

Replies to pre bid queries to Gem Bid ref no. GEM/2022/B/2596622 dated 30/09/2022 for Supply, Installation and Maintenance of Network Hardware Security Module (HSM) for Canara Bank for 5 years

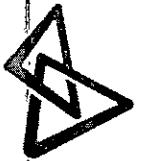
Sl. No.	Gem bid Clause	Clause/ Technical Specification	Bidder's Query	Bank's Reply
1.	Gem bid document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:	18. Payment Terms: 18.1. 70% on delivery and 20% on Installation and 10% on start of the warranty.	Request the payment term to be as per below: 80% on delivery and 10% on Installation and 10% on start of the warranty	Bidder to comply with Gem bid terms and conditions.
2.	Gem bid document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:	17. Penalties & Liquidated damages: 17.1.3. However, the total Penalty/LD to be recovered under above clauses 17.1.1, and 17.1.2 shall be restricted to 10% of the total value of all HSMS (excluding Warranty and AMC).	request to keep the overall penalty restricted to 5% of the total value of all HSMS (excluding Warranty and AMC).	Bidder to comply with Gem bid terms and conditions.
3.	Gem bid document:	17. Penalties & Liquidated damages:	request to keep the overall penalty restricted to 5% of total hardware cost (excluding AMC) during	Bidder to comply with Gem bid terms and conditions.



	17.2. Penalties/Liquidated damages for not maintaining uptime: 17.2.2 The maximum penalty levied under above clause 17.2.1 shall not be more than 10% of total hardware cost (excluding AMC) during warranty period and 50% of AMC amount payable per quarter.	Buyer Added Bid Specific Terms and Conditions: 8.Buyer Added Bid Specific ATC:	warranty period and 50% of AMC amount payable per quarter.
4. Gem document: Buyer Added Bid Specific Terms and Conditions: 8.Buyer Added Bid Specific ATC:	53. <u>Assignment:</u> 53.1 The selected bidder/OEM shall not assign to any one, in whole or in part, its obligations to perform under the Gem bid/contract, except with the Bank's prior written consent.	NA	Bidder to comply with Gem bid terms and conditions.
5. Gem document: Buyer Added Bid Specific Terms and Conditions: 8.Buyer Added Bid Specific ATC:	We should have assignment rights without consent to our Affiliates and Group Companies. Further, Bank should include that they will intimate upon any assignment from their end.	NA	Bidder to comply with Gem bid terms and conditions.
6. Gem document:	We should have assignment rights without consent to our Affiliates and Group Companies. Further, Bank should include that they will intimate upon any assignment from their end.	12. <u>CONFIDENTIALITY AND NON-DISCLOSURE:</u>	Bidder to comply with Gem bid terms and conditions.



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<p>Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:</p>	<p>12.1 VENDOR/ SERVICE PROVIDER shall take all necessary precautions to ensure that all confidential information is treated as confidential and not disclosed or used other than for the purpose of project execution. VENDOR/ SERVICE PROVIDER shall suitably defend, indemnify BANK for any loss/damage suffered by BANK on account of and to the extent of any disclosure of the confidential information. VENDOR/ SERVICE PROVIDER shall furnish an undertaking in the prescribed format</p>		
<p>7. Gem bid document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:</p>	<p>59. Indemnity 59.1. The bidder shall keep and hold the Bank indemnified and harmless from time to time and at all times against all actions, proceedings, claims, suits, liabilities (including statutory liability), penalties, demands, charges, costs (including legal costs) and expenses, damages, losses and any other expenses which may be caused to or suffered by or made or taken against the Bank arising out of:</p>	<p>59.1 We request the Bank to restrict this section only to claims arising from damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct. Suggested following clause: With respect to all claims including those for intellectual property claims, Bidder shall in no event be liable in an amount that exceeds, in the aggregate for all such liabilities, the most recent twelve (12) months of charges collected by</p>	<p>Bidder to comply with Gem bid terms and conditions.</p>



		<p>59.1.1. The breach, default or non-performance of undertakings, warranties, covenants or obligations by the bidder;</p> <p>59.1.2. Any contravention or Non-compliance with any applicable laws, regulations, rules, statutory or legal requirements by the bidder;</p>	<p>Bidder pursuant to the applicable PO/Order giving rise to the liability</p>	
<p>8.</p>	<p>Gem bid document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:</p>	<p>59. Indemnity</p> <p>59.2 The bidder/OEM shall indemnify, protect and save the Bank against all claims, losses, costs, damages, expenses, action suits and other proceedings, resulting from infringement of any law pertaining to patent, trademarks, copyrights etc. or such other statutory infringements in respect of Solution supplied by them.</p>	<p>We request the Bank to cap the liability as below: With respect to all indemnity Claims including intellectual property claims, Bidder shall in no event be liable in an amount that exceeds, in the aggregate for all such liabilities, the most recent twelve (12) months of charges collected by Bidder pursuant to the applicable PO giving rise to the liability.</p>	<p>Bidder to comply with Gem bid terms and conditions.</p>
<p>9.</p>	<p>Gem bid document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:</p>	<p>59. Indemnity</p> <p>59.2.2 The limits specified in above clause shall not apply to claims made by the Bank/third parties in case of infringement of Intellectual property rights or for claims relating to the loss or damage to real property and tangible personal property and</p>	<p>While the indemnity clause refers to the liability cap, the actual limitation of liability clause does not feature in the contract document. Please propose the following limitation of liability clause to the Bank: i) The maximum aggregate liability of Service Provider/Vendor, with respect to all indemnity Claims</p>	<p>Bidder to comply with Gem bid terms and conditions.</p>



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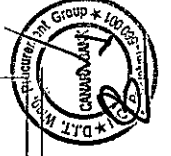


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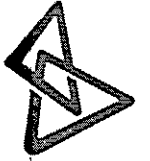
		<p>for bodily injury or death and in these cases the liability will be unlimited.</p>	<p>under Section 59.1. and 59.2 including intellectual property claims, shall in no event exceeds, the most recent twelve (12) months of charges collected by Service Provider/Vendor pursuant to the applicable PO giving rise to the liability.</p> <p>ii. Under no circumstances shall either Party be liable for any indirect, consequential or incidental losses, damages or claims including loss of profit, loss of business or revenue.</p>	
<p>10.</p>	<p>Gem bid document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:</p>	<p><u>Annexure-12:</u> <u>DRAFT CONTRACT AGREEMENT:</u> 11.1 VENDOR/ SERVICE PROVIDER shall keep and hold the Bank indemnified and harmless from time to time and at all times against all actions, proceedings, claims, suits, liabilities (including statutory liability), penalties, demands, charges, costs (including legal costs) and expenses, damages, losses and any other expenses which may be caused to or suffered by or made or taken against the Bank arising out of: 11.1.1. The breach, default or non-performance of</p>	<p>We request the Bank to restrict this section only to claims arising from damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct.</p> <p>Suggested following clause: With respect to all claims including those for intellectual property claims, Bidder shall in no event be liable in an amount that exceeds, in the aggregate for all such liabilities, the most recent twelve (12) months of charges collected by Bidder pursuant to the applicable PO/Order giving rise to the liability</p>	<p>Bidder to comply with Gem bid terms and conditions.</p>



		undertakings, warranties, covenants or obligations by VENDOR/ SERVICE PROVIDER; 11.1.2. Any contravention or Non-compliance with any applicable laws, regulations, rules, statutory or legal requirements by VENDOR/ SERVICE PROVIDER;		
11. Gem document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:	bid Bid Terms and Conditions: 8. Buyer Added Bid Specific ATC:	<u>Annexure-12:</u> <u>DRAFT CONTRACT AGREEMENT:</u> 11.2 VENDOR/ SERVICE PROVIDER shall indemnify, protect and save the Bank against all claims, losses, costs, damages, expenses, action suits and other proceedings, resulting from infringement of any law pertaining to patent, trademarks, copyrights etc. or such other statutory infringements in respect of Solution supplied by them.	We request the Bank to cap the liability as below: With respect to all indemnity Claims including intellectual property claims, Bidder shall in no event be liable in an amount that exceeds, in the aggregate for all such liabilities, the most recent twelve (12) months of charges collected by Bidder pursuant to the applicable PO giving rise to the liability.	Bidder to comply with GeM bid terms and conditions.
12. Gem document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:	bid Bid Terms and Conditions: 8. Buyer Added Bid Specific ATC:	<u>Annexure-12:</u> <u>DRAFT CONTRACT AGREEMENT:</u> 11.2.2. The limits specified in above clause shall not apply to claims made by the Bank/third parties in case of infringement of Intellectual property rights or	While the indemnity clause refers to the liability cap, the actual limitation of liability clause does not feature in the contract document. Please propose the following limitation of liability clause to the Bank: i) The maximum aggregate liability	Bidder to comply with GeM bid terms and conditions.



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		<p>for claims relating to the loss or damage to real property and tangible personal property and for bodily injury or death and in these cases the liability will be unlimited.</p>	<p>of Service Provider/Vendor, with respect to all indemnity Claims under Section 59.1. and 59.2 including intellectual property claims, shall in no event exceeds, the most recent twelve (12) months of charges collected by Service Provider/Vendor pursuant to the applicable PO giving rise to the liability.</p> <p>ii. Under no circumstances shall either Party be liable for any indirect, consequential or incidental losses, damages or claims including loss of profit, loss of business or revenue.</p>	
13.	Gem bid document: General terms and conditions		<p>The Terms and Conditions stipulated in STC & SLA will supersede those in GTC and Terms and Conditions stipulated in ATC will supersede those in GTC and STC in case of any conflicting provisions.</p> <p>Seeking clarification from Bank that GTC terms should be superseding STC, SLA & ATC & Terms and conditions rather than vice versa</p>	Bidder to comply with Gem bid terms and conditions.



<p>14.</p>	<p>Gem bid document: General terms and conditions</p>	<p>16 (vi) All disputes in connection with the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction, the place from where Contract was issued is situated.</p>	<p>Can we agree on Mumbai or New Delhi courts specifically?</p>	<p>Bidder to comply with GeM bid terms and conditions,</p>
<p>15.</p>	<p>Gem bid document: General terms and conditions</p>	<p>18 Limitation of Liability: Notwithstanding anything contained in this agreement, no party will be liable for any special, incidental or consequential damages arising out of or in connection with this agreement or any breach hereof (including for loss of data or profits, or cost of cover), whether or not such party has been advised of the possibility of such damages, and whether under a theory of contract, tort (including negligence) or otherwise; except for liabilities arising out of any violation, misappropriation or infringement of a party's intellectual property</p>	<p>We request the Bank to clarify on the following: a) Whether this LOL shall take precedence over all the terms and conditions under this RFP? b) Further, the aggregate liability of Bidder should be capped to an amount that shall not exceed recent twelve (12) months of charges collected by Bidder pursuant to the applicable PO/order giving rise to the liability.</p>	<p>Bidder to comply with GeM bid terms and conditions.</p>





	<p>rights, or from a breach by either party of its obligation. In no event will either party's aggregate liability arising out of or in connection with this agreement or any breach hereof (whether under a theory of contract, tort (including negligence), warranty or otherwise) exceed the Contract Price entered into the Contract between Buyer and Seller.</p>		
<p>16. Gem bid document: General terms and conditions</p>	<p>23.2 Indemnification: The Seller shall at all-time indemnify Buyer against all suits and claims which may be made in respect of the goods/services for infringement of any right protected by patent, registration of designs or trade mark. Provided always that in the event of any claim and suit in respect of alleged breach of patent, registered designs or trade-mark being made against the Buyer, the Buyer shall notify the Seller/ Service Provider of the same who shall at its own expense either settle any such dispute or conduct and litigation that may arise there from.</p>	<p>We request you to add the following exceptions to the said clause: 1. Not using the said products in combination with other products not provided by the bidder or 2. equipment's not being used as per the instructions provided by the bidder.</p>	<p>Bidder to comply with Gem bid terms and conditions.</p>



17.	Gem document: General terms and conditions	<p>23.2 Buyers and Sellers agree to indemnify, defend and hold harmless Gem:</p> <p>23.2.1- Breach of the contract</p> <p>23.2.2- 3rd party third party claims due use of the Website</p> <p>23.2.3- claims made by 3rd party regarding content/ information or materials provided by Seller cause any damage to a third party;</p> <p>23.2.4- Violation of any IP rights</p>	<p>We request the Bank to restrict this section only to claims arising from damage to tangible property, personal injury or death caused by such party's negligence or wilful misconduct.</p> <p>Suggested following clause: With respect to all claims including those for intellectual property claims, Bidder shall in no event be liable in an amount that exceeds, in the aggregate for all such liabilities, the most recent twelve (12) months of charges collected by Bidder pursuant to the applicable PO/Order giving rise to the liability.</p>	Bidder to comply with Gem bid terms and conditions.
18.	Gem document: Buyer Added Bid Specific Terms and Conditions: 8. Buyer Added Bid Specific ATC:	<p><u>10. Delivery, installation and maintenance:</u> 10.2. The delivery of all HSMS as per technical specifications and scope of work should be within Seven (7) weeks from the date of acceptance of the Purchase Order. Please note that no extra charges will be paid for those locations where road permit is required. The selected bidder has to arrange for road permit at his own cost. It will be the sole responsibility of the selected bidder to submit any form</p>	<p>Request bank to increase the delivery timelines to 18 weeks & 2 weeks would be required for installation.</p>	<p>The Gem bid clause is modified as under:</p> <p>"10. Delivery, installation and maintenance: 10.2. The delivery of all Network HSMS as per technical specifications and scope of work should be within Sixteen (16) weeks from the date of acceptance of the Purchase Order. Please note that no extra charges will be paid for those locations where road permit is required. The <u>selected bidder</u> has to arrange for road permit at his own cost. It will be the sole responsibility of <u>the selected bidder</u> to submit any form required for</p>



		required for release of shipment from the check post.		release of shipment from the check post."
19.	Gem bid document: General terms and conditions	Clause 7: Past Performance: The Bidder or its OEM {themselves or through re-seller(s)} should have supplied same or similar Category Products for 80% of bid quantity, in at least one of the last three Financial years before the bid opening date to any Central / State Govt Organization / PSU / Public Listed Company. Copies of relevant contracts (proving supply of cumulative order quantity in any one financial year) to be submitted along with bid in support of quantity supplied in the relevant Financial year. In case of bunch bids, the category related to primary product having highest bid value should meet this criterion.	Request the bank to clarify whether this clause is related to the point number 7 which is highlighted on page no 3	Bidder to comply with Gem bid terms and conditions.
20.	General terms and conditions	EMD	Request bank to allow the bidder to submit the PBG in the form of BG.	Bidder to comply with Gem bid terms and conditions.

Date: 12/10/2022
 Place: Bengaluru


 Deputy General Manager

