
- Mechanisms for systemizing / automating the process of data collection, analysis, reporting, ad hoc querying of data / analysis, etc. to the greatest extent possible
 - Identification of type and quantum of personnel required for the data collection process
- Analysis of data to identify the risks, variations, deviations, performances
- Formats for performance reporting across various levels (Chairman, NSDC Board, Proposal Approval Committee, Proposal Evaluation Committee, others) at specified time intervals
 - Dashboards to indicate real time progress across projects, geographies, partners, sectors, states, courses, ranking / scoring based on performance etc
 - Formats to represent periodic performance variation (Actual versus projected) across partners, projects etc.
 - Fund utilization and disbursement schedule across milestone achievements
 - Annual Performance review of Partners
- Mechanisms to support ad-hoc queries for data, analysis and reports in respect of individual projects as well as at NSDC Program level
- Data security and control measures
- Tools for training of personnel from NSDC, Project Monitor and any other agencies involved in the monitoring process

- Formulate the system specifications and requirements of IT tools (If any) to be implemented by a third party IT vendor¹
- Mechanisms for linking NSDC fund disbursements to milestone achievements
- Defining the integrated process for monitoring post agreement to execution i.e. project kickoff, annual milestones, annual budgeting, process for responding to Partners agreement related queries, escalation matrix, standard response formats.

The development process described above will include upfront intensive effort to develop a detailed framework as well as its continued evolution through the course of the Contract period.

II. Design of a comprehensive framework for program management of the monitoring activity (the “Program Management Framework”)

NSDC looks forward to have a framework which reduces cost of monitoring but the impact should be optimum. Based on the recommended framework agency needs to define

- The roles to be performed by each of the entities involved in the monitoring activity.
- the organization structure and staffing requirements with respect to each entity engaged in the monitoring activity, and specifically linking the volume of staffing to the scale of the monitoring activity (across number of Partners, number of facilities, number of Trainees, etc.)
- the interface, reporting and control framework in respect of the monitoring activity
- Formulate the system specifications and requirements of IT tools (If any) to be implemented by a third party IT vendor¹ and assist the vendor in implementation.
- Should recommend mechanism for physical verification of progress and financial reports on random sampling basis. The mechanism should be such as to reduce the cost of travelling,

III. Ongoing program management (Consolidation, analysis and reporting) for a period of 1 year

The scope of work for the Program Management module would include:

- **Run pilot test for evaluating effectiveness of the Monitoring Framework**
 - Refine the Monitoring Framework and the Program Management Framework based on learning from this pilot test
- **In case there is need of other sub-agencies then - sourcing sub-agencies and specialist agencies (hereinafter referred to as ‘Agencies’) for supporting various activities related to monitoring to be managed at their own end for e.g. following activities as required.**
 - Identification and allocation of activities to be outsourced to Agencies

¹ Procurement of IT vendor would be handled independently by NSDC but inputs on scope of work and design specifications to be specified by Agency

- Preparation of Request for Proposal documents to support identification of Agencies
- Bid process management
- Final selection of Agencies in consultation with NSDC
- **Ongoing program management - Consolidation, analysis and reporting**
 - Periodic review and monitoring of the activities of various Agencies
 - Data collection from Partners, Agencies, NSDC and any other relevant sources
 - Ensure smooth and timely data collection and delivery of the same to Nodal agency for downstream analysis and reporting
 - Consolidation of data across information sources
 - Independent verification of data using appropriate sampling techniques
 - Data analysis to generate insights on effectiveness and efficiency of training delivered and the process followed
 - Delivering of periodic reports to NSDC top management and Board on performance of funded projects
 - Maintenance of appropriate system to support ad hoc data and analysis queries by NSDC management
 - Outlining of 'red-flag'/concern areas and recommendation of actionable recourse in such cases

4. Deliverables

The agency shall be solely responsible for end-to-end defining and implementation of the Monitoring Framework. Perform the Central Coordination / PMO functions and also responsible for coordinating with the sub-agencies engaged if any for monitoring the overall performance of all NSDC Partners at Centre level. The deliverables as part of the scope of the Agency includes:

- Draft Consulting Deliverables,
- Draft Monitoring Framework / Manual
- Draft Program Management / Implementation Framework
- Final Consulting Deliverables, to be delivered after completion of the Pilot Rollout, and incorporating learning from it:
 - Final Monitoring Framework / Manual
 - Final Program Management / Implementing Framework
- Program Management outputs, including:
 - Setting up the monitoring team / agencies as per the proposed framework per schedule
 - Score card for monitoring performance
 - Ensuring optimum efficiency at least cost of operation,
 - Ensuring proper risk mitigation and escalation process / matrix

- Quarterly reports (4 quarters) on the technical and financial monitoring of ongoing projects

5. Payment terms

S. No.	Milestone	Indicative Timeline	Payment terms
1	Project mobilization	Day 0	20% of the Fixed Fees
2	Submission of Draft Monitoring Framework and Draft Program Management Framework	End of Month 3	40% of the Fixed Fees
3	Submission of Final Monitoring Framework and Final Program Management Framework	End of Month 5	15% of the Fixed Fees
4	Monthly Program Management Retainer	Once a quarter, starting End of 1 st quarter after Month 4	100% of the monthly Retainer Fees
5	At the successful implementation of the pilot program management, monitoring framework	End of the contract period	25% of the Fixed Fees

6. Duration of contract

The contract will be effective for one year from the signing of the agreement with NSDC and may be renewed by NSDC at its sole discretion and subject to satisfactory performance of services by the Agency.

Format for Pre-Qualification Proposal

Annexure I

- I. **Organization profile**
 - Company/ firm information
 - Certificate of incorporation
 - Financial health (turnover/ profits) of the Agency in the last 3 financial years

- II. **Experience of project involving project management/monitoring for a central/state government (Please attached supporting documents in the form of contract copy, client letter etc.)**

Assignment name:	
Approx. value of the contract (in Indian Rupees):	
Approx. value of the project outlay (in Indian Rupees)	
Country:	
Location within country:	
Duration of assignment (months):	
Name of Client:	
Address:	
Start date (month/year):	
Completion date (month/year):	
Total No of staff-months of the assignment:	
Name of senior professional staff of your firm involved and functions	

performed:	
Narrative description of Project:	
Description of actual services provided by your staff within the assignment:	

III. Self-declaration on the number of advisors in the area of project management/ monitoring

Format for Technical Proposal

Annexure II

The technical proposal should contain the following information. Bidders can provide additional information to support their bid.

I. Experience (Please attached supporting documents in the form of contract copy, client letter etc.)

Assignment name:	
Approx. value of the contract (in Indian Rupees):	
Approx. value of the project outlay (in Indian Rupees)	
Country:	
Location within country:	
Duration of assignment (months):	
Name of Client:	
Address:	
Start date (month/year):	
Completion date (month/year):	
Total No of staff-months of the assignment:	
Name of senior professional staff of your firm involved and functions performed:	
Narrative description of Project:	

Description of actual services provided by your staff within the assignment:

II. Approach and methodology for the engagement

- Understanding of NSDC requirements, objectives and scope
- Planned activities and output
- Methodology of carrying out the activities
- Tools to be used
- Data Capture Mechanism / Formats / Manuals
- Work plan

III. Resources proposed for the engagement

- Team structure
- Team roles and responsibilities
- CVs for Project Manager, Team Leader and Team Members
- Team size
- Network of offices / associates across India

IV. Format for providing CVs for Project Manager, Team Leader and Team Members

1. **Proposed Position:**

2. **Name of Firm:**

3. **Name of Staff:**

4. **Date of Birth:**

5. **Nationality:**

6. **Education:**

Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained:

Degree	University/ Institution	Year in which obtained

7. **Membership of Professional Associations:**

8. **Other Training:**

9. **Countries of Work Experience:** *List countries where staff has worked in the last ten years*

10. **Languages:** *For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing*

Language	Speaking	Reading	Writing

11. **Employment Record:** *Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held*

From:	To:
Employer	

12. **Detailed Tasks Assigned:** *List all tasks to be performed under this Assignment/job*

13. **Work Undertaken that Best Illustrates the experience as required for the Role**

Among the Assignment/jobs in which the staffs has been involved, indicate the following information for those Assignment/ jobs that best illustrate staff capability to handle the tasks listed under point 12.

Name of assignment/job or project	
Name of the client	

Year	
Location	
Main Project Features	
Position Held	
Activities performed	

14. I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

Place:

[Signature of staff member or authorized representative of the staff]

Full name of authorized representative:

Format for Financial Proposal

Annexure III

S. No.	Description	Amount (without tax)	Amount (inclusive of all taxes)
A	Professional Fees for Monitoring Framework and Program Management Framework Development (the "Fixed Fees")		
B	Retainer fees per month for Program Management (payable from Months 4 to Months 12)		
C	Total Retainer fees for Program Management (equals C multiplied by 9)		
D	Total fees (equals A plus C)		

Note:

1. In case of any discrepancy in multiplication or totaling, NSDC will treat the **Highest** of the calculated or stated numbers as the Bidder's Financial Proposal.
2. Total Fees (row D above), inclusive of all taxes, will be used in calculating the financial score (S_f) of the proposal.

TERMS AND CONDITIONS

The Contract/ Agreement between NSDC and the Nodal Agency are subject to the terms and conditions set forth below:

1.1 CONTRACT DOCUMENTS

The Proposer shall not, without prior written consent from NSDC, disclose the Contract or any provision thereof or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of NSDC in connection therewith, to any person other than a person employed by the Proposer in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary for purposes of such performance.

The Proposer shall not, without prior written consent of NSDC, make use of any document or information made available for the project, except for purposes of performing the Contract.

All project related documents issued by NSDC, other than the Contract itself, shall remain the property of NSDC and shall be returned (in all copies) to NSDC, on completion of the Proposer's performance under the Contract if so required by NSDC.

1.2 INTERPRETATION

In case of any ambiguity in the interpretation of any of the clauses in the tender document, the interpretation of the clauses by Authorized Representative of NSDC shall be final and binding on all parties.

1.3 COMMUNICATIONS

Wherever Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered against receipt; and
- (b) Delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract.

1.4 LANGUAGE

The proposal and all correspondence and documents related to the proposal exchanged by the Proposer and NSDC should be in English. Supporting documents and printed literature furnished by the Proposer may be in any language other than English provided they are accompanied by an accurate translation of the relevant passages in English language. Supporting material, which is not translated in English, will not be considered for evaluation. For the purpose of evaluation and interpretation of the proposal, the English language translation shall prevail.

1.5 TIME FOR COMMENCEMENT AND COMPLETION

The Proposer shall commence work on the Framework within the period specified and without prejudice, the Proposer shall thereafter proceed in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the agreed and finalized Project Plan.

The Proposer shall attain completion of the project or of a part where a separate time for completion of such part is specified in the Contract, within the time stated or within such extended time to which the Proposer shall be entitled.

1.6 PROPOSER'S ROLES AND RESPONSIBILITIES

The Proposer will be responsible for:

- Preparation of detailed Monitoring Framework as per the implicit and explicit objectives ensuring properly defined mechanism for validation for reports and outcomes.
- Providing deliverables as indicated in 'Deliverables' section of the RFP and the overall intended scope of work.
- Defining the Program Management Framework and implementing the same. The framework has to be most efficient and cost effective.
- Preparation of a detailed Monitoring manual encompassing of processes, chart, report templates, frequency, validation mechanism, monitoring org chart, quantum of diligence / sampling, quality, financial and technical monitoring mechanism etc

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- Deploying resources as required /proposed to meet the RFP requirements and proposed Program Management and Monitoring Framework.
 - Ensuring timely completion of the project
 - Co-ordinating with all stakeholders and solely responsible for monitoring on behalf of NSDC.
 - Generation of timely monthly, quarterly and annual reports.
 - Maintaining Partner wise profile in the system
 - Assisting the agency developing the IT solution/ framework
 - Ensuring timely disbursement, verification and validation for next disbursements,
 - Checking & confirming the fund utilization in line to the Agreement
 - Balance score card at Partner level for NSDC Management

1.7 EMPLOYER'S (AND OTHER STAKEHOLDERS) ROLES AND RESPONSIBILITIES

It will be the responsibility of NSDC to:

- Provide strategic leadership to the project
- Will be responsible for co-ordination within NSDC and with other related agencies
- Facilitate convening of the meetings with stakeholders, providing requisite documents and guidance as needed
- Provide comments on the deliverables submitted by the Consultant within the agreed Timeframe
- Facilitate support for the pilot Operating Framework
- Review and approve the Monitoring Framework, Project Management Framework, matrix for Scorecard and Manual for implementation as Pilot upon satisfaction.
- Periodically review the progress of the project

1.8 TERMS OF PAYMENT

- 1.8.1 NSDC shall follow the payment schedule as given in Section 6 of the RFP
- 1.8.2 NSDC's authorized representative shall certify actual implementation. The Service Provider must provide support up to initial two years and after completion of contract period unless extended for another term, the Service Provider has to ensure proper hand-holding of the system to any new parties that NSDC may contract with.
- 1.8.3 The Service Provider's request(s) for payment shall be made to NSDC in writing, accompanied by an invoice describing, as appropriate, the service provided. The Service Provider will define the services performed and substantiate with documents the fulfillment of obligations as stipulated in the Contract.
- 1.8.4 Payments shall be made promptly by NSDC after submission of the invoice or claim by the Service Provider and upon verification and certification by the concerned official. In case the NSDC representative is not satisfied with the quality of service delivery and the detailing of work of the Service provider, he/ she shall return the invoice advising needful changes or improvement in the quality of delivery or the additional incomplete work which is expected to be delivered by the service provider. The decision of the NSDC representative shall be final and binding. In such cases, the Service Provider and the NSDC representative shall within a week sign-off a mutually agreed date for completing of the desired activity and resubmission of the invoice.
- 1.8.5 Payments shall be made in Indian Rupees/ INR.
- 1.8.5 Prices:
- 1.8.5.1 Amount payable to the Service Provider as stated in the Contract shall remain non-negotiable and fixed during the tenure of the Contract.
- 1.8.5.2 The prices quoted shall not be conditional /optional and it should be in line with the technology and approach presented during the Approach & Methodology Presentation by the Service Provider before the Committee and in compliance with RFP and all corrigendum

uploaded on website. The Proposer shall not submit conditional / optional proposals. Conditional / optional proposals are liable to be out rightly rejected.

1.9 TAXES AND DUTIES

For all services supplied, the Proposer shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted products or services to the Employer. If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Proposer or its employees in connection with performance of the Contract, an adjustment as per the terms of this RFP shall be applicable and Contract Price shall be made to take into account any such change in such manner as prescribed herein the RFP.

1.10 INTELLECTUAL PROPERTY RIGHTS (IPR)

1.10.1 During the Subscription phase, the responsibility to maintain the IPR of any BI or PMO Tool / Application(s) provided by the selected Proposer would lie with the selected Proposer and the Proposer will transfer the IPR to NSDC or its nominated agency during the Transfer stage, which could be post the subscription period or an extended subscription period. Following conditions apply:

1.10.2 Ownership and Title: Title to the software, any enhancements, point updates and documentation, including ownership rights to patents, copyrights, trademarks and trade secrets therein shall be the exclusive property of NSDC.

1.10.3 Reverse Engineering: The operator shall not reverse engineer any minor, major enhancement or point update.

1.10.4 Confidentiality: The Proposer hereby acknowledges that the minor enhancements, point updates, and documentation may contain information that may be trade secret and proprietary to NSDC. The Proposer hereby agrees not to disclose such information except to persons and organizations expressly authorized by NSDC to receive such information. The Proposer shall not

remove or alter any copyright notices or proprietary legends affixed by NSDC to such minor enhancements, point updates or documentation.

1.10.5 Copies: The Proposer shall make available to NSDC an additional copy of the minor enhancements, point updates and documentation for back-up use on the computer.

1.10.6 Limitation of Damages: The Proposer shall not be liable for any failure to perform its services because of circumstances beyond the control of Proposer, where such circumstances shall include (without limitation) natural disaster, terrorism, labor disputes, war, declarations of governments, transportation delays, and misuse of the Software by NSDC.

1.10.7 WARRANTY/ INDEMNITY:

The Proposer hereby represents and warrants that (i) the Services/Products as supplied, installed, tested and accepted; (ii) use of the Services/Products in accordance with the Contract; and (iii) copying of the Software and Documentation provided to the Employer in accordance with the Contract do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Employer to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Proposer shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for Project execution.

1.11 SERVICES AND PRODUCT AGREEMENTS

The ownership of all framework, manual, templates, tools and application developed and to be deployed as part of the project would be in the name of NSDC and the original copy of the same shall be deposited by the successful Proposer at the office of NSDC after successful implementation of the same. The proposer indemnifies claim to such product and services and shall not replicate to any other client of his or his associates.

1.12 CONFIDENTIAL INFORMATION

The Employer/NSDC (“the Disclosing Party”) and the Proposer/ Proposer (“the Receiving Party”) shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract (Confidential Information), whether such information has been furnished prior to, during or following termination of the Contract.

The Proposer is deemed to be the Receiving Party of Confidential Information generated by the Proposer itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, Proposers, employees, or other contracts of the Employer.

The Employer shall not, without the Proposer’s prior written consent, use any Confidential Information received from the Proposer for any purpose other than the operation and maintenance of the project. Similarly, the Proposer shall not, without the Employer’s prior written consent, use any Confidential Information received from the Employer for any purpose other than those that are required for the performance of the Contract.

1.13 AUTHORISED REPRESENTATIVES

1.13.1 Employer’s Representative

The Employer/NSDC shall appoint and notify the Proposer/ Proposer in writing the name of the Competent Authority /Officer. The Employer may from time to time appoint some other person as the Competent Authority /Officer in place of the person previously so appointed and shall give a notice of the name of such other person to the Proposer without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Proposer.

The Competent Authority /Officer shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other

communications under the Contract shall be given by the Competent Authority /Officer, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Proposer to the Employer under the Contract shall be given to the Competent Authority /Officer, except as herein otherwise provided.

1.13.2 Proposer's Representative

If the Proposer's Representative is not named, the Proposer shall appoint the Proposer's Representative and shall request the Employer in writing to approve the person so appointed. The request must be accompanied by detailed curriculum vitae for the nominee, as well as description of any other responsibilities the nominee would retain while performing the duties of the Proposer's Representative. If the Employer does not object to the appointment, the Proposer's Representative shall be deemed to have been approved. If the Employer objects to the appointment giving the reason therefore, then the Proposer shall appoint a replacement of such objection.

1.13.3 Objections and Removals

The Employer may by notice to the Proposer object to any representative or person employed by the Proposer in the execution of the Contract who, in the reasonable opinion of the Employer, may have behaved inappropriately, be incompetent, or be negligent. The Employer shall provide evidence of the same, whereupon the Proposer shall remove such person from work.

1.14 PROJECT PLANNING AND PERFORMANCE

1.14.1 The agreed and finalized Project Plan will be prepared by the Proposer and approved by the Employer/ NSDC. If required, the impact on the Implementation Schedule of modifications agreed during finalization of the agreed and finalized Project Plan shall be incorporated in the Contract by amendment.

1.14.2 Proposer shall undertake to supply, install, test, and commission the Services in accordance with the agreed and finalized Project Plan.

1.14.3 The progress report and other reports shall be prepared by the Proposer and submitted to the Employer in the format and frequency specified.

1.14.4 If at any time the Proposer's actual progress falls behind the project schedule described in the agreed and finalized Project Plan, or it becomes apparent that it will so fall behind, the Proposer shall, at the request of the Employer's Competent Authority /Officer, prepare and submit to the Competent Authority /Officer, a revised project schedule, taking into account the prevailing circumstances, and shall notify the Competent Authority /Officer of the steps being taken to expedite progress so as to attain completion of the facilities within the stated time for completion.

1.14.5 NSDC, as per rules, through its officials can undertake audit of the information provided by the vendor at any point of time. The vendor must provide support and access to the data and its offices meant for the project. In case of any dispute, NSDC's decision will be final and binding on the vendor.

1.14.6 In case NSDC through audit or otherwise finds that the vendor has purposefully committed any irregularity, NSDC has the right to terminate the contract with immediate effect.

1.15 SUBCONTRACTING (AREAS THAT CAN BE SUBCONTRACTED, EXTENT ETC)

In case required, the Proposer shall seek permission and submit the list of sub- Proposers to the Employer for its prior approval in writing. Such approval by the Employer of a sub- Proposer(s) shall not relieve the Proposer from any of its obligations, duties, or responsibilities under the Contract.

1.16 TRANSPORT AND DELIVERY

Delivery Schedule will require the explicit written consent of the Employer. The Proposer shall bear responsibility for deliveries and cost of transport to the Project Sites. Unless otherwise specified, the Proposer shall be free to use transportation through carriers registered in the Country.

1.17 PRODUCT UPGRADES

At any point during performance of the Contract, should technological advances be introduced by the Proposer for the IT Services originally offered by the Proposer in its proposal and still to be delivered,

the Proposer shall be obligated to offer to the Employer the latest versions of the available information technologies having equal or better performance or functionality at the same or lesser unit prices.

1.18 INSPECTION AND TESTING

NSDC and/or its representative reserve the right of inspection of processes being followed by the Proposer anytime during the period of the contract. NSDC reserves the right to inspect, test and, wherever necessary, reject the monitoring framework, templates, or manual or program management processes. This shall in no way be limited or waived by reason of having previously been inspected and passed by NSDC or its representative prior to the Pilot implementation.

1.19 OPERATIONAL FRAMEWORK ACCEPTANCE

Implementation of the Operational Framework shall be commenced by the Proposer immediately after intimation of acceptance is issued by the Employer's Representative.

The Employer shall supply the operating and technical personnel and all materials and information reasonably required to enable the Proposer to carry out its obligations with respect to implementation of the monitoring operational framework.

The **Operational Acceptance Tests** shall be the primary responsibility of the Employer, but shall be conducted with the full cooperation of the Proposer during Commissioning of the IT Application to ascertain whether they conform to the requirements and meets the standard of performance quoted in the Proposer's proposal, including, but not restricted to, the functional and technical performance requirements.

If, for reason attributable to the Employer, the Operational Acceptance Test of the IT Application cannot be successfully completed within the period specified, from the date of Installation or any other period agreed upon in writing by the Employer and the Proposer, the Proposer shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects.

If the IT Application fails to pass the Operational Acceptance Test(s) then either:

- the Employer may consider terminating the Contract, or

- If the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Employer to fulfill its obligations under the Contract, then the Proposer shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract.

1.20 COMPLETION TIME GUARANTEE

The Proposer guarantees that it shall complete the project within the time period specified in the Implementation Schedule and/or Agreed and Finalized Project Plan or within such extended time to which the Proposer shall be entitled to.

1.21 DEFECT LIABILITY

The Proposer warrants that all Services/Products to be delivered under this contract:

- shall be free from defects in the design and workmanship;
- are newly manufactured, unused, and incorporate all recent material improvements in design; and
- complies with or exceeds the Technical Specifications
- Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.

In addition, the Proposer warrants that:

The Warranty Period shall commence from the date of Operational Acceptance of the IT Services. If during the Warranty Period any defect should be found in the design, documentation, and workmanship of the Services provided by the Proposer, the Proposer shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Proposer shall, at its discretion, determine) such defect as well as any damage to the Products and/or Services caused by such defect.

1.22 FUNCTIONAL GUARANTEES

The Proposer guarantees that during the Operational Acceptance, the IT Services shall attain the Functional Guarantees, subject to and upon the conditions therein specified.

If, for reasons attributable to the Proposer, the minimum level of the Functional Guarantees is not met either in whole or in part, the Proposer shall at its own cost and expense make such changes, modifications and/or additions to the Services or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Proposer shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Operational Acceptance Test until the minimum level of the Guarantees has been met. If the Proposer eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract.

1.23 LIMITATION OF LIABILITY

Except in cases of criminal negligence or willful misconduct and Intellectual Property Rights Indemnity claims:

- neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract, and
- The aggregate liability of the Proposer to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the Contract Price, provided that this limitation shall not apply to any obligation of the Proposer to indemnify the Employer with respect to patent infringement.

1.24 CRIMINAL CHARGES AND CONVICTION

The Proposer warrants that it has disclosed and will continue to disclose during the term of this Contract full details of all criminal convictions and all pending criminal charges against it or any of its personnel and associates that would reasonably be expected to adversely affect the Proposer or the Proposer's capacity to fulfill its obligations under this contract.

1.25 CARE OF IT PRODUCTS AND/OR SERVICES

The Proposer shall be responsible for the care and custody of the IT Products and/or Services or any part thereof until the date of completion of the Project, where the contract provides for completion of the in parts, until the date of completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the IT Products and/or Services or the relevant part thereof from any cause whatsoever during such period.

1.26 LOSS OF OR DAMAGE TO PROPERTY; ACCIDENT OR INJURY TO WORKERS

The Proposer shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in the India. The Proposer shall indemnify and hold the Employer and its employees and officers harmless from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property by reason of the negligence of the Proposer or its employees, officers or agents.

1.27 INSURANCE

The Proposer shall maintain standard forms of comprehensive insurance including liability insurance, system and facility insurance and any other insurance for the personnel, assets, data, software, etc. and submit the list of all the insured items to NSDC prior to the start of operations.

1.28 FORCE MAJEURE

- Neither Party to this Agreement or to the SLA shall be liable to the other for any loss or damage which may be suffered by the other due (directly) to the extent and for the duration of any cause beyond the reasonable control of the Party unable to perform ("Force Majeure") events such as but not limited to acts of God not confined to the premises of the Party claiming the Force Majeure, flood, drought, lightning or fire, earthquakes, strike, lock-outs beyond its control, labor disturbance not caused at the instance of the Party claiming Force Majeure, acts of government or other competent authority, war, terrorist activities, military operations, riots, epidemics, civil commotions etc. No failure, delay or other default of any Proposer to either Party shall entitle such Party to claim Force Majeure.
- The Party seeking to rely on Force Majeure shall promptly, within 2 days, notify the other Party of the occurrence of a Force Majeure event as a condition precedent to the availability of this defense with particulars detail in writing to the other Party and shall demonstrate that it has and is taking all reasonable measures to mitigate the events of Force Majeure.
- In the event the Force Majeure substantially prevents, hinders or delays the Proposer's performance of Services necessary for the operation of Project's critical business functions for a period in excess of 5 days, NSDC may declare that an emergency exists. NSDC will issue a notice to the Proposer to resume normal services at all affected sites and for all operations within a period of 7 days. In the event that the Proposer is not able to resume services within the next 7 days, NSDC may terminate the Agreement and/or obtain substitute performance from an alternate Proposer. However, the event of Force Majeure is to be reviewed under two

categories i.e. prior to commencement of operations and post commencement of operations respectively.

- **Prior to commencement of operations:** If the event of Force Majeure occurs prior to commencement of operations and continues for a period in excess of 10 days, then NSDC will grant a period of 7 days to the Proposer to resume normal activities under this Agreement. In case the default continues, then NSDC may discuss the issue with the Proposer and revise the existing timelines for the Project. If the Proposer does not complete the Project Implementation in accordance with the revised time, NSDC will have the option to terminate this Agreement.
- **Post commencement of operations:** If Force Majeure occurs post commencement of operations and continues for a period in excess of five days, then NSDC will grant a period of 7 days to the Proposer to resume normal services under this Agreement. In case the default continues, NSDC may grant an extension of time to the Proposer for rectifying the situation. However, NSDC will deduct for each day of the extension period a percentage proportionate to the number of days and the affected areas/s from the next payable amount as per Payment Schedule. If there is any further delay despite the extended period, NSDC will have the option to terminate the Agreement.
- Notwithstanding the terms of this section, the failure on the part of the Proposer under the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure.

1.29 CHANGE IN LAWS AND REGULATIONS

If after the date of proposal submission, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Proposer and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Proposer has thereby been affected in the performance of any of its obligations under the Contract.

1.30 COMPLIANCE WITH LAWS

- The Proposer shall undertake to observe, adhere to, comply with and notify NSDC about all laws in force or as are made applicable in future, pertaining to or applicable to the Proposer, their business, their employees or their obligations towards employees and all purposes of this tender and shall indemnify, keep indemnified, hold harmless, defend and protect NSDC and its employees/officers/staff/ personnel/representatives/agents from any failure or omission on its part

to do so and against all claims or demands of liability and all consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising there from.

- The Proposer shall promptly and timely obtain all such consents, permissions, approvals, licenses, etc, as may be necessary or required for any of the purposes of this project or for the conduct of their own business under any applicable Law, Government Regulation/Guidelines and shall keep the same valid and in force during the term of the project, and in the event of any failure or omission to do so, shall indemnify, keep indemnified, hold harmless, defend, protect and fully compensate NSDC and its employees/ officers/ staff/ personnel/ representatives/agents from and against all claims or demands of liability and all consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising there from and NSDC shall give notice of any such claim or demand of liability within reasonable time to the Proposer.
- The Proposer agrees that the Proposer shall not be entitled to assign / sub lease any or all of its rights and or obligations under this tender and subsequent Agreement to any entity including Proposer's affiliate without the prior written consent of NSDC.

1.31 EXTENSION OF TIME FOR COMPLETION

The Time(s) for Completion shall be extended if the Proposer is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- any occurrence of Force Majeure or unforeseen conditions
- any changes in laws and regulations
- any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Nodal Officer, or any other Proposers employed by the Employer; or
- Any other matter specifically mentioned in the Contract by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Proposer.

1.32 SUSPENSION

No order of suspension or termination of implementing Proposer would be issued by NSDC except after conducting an enquiry by an officer of NSDC, authorized in this regard.

The grounds for suspension / termination of implementing Proposer may include inter alia

- Contravention of the conditions/clauses as would be specified in the Contract/Letter of Appointment.
- Inability to perform the duties and requirements as would be specified in the contract.

1.33 TERMINATION FOR PROPOSER'S DEFAULT

The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Proposer:

- if the Proposer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Proposer is a corporation, a resolution is passed or order is made for its winding up, (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Proposer takes or suffers any other analogous action in consequence of debt;
- if the Proposer, in the judgment of the Employer has engaged in corrupt, fraudulent, coercive or collusive practices in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer the hardware, software, or materials provided under the Contract.

If the Proposer:

- has abandoned or repudiated the Contract;
- has without valid reason failed to commence work on the project promptly;
- persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
- refuses or is unable to provide sufficient Documentation, Services, or labor to execute and complete the project in the manner specified in the agreed and finalized Project Plan then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Proposer stating the nature of the default and requiring the Proposer to remedy the same. If the Proposer fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Proposer.

Upon receipt of the notice of termination, the Proposer shall, either immediately or upon such

Date as is specified in the notice of termination,

- cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the project already executed, or any
- work required to leave the Site in a clean and safe condition;

- deliver to the Employer the part of the project executed by the Proposer up to the date of termination;
- to the extent legally possible, assign to the Employer all rights, title and benefit of the Proposer to the Project as of the date of termination, and, as may be required by the Employer
- Deliver to the Employer all drawings, specifications, and other documents prepared by the Proposer as of the date of termination in connection with the Project.

1.34 DISPUTES AND ARBITRATION

1.34.1 Arbitration

Any controversy or claim arising out of or relating to this project and the services to be rendered by Proposer under or pursuant to this project Agreement, the interpretation hereof, or its breach shall, if not resolved by mutual discussions between the parties, be settled by binding arbitration in accordance with the Arbitration and Conciliation Act, 1996. Arbitration shall be conducted in New Delhi in English language.

1.34.2 JURISDICTION

All disputes and controversies between NSDC and Proposer shall be subject to the exclusive jurisdiction of the Courts at New Delhi the parties agree to submit themselves to the jurisdiction of such court. This Project agreement shall be governed by the laws of India.

1.35 REPRESENTATIONS AND WARRANTIES

- a) The Proposer warrants that they have obtained all necessary corporate approvals to enter into an Agreement and that no consent, approval, or RFP Document for Skill Development Management System for NSDC, no withholding of objection is required from any governmental authority with respect to the entering into or the performance of this project.
- b) The Proposer further warrants that they are under no obligation or restriction, nor shall they assume any such obligation or restriction, that would in any way interfere or conflict with, or that would present a conflict of interest concerning, any obligations under this project .

- c) Proposer warrants that it shall perform the Services in a professional and workmanlike manner and materially in accordance with the applicable specifications in the RFP.
- d) The Proposer represents that it is duly incorporated, validly existing and in good standing under as per the laws of the state in which such Party is incorporated.
- e) The Proposer represents that it has the corporate power and authority to enter into Agreements and perform its obligations there under. The execution, delivery and performance of terms and conditions under Agreements by such Party and the performance of its obligations there under are duly authorized and approved by all necessary action and no other action on the part of such Party is necessary to authorize the execution, delivery and performance under an Agreement.
- f) The Proposer represents that the submission of responses to the RFP execution, delivery and performance under an Agreement entered in case the Proposer is selected:
- Will not violate or contravene any provision of its documents of incorporation;
 - Will not violate or contravene any law, statute, rule, regulation, licensing requirement, order, writ, injunction or decree of any court, governmental instrumentality or other regulatory, governmental or public body, agency or authority by which it is bound or by which any of its properties or assets are bound;
 - Except to the extent that the same have been duly and properly completed or obtained, will not require any filing with, or permit, consent or approval of or license from, or the giving of any notice to, any court, governmental instrumentality or other regulatory, governmental or public body, agency or authority, joint venture party, or any other entity or person whatsoever;
 - To the best of its knowledge, after reasonable investigation, no representation or warranty by such Party in this Agreement, and no document furnished or to be furnished to the other Party to this Agreement, or in connection herewith or with the transactions contemplated hereby, contains or will contain any untrue or misleading statement or omits or will omit any fact necessary to make the statements contained herein or therein, in light of the circumstances under which made, not misleading. There have been no events or transactions, or facts or information which has come to, or upon reasonable diligence, should have come to the attention of such Party and which have not been disclosed herein or in a schedule hereto, having a direct impact on the transactions contemplated hereunder.