



CLARIFICATION #2
FOR
SUPPLY AND DELIVERY OF TRAFFIC COUNTERS
Ref No: MCA-N/RMP/SH/072

Date: 24 January 2024

SN	Reference of the RFQ	Questions	Answer/Response of Millennium Challenge Account Nepal (MCA-Nepal)
1.	<p>RFQ Document, Annex 4, Page-23</p> <p>17. Disputes Resolution.</p> <p>Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to and determined by a sole arbitrator to be appointed by agreement between the Parties or in default of agreement by the Parties, in accordance with Law of Nepal. The arbitration shall be held in Kathmandu, Nepal and the language of the arbitration shall be English. The arbitral award shall be final and binding. Notwithstanding any reference to arbitration herein, the Parties shall continue to perform their respective obligations under the Contract. MCC has the right to be an observer to any arbitration proceeding associated with this Contract, at its sole discretion, but does not have the obligation to participate in any arbitration proceeding.</p>	<p>We are unaware of the Laws of Nepal and delving into the same may take considerable time to have a completely mutual agreement. Instead, we propose that dispute resolution and arbitration is under the International Chambers of Commerce (ICC). The ICC is an international institution with established rules and procedures that are recognized globally and opting for ICC provides a neutral ground that is not influenced by local legal or political considerations. Further, ICC arbitration offers a panel of arbitrators with expertise in international commercial disputes. This can be beneficial when dealing with complex matters that require a deep understanding of global business practices. Awards issued by the ICC are generally more easily enforceable across different jurisdictions due to the New York Convention, which facilitates the recognition and enforcement of arbitral awards in numerous countries.</p> <p>Please confirm if this is acceptable.</p>	<p>Your proposed modification is not acceptable for MCA-Nepal. Thus, this Clause number 17 will not be modified.</p> <p>As per MCC PPG P1.A.3.4.1, this procurement falls under the shopping method based on its estimated value. Thus, for such procurement, it is not practicable for MCA-Nepal to carry out the dispute resolution and arbitration under the International Chambers of Commerce (ICC).</p>
2.	<p>RFQ Document, Annex 4, Page-23</p> <p>18. Termination for Convenience</p>	<p>The contract does not suggest a reasonable period for the date upon which the termination will be effective. As such we suggest this period be 30 – 60 days. We</p>	<p>Sub clause (a) states that the notice of termination is for the Purchaser's convenience.</p>

	<p>(a) The Purchaser, by notice sent to the Supplier, may terminate this Contract, in whole or in part, at any time in its sole discretion for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under this Contract is terminated, and the date upon which such termination becomes effective.</p>	<p>request this as a fair business practice and also allows both parties to adequately plan for the termination to mitigate disruptions to the Purchaser. This period also helps Supplier to minimize the impact of sudden terminations and mitigate business risks ensuring smoother transition and reduce potential financial strain. A 30–60-day notice period helps ensure compliance with any such legal obligations and maintain positive relations between the Purchaser and Supplier. Please confirm.</p>	<p>Further, as per Sub clause (b), the Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at this Contract terms and prices. This means, if the Purchaser wants to terminate the contract, in whole or in part, it will issue a notice of termination to the supplier and the termination will be effective from the date of issuance of such notice. However, the Goods that are complete and ready for shipment within twenty-eight (28) days after the issuance of notice of termination shall be accepted by the Purchaser. Thus, this provision (b) fulfills the purpose of your proposed modification.</p>
3.	<p>RFQ Document, Annex 4, Page-23 18. Termination for Convenience (b2) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.</p>	<p>We recommend including the period within which the amount is to be agreed upon between the purchaser and the supplier. Therefore, we recommend to add and conclude this clause with the following – "In case the parties fail to reach an agreement within 15 days, it should be referred to a dispute, in accordance with section 17." Please confirm.</p>	<p>This Clause number 18(b2) will not be modified.</p>

4.	Not Applicable	<p>We would like to request including the following clause regarding limitation of liability –</p> <p>21. Limitation of Liability</p> <p>21.1 Supplier’s aggregate liability under this Contract shall be limited to the Contract Price.</p> <p>21.2 Notwithstanding any language contained in any other provision of this Contract to the contrary, the Supplier shall not be liable to Purchaser for any incidental, special (including punitive and multiple damages), lost profits, lost savings or consequential damages whatsoever under this Contract.</p>	This additional Clause is Not Applicable.
5.	General	<p>We are very clear for part A. Traffic Survey Equipment with Camera. However we have query for the part B that is for part B. Surface Distress Identification (SDI) Utility Camera</p> <p>1. Is there any requirement of software for surface Distress Identification? If Yes, what are the features? We suppose this is only for monitoring, so no software is required for this. Kindly confirm.</p> <p>Looking forward to hearing from you soon.</p>	No, there is no requirement for a distress identification software with the camera.