

Clarifications to the Queries raised on the RFP for Selection of Legal Adviser for PPP in Coal Mining

S. No.	Clause No.	Bidders's Query	Reply of Planning Commission
1.	1.7.2 of the RFP	The RFP specifies in various clauses that all payments to the Legal Adviser will be made in INR. This is acceptable to KCo, but not for C&P (as it is not resident in India). Please clarify whether payments to C&P could be made in US dollars.	No change is contemplated.
2.	1.8 of RFP	Would it be possible to have an extension of the Proposal Due Date?	Addendum has been issued.
3.	2.2.3 of the RFP	C&P is a Limited Liability Partnership formed under the laws of New York State. Being a privately held partnership, the Firm does not issue its financial statements to public or third party entities. We are, however, able to provide an alternative. The American Law (AMLAW) publication presents figures for the top law firms, for which the Firm qualifies. We would be happy to provide you with a signed financial certificate including details of our financial information published by AMLAW covering the period from 2009 to 2012. Please confirm whether the provision of such a financial certificate would be acceptable.	No change is contemplated.
4.	2.13 and 2.16.5 of the RFP	Clause 2.13 envisages that the proposal and a copy of the proposal must be submitted in hard copy only. Would it be possible to submit only a scan of the proposal and copy of the proposal via e-mail (i.e. no hard copies)?	No change is contemplated
5.	2.26 of the RFP	<p>This clause provides that the Legal Adviser shall indemnify the Authority, for an amount not exceeding 3 (three) times the value of the Agreement, for any direct loss or damage that is caused due to any deficiency in Service.</p> <p>We suggest that the liability of the Legal Adviser for direct loss or damage that is caused due to any deficiency in Service should be capped at 10% of the Agreement Value.</p> <p>The above value has been suggested based on the fact that liability of the Legal Adviser under Clause 3.4.3 of the Agreement for <i>negligence</i> or <i>willful misconduct</i> is capped at the Agreement Value or proceeds from insurance, whichever is higher. Deficiency in service is a much lower standard for measuring a default than negligence or <i>willful misconduct</i> and therefore</p>	No change is contemplated.

		<p>should be subject to a much lesser overall cap on liability.</p> <p>Further, it should also be clarified that the Legal Advisor shall not be liable for any such loss or damage if it is attributable to any act or omission of the Authority. (For e.g. wrong instructions may result in delays which could be viewed as deficiency of services)</p> <p>Clause 2.26 of the RFP should be amended to reflect the above position under the Agreement.</p>	
7.	3.1.3 of the RFP	<p>The clause provides for scoring criteria for evaluation and under Item Code 1 and <i>inter alia</i> provides that 70% marks out of the 30 shall be awarded based on the overall turnover, experience and capacity of the firm.</p> <p>Please consider removing the turnover criteria.</p>	No change is contemplated.
8.	1.5, 1.6, 3.5 and 5.4 of the Terms of Reference (ToR)	<p>Would it be possible to include some (more specific) assumptions regarding the number of fact-to-face meetings, conferences and discussions that the Legal Adviser, Legal Expert or other Key Personnel will entertain with the authority?</p>	No change is contemplated.
9.	3 (Scope of Services) of the ToR	<p>We propose that should the Authority choose to amend the scope of services, the value of the fees payable by the Authority in respect of the Deliverables will be adjusted accordingly. Please confirm whether this would be acceptable.</p>	Refer to Clause 2.6 of the Agreement.
10.	3.2 (c) of the ToR	<p>This clause covers within the scope of work assisting the Authority in identification of project risks across various States and in allocation of the same in an efficient and economic manner.</p> <p>Please clarify the scope of work above.</p> <p>The scope work is not clear as any risk assessment across difference states would require review of historical information and due diligence. Further, project risks would vary within a State itself depending on the area in which a project may be located. (For e.g. there may be law and order/ naxal issues in some areas while in others it could be an issue of acquisition of land.)</p>	Addendum is being issued.

11.	3.2 (e) of the ToR	<p>This clause covers within the scope of work, assisting the Authority in preparation of the RFQ and RFP documents.</p> <p>Please clarify if the above scope work refers to drafting / preparing of model RFQ and RFP documents.</p>	Addendum is being issued.
12.	4.1 (B) (ii) of the ToR	<p>1. Please note that that Clause 3.3 cross referred in this Clause does not specify anything about a revenue model to be developed.</p> <p>It seems to be an error and may kindly be deleted.</p> <p>2. Part of the Scope of Work (per Deliverables item B.(ii) on page 37) is to advise on the development of a “Revenue Model” as specified in Clause 3.3.</p> <p>Please clarify whether the legal advisor would be responsible for developing the revenue model.</p> <p>3. Please clarify what is meant by "Revenue Model" referred to in sub-clause B (ii) of Clause 4.1.</p>	Addendum is being issued.
13.	4.1 B (iii) of the ToR	<p>Please clarify whether the regulatory approvals mentioned in sub-clause B(iii) of Clause 4.1 of the Terms of Reference are for a specific "Project", or approvals that would be generally required for all projects based on the MCA.</p>	Addendum is being issued.
14.	5.3 of the ToR	<p>Clause 5.3 states that the Legal Expert shall himself expend on the Consultancy no less than one half of the man hours specified for each deliverable in clause 5.4. Would it be possible to revise this figure?</p>	No change is contemplated.
15.	5.4 of the ToR	<p>1. The variation process in ToR 5.4 on page 39 suggests that the maximum hours allocated by the Authority are indicative and may be varied by up to 50% “depending on the progress of work”. Please clarify whether the legal advisor are being offered the opportunity to vary the estimated hours for the purposes of the RFP.</p> <p>Please also clarify whether there is any maximum cap proposed to be fixed.</p> <p>2. Please clarify / confirm whether in case of delay on part of the authority or any advisor other than the Legal Advisor, the estimated number of 400 hours could be increased in proportion to the delay.</p>	No change is contemplated.

16.	5.5 of the ToR	<p>The variation claim procedure described in clause 5.5 of the ToR on page 39 suggests that variations of up to 30% of the period of engagement and up to 25% of the Agreement Value can be made “by written notice to the Authority”, and goes on to suggest that other adjustments can only be made with the written approval of the Authority.</p> <p>Please clarify whether the Authority has pre-approved adjustments.</p>	No change is contemplated.
17.	1.1.1 of the ToR (Definition of the term ‘Resident Personnel’)	<p>This term has been defined but not used in the Agreement.</p> <p>Please clarify the intent.</p>	Refer to Clause 2.15.2 (i) of the RFP.
18.	2.9.5 of the Agreement	<p>This clause provides that upon termination of this Agreement pursuant to Clause 2.9.1 or 2.9.2 the legal Advisor shall be entitled to remuneration for Services ‘satisfactorily performed prior to the date of termination’.</p> <p>The above should be amended to clarify that in the event of termination on account of Clauses 2.9.1(f), 2.9.1(g) and 2.9.2 the Legal Advisors should be entitled to remuneration for Services ‘performed prior to date of the termination on the basis of the actual man hours spent’.</p>	No change is contemplated.
19.	3.2.2 of the Agreement	<p>The post-engagements restriction period described in Clause 3.2.2 of the Form of Agreement on page 56 describes a restriction period of 6 months from the date of commencement and other references are to 6 months post assignment.</p> <p>Please confirm and clarify that the successful legal advisor would not be precluded from advising a bidder in any subsequent PPP project in the mining sector, regardless of timing.</p>	Addendum is being issued.
20.	3.4 of the Agreement	<p>The liability of either party under the agreement should exclude consequential or indirect losses, in contract, tort or otherwise.</p>	No change is contemplated.
21.	3.4.4 of the Agreement	<p>This clause provides that ‘the limitation of liability specified in Clause 3.4.3 shall not affect the Legal Adviser’s liability, if any, for damage to Third Parties caused by the Legal Adviser or any person or firm acting on behalf of the Legal Adviser in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value’.</p>	No change is contemplated.

		This clause may be amended to clarify that such condition would apply only in such cases where the Authority suffers any damages on account of Third Party action / claims brought due causes mentioned in the above clause.	
22.		The liquidated damages due to time delays in case of factors beyond the control of legal advisors (for example the extent of public comment to be considered) should not be imposed on the legal advisors. Please confirm.	Refer to Clause 7.2.2 of the Agreement.
23.		Please clarify whether payment of fees is without a withholding tax deduction?	Refer to Note no.7 of Form-2 (Financial Proposal) of Appendix-II of the RFP.
24.		It will be tax efficient for KCo to receive payments directly from the Authority (rather than through C&P). Please clarify whether separate payments would be possible.	Refer to Clause 2.1.1 of the RFP.
25.		Please clarify as to whether: (i) an Indian firm and foreign firm can jointly bid; and (ii) such firm should only be a law firm or other consultancy firm.	Refer to Clause 2.1.1 of the RFP. Refer to Clause 1.2 of the RFP