

Privatisation Commission's Clarification on the Interested Parties (IP) Queries

Page No.	Clause No.	Query	PC's Response
28	Notes	<p>"Note 2: Cost incurred pertaining to advertisement and marketing roadshows (including travel costs for nominated PC officials) for soliciting interest from prospective investors and hiring of Third Party (ies) shall be borne by the Financial Adviser from out-of-pocket expenses with the prior approval of the PC. Please note that all third parties will be finalized/appointed after consulting and acquiring approval from PC."</p> <p>We need exact specifications and details regarding nominated PC officials for accurate calculation of out-of-pocket expenses.</p>	PC officials not exceeding 3 at any point in time.
28	Milestone based retainer	<p>The table requires FA to provide specific amount in Retainer and out of pocket expenses heads separately for FESCO, GEPCO and IESCO.</p> <p>Please clarify that in case the PC decides to start work on each DISCO in a sequential manner, the same order will apply as listed in the RFP. i.e. FA will work on FESCO first, following by GEPCO and IESCO thereafter.</p>	<p>The sequential order will be determined once investors' appetite is assessed by the Financial Adviser during Initial Market Sounding – Phase I.</p> <p>PC will make this decision based on the FA's assessment of the market.</p>

Comments on the Engagement Agreement included in the RFP

PC's response:

Any changes in the draft Advisory agreement will be carried out under the provisions of Regulation 12 (Contract negotiation) of Privatisation Commission's (Hiring of Financial Adviser) Regulations 2018 with the Top Ranked IP)

The Firms global engagement rules and SOPs make it mandatory for us to include certain clauses and provisions in Engagement Agreements particularly relating to Deliverables, Intellectual Property Rights, and Deliverables.

The following table indicates the deviations between the contract provided in the RFP and we would request the PC that following may be considered.

Page No.	Clause No.	Comments
61	10	<p>Clause on "Termination of Agreement for failure to become effective" is missing.</p> <p>10.1 If this Agreement has not become effective within such time after the date of signature as specified in the SCA, either Party may, by not less than twenty two (22) days written notice to the other Party, declare the Agreement to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect to the Agreement.</p>
62	12	<p>"Expiration and Duration of Agreement"</p> <p>Proposed Insertion to the clause:</p> <p>12.2 The FA/TA shall perform the Services within the timelines set out in the implementation schedule (Appendix-B) subject to:</p> <p>(i) timely receipt of approvals and consents from and decisions by the Client, and their relevant bodies; and</p> <p>(ii) timely receipt by the FA/TA of all the information and data required for the preparation of the Deliverables,</p> <p>(iii) Assumptions / dependencies reflected in the implementation schedule (Appendix-B).</p> <p>It is further stipulated that:</p> <p>a) The FA/TA shall not be considered or deemed to be in breach of this</p>

		<p>Agreement if these timelines are not met for reasons which are not solely attributable to the FA/TA;</p> <p>b) The Client shall not be entitled to withhold any amounts payable to the FA/TA under this Agreement in case of delay in these timelines for reasons which are not solely attributable to the FA/TA;</p> <p>c) The FA/TA will provide the Client progress updates for the Services on regular intervals (or such other times as the Parties may mutually agree in writing), based on such progress updates, the Parties may reasonably adjust the timelines accordingly, provided that the reasons for such delays / adjustments are not solely attributable to FA/TA.</p>
65	17b.	<p>“Termination by the Financial Advisor” Proposed Insertion to the clause: (e) FA/TA may terminate this Agreement, or any particular Services, immediately upon written notice to Client if FA/TA is restrained from performing the Services under applicable law and / or regulatory rules and regulations framed thereunder.</p>
65	17.1.6	<p>“Payment upon Termination” Proposed Insertion to the clause: (c) Reimbursement of reasonable costs as shall have been duly incurred prior to the date of such termination including out-of-pocket expenses and fees for work being performed towards a deliverable output, taking into account the proportional amount of work undertaken and the time spent relative to the indicative level of effort as set out in the list of deliverables, and for reasonable costs, including fees, incidental to the orderly termination of the Services. Such payment(s) shall be verified by the Client within thirty (30) days from the date of receipt of invoice. Any payment under this Clause shall be made within thirty (30) days of the approval by the Client.</p>
66	20	<p>“Confidentiality” Proposed Insertion to the clause: 20.2 In consideration of the Client or from an entity of the Federal Government providing the FA/TA with Confidential Information, the FA/TA agrees that all Confidential Information will be held and treated by the FA/TA, its affiliates, and it and its affiliates’ agents, sub-contractors, attorneys and employees (collectively “FA/TA Representatives”) in confidence and will not, except as hereinafter provided or as mandated and/or required by law, without the Client’s prior written consent be disclosed by the FA/TA or FA/TA Representatives and will not be used by the FA/TA or FA/TA Representatives other than in connection with the purpose described in this Agreement. 20.3 The term “Confidential Information” does not include information which (i) was already in the FA/TA’s possession, (ii) was or becomes generally available to the public, or (iii) becomes available to the FA/TA from a third person who, in so far as is known to the FA/TA, is not prohibited from transmitting the information to the FA/TA by a contractual, legal or fiduciary obligation to the Client or the Federal Government. 20.4 Nothing contained herein shall prevent the FA/TA to disclose in confidence any Confidential Information to a sub-contractor, key professional staff or to an affiliate of the FA/TA. 20.5 This confidentiality obligation shall terminate 18 months from the date of termination of this Agreement.</p>
66	21	<p>“Liability of the Financial Advisor” Proposed Insertion to the clause: 21.1 As part of the parties’ commercial arrangements, the parties have mutually agreed the following limitations of liability: (a) Neither party will be responsible for any amount with respect to loss of profit, or goodwill, or any other consequential, incidental, indirect, exemplary, punitive or special damages in connection with claims arising out of this Agreement, whether or not the likelihood of such loss or damage was contemplated. (b) Client may not recover from FA/TA, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services, that directly caused the loss in connection with claims arising out of this Agreement. (c) If FA/TA is liable to Client under this Agreement for loss or damage to which any other persons have also contributed, FA/TA’s liability to Client shall be several, and not joint, with such others, and shall be limited to FA/TA’s proportionate share of that total loss or damage, based on FA/TA’s contribution to the loss and damage relative to the others’ contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of FA/TA’s proportionate liability hereunder, nor shall settlement of or difficulty enforcing any</p>

		<p>claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect such assessment.</p> <p>(d) Client shall make any claim relating to this Agreement within (18) months of the act or omission alleged to have caused the claims.</p> <p>(e) The total liability of the FA/TA's under this Agreement shall not exceed the total fees paid to the FA/TA's by the Client.</p> <p>21.2 The limitations set out in Clauses 21.1(b) and 21.1(d) above will not apply to losses or damages caused by FA/TA's fraud or willful misconduct or to the extent prohibited by applicable law.</p> <p>21.3 Client shall make any claim or bring proceedings under this Agreement only against the FA/TA's, Client may not make a claim or bring proceedings under this Agreement against any other Firm or Persons.</p>
66	23	<p>“Proprietary Rights of the Client in Reports and Records” Proposed Insertion to the clause:</p> <p>23.3 Client may not rely on any draft Deliverable. FA/TA may not be required to update any approved final Deliverable as a result of circumstances of which FA/TA becomes aware, or events occurring, after four months of approval of Deliverable.</p> <p>23.4 Client may not disclose a Report (or any portion or summary of a Report), except:</p> <ul style="list-style-type: none"> a) to client's lawyers (subject to these disclosure restrictions) who may review it only in connection with advice relating to the Services. b). to Client's statutory auditors (subject to these disclosure restrictions) who may review it only in connection with their audit. c) to the extent, and for the purposes, as deemed necessary by the Client to other Government ministries/ authorities/bodies/ regulators and required by applicable law; d) to other persons who may be connected, interested and supporting the Client in relation to the transaction. e) to other persons with FA/TA's prior written consent, who may use it only as specified in such consent. <p>If Client discloses a Report (or a portion thereof), Client shall not alter, edit or modify it from the form provided by the FA/TA. Client shall inform those to whom it discloses a Report that the obligations and duty of care of the FA/TA is not extended to them for any purpose.</p> <p>23.5 Each Party retains its rights in its pre-existing intellectual property. Any intellectual property developed by FA/TA, including any internal working papers compiled in connection with the Services (but not Client Information contained in them), shall be the property of FA/TA.</p>
70	35	<p>“Indemnification” Missing in the RFP</p> <p>35.6 Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable to the other Party for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Agreement.</p>