



CLARIFICATION #4

FOR

CONSULTING SERVICES FOR EMBEDDED (RESIDENT) ADVISORS FOR ELECTRICITY REGULATORY COMMISSION (ERC) UNDER ELECTRICITY TRANSMISSION PROJECT (POWER SECTOR TECHNICAL ASSISTANCE ACTIVITY);

REF MCA-N/ETP/QCBS/008

ISSUED ON: 5 DECEMBER 2023

SN	Reference to the Bidding Document	Questions from Bidders	Response of Millennium Challenge Account Nepal (MCA-Nepal)
1.	<p>TECH-2B (Current and Past Proceedings, Litigation, Arbitration, Actions, Claims, Investigations and Disputes of the Consultant) provided at page 69 of the RFP which states the following:</p> <p><i>“The Consultant, or any related company or entity or affiliate, has been involved in any proceeding, litigation, arbitration, action, claim, investigation or dispute within the past five (5) years the process or outcome of which the MCA Entity could reasonably interpret may impact or have the potential to impact the financial or operational condition of the Consultant in a manner that may adversely affect the Consultant’s ability to satisfy any of its obligations under the Contract: No: _____ Yes: _____ (If “Yes,” see below)”</i></p>	<p>We further noticed that Form TECH-2B is to be submitted in relation with the following clauses:</p> <p>Clause 12.5 (a) at page 23 - <i>Information on current or past proceedings, litigation, arbitration, action claims, investigations or disputes is required (Form TECH-2B of Section IV A).</i></p> <p>Clause 3.3 at page 46 - <i>Litigation Criteria - The Consultant shall provide accurate information on any current or past litigation or arbitration resulting from contracts completed, terminated, or under execution by the Consultant over the last five (5) years, as indicated in Form TECH-2B. A consistent history of awards against the Consultant or existence of high value disputes may lead to the rejection of the Proposal. Each Associate must provide the information required in TECH-2B.</i></p>	

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		<p>Clause 3.7.2 at page 60 - <i>Historical Contract non-performance</i> <i>Clause 3.7.2.1 - Pending Litigation - All pending proceedings, litigation, arbitrations, actions, claims, investigations or disputes, in net (difference between claim by Bidder and claim against bidder), shall not represent more than ten percent (10%) of the Consultant's net worth.</i></p> <p>Clause 3.7.3 at page 61 – <i>Financial Situation</i> <i>Clause 3.7.3.1 - Historical Financial Performance - Submission of evidence of the Consultant's financial capacity to mobilize and sustain the Services.</i> <i>Clause 3.7.3.2 - Financial Resources - The Consultant must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means.</i></p> <p>We wish to humbly submit that any professional services firm having long standing operations may have various ongoing proceedings, litigations, arbitrations, actions, claims, investigations or disputes ("matters") in the normal course of business.</p>	<p>Your understanding on the following: “A Consultant is required to furnish details of pending client matters in Form TECH-2B only if such client matters represent more than ten percent (10%) of the bidder's net worth. Accordingly, if such pending client matters do not represent more than ten percent of the bidder's net worth, the</p>

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		<p>We understand that the details sought under Form TECH-2B are not intended to cover all such matters. We understand that the details sought through and under Form TECH-2B are intended to cover only those pending matters which are directly initiated and filed against the bidder by bidder's clients due to non-performance of services by the bidder under the respective client contracts in the last five (5) years ("client matters").</p> <p>Further, we understand that a bidder is required to furnish details of pending client matters in Form TECH- 2B only if such client matters represent more than ten percent (10%) of the bidder's net worth. Accordingly, if such pending client matters do not represent more than ten percent of the bidder's net worth, the bidder can state 'NO' in Form Tech-2B and will not be required to provide any further details.</p> <p>We are looking forward to your positive consideration and response to enable us to submit our bid.</p>	<p>bidder can state 'NO' in Form Tech-2B and will not be required to provide any further details”, is not correct.</p> <p>All the Consultants submitting a Proposal are required to submit the requested information under the RFP with their proposal. If the Consultant is having pending proceedings, litigation, arbitrations, actions, claims, investigations or disputes (claim by the Consultant or Claim against the Consultant), the Consultant is required to state “Yes”, and provide the information of such litigation, arbitrations, actions, claims, investigations or disputes.</p> <p>The assessment of the information submitted by the Consultant in Form Tech-2B to determine the compliance with this requirement, will be carried out by the Evaluation Panel appointed by the MCA-Nepal for the proposal's evaluation.</p>

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2.	<p>MCC Nepal Compact Agreement Schedule D (Corporate Income And Withholding Tax), Pg. No. 68 of 78 Point 4 of the Procedures: Income Tax Exempt Entities not registered under the laws of Nepal that may have permanent establishment in Nepal will register as a taxable person in Nepal. MCA-Nepal will arrange this registration with a tax office of the IRD so that the Income Tax Exempt Entity (including its permanent establishment) and all income derived from MCC Funding will be exempt from taxation.</p>	<p>In order to undertake this project, we have been advised to set-up a branch office (i.e., permanent establishment) in Nepal as per the Nepal Corporate law requirements. As per section 2.8 of the Millennium Challenge Compact (MCC), we understand that tax exemptions are provided to the consultants, subcontractors, etc. Please confirm if such exemptions are equally applicable to the permanent establishment of the foreign consultants</p>	<p>Please refer to Compact Section 2.8 read alongwith Annex – VII: Tax Schedules.</p> <p>Consultants are requested to take note of SCHEDULE D CORPORATE INCOME AND WITHHOLDING TAX, Section Beneficiaries of Exemption, Point No. 2 which states as follows:</p> <p>“2. Each Exempt Entity, other than legal persons that are legal entities registered under the laws of Nepal (the “Income Tax Exempt Entity”). Any income that is derived from MCC funding by legal entities or persons, but not individuals, that are considered taxable, per the tax code, due to residence in Nepal solely with respect to their work performed in furtherance of the Compact will not be considered taxable or subject to taxation in Nepal.”</p>
3.	<p>General</p>	<p>Please confirm that it is not mandatory to open a Bank Account in Nepal for the sole purpose of receiving credit against the invoices raised to MCA-Nepal by the Consultant. This is a critical question, given the stringent restrictions and challenges in repatriating money from Nepal to India. Please confirm.</p>	<p>If the Consultant is an international firm established outside of Nepal, the payments can be made directly to the Bank Account of the Consultant in their Country.</p>

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4.	General	<p>We are thinking of putting up for consulting service for embedded advisor.</p> <p>To put proposal is it necessary for obtaining SAM registration for putting bid?</p>	<p>As per the Request for Proposal (RFP) document, there is no requirement for obtaining SAM registration. However, as per TECH-12, you are required to verify eligibility of yourself, your partner(s) if any and your key staff on various websites including SAM's website and attach the results of the verification to your proposal and submit it to the MCA Procurement Agent at the time of Bid submission at MCANepalPA@dt-global.com; (Procurement Agent) with a copy to MCC at sanctionscompliance@mcc.gov .</p> <p>To further clarify, under MCC procurements, SAM website is only used/needed for checking eligibility of the Consultants but registration in SAM is not a requirement.</p>