Reply of Prebid Queries -Commercial
Tender Description: APPOINTMENT OF SERVICE PROVIDER FOR BULK SMS AND WHATSAPP SERVICES
TENDER ID- 355187

Subject: Reply of Prebid Queries of the tender

Ref. Documents:

No Attachment

Sr. No.	Page No./ Clause No.	Title of Clause as per Tender	Description of Clause as per Tender	Bidder's Query	GEL Reply
1	SECTION IV: GTC Page 2 of 34; GENERAL TERMS OF CONTRACT (GTC)	DEFINITION	Force Majeure - Shall mean act of God, flood, drought, earthquake, cyclone or other disaster, epidemic, plague, fire, act of war or like event which are unpredictable and outside the reasonable control of the affected PARTY, and which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which, or any consequences of which, have a material and adverse effect upon the performance by the affected PARTY of its obligations under this CONTRACT.	Please include Pandemics in the clause. Kindly mention that the payments for the services rendered shall also be paid with immediate effect if this clause is invoked.	Tender Term Prevails

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2	SECTION IV: GTC Page 8 and 9 of 34; GTC, Section 6	TAXES & DUTIES	Where the requirement for any withholding is avoided by the CONTRACTOR or any SUBCONTRACTORS holding an appropriate exemption certificate, it is the duty of the CONTRACTOR to inform the OWNER that such a certificate is held and to inform the OWNER of any change to or cancellation of the certificate and to provide copies of the certificate or any further information that may be required by the OWNER to satisfy itself that it can make payment without any withholding. The CONTRACTOR shall be responsible for, indemnify, defend and hold harmless the OWNER against any Claims whatsoever arising in connection with such withholding or failure to withhold as may arise due to the CONTRACTOR's failure to inform the OWNER of any relevant matter in a timely fashion.	Extensive tax, GST and statutory indemnities. Kindly limit to supplier fault.	Tender Term Prevails

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3	SECTION IV: GTC Page 10-12 of 34; GTC, Section 7	INVOICING	7.5 OWNER shall make payment after making deductions, as applicable, but not limited to: a. Tax Deduction at Source (TDS) b. Liquidated Damages and/or Penalty charges c. Retention amount d. Any other taxes/statutory deductions as applicable from time to time including applicable taxes levied at prevailing rates on Liquidated Damages / Penalty/ any other such amount deducted/ withheld/ recovered from the CONTRACTOR. e. Any sums owed to the OWNER (as per Clause 7.9) or in case the CONTRACTOR has committed a breach of its obligations under this CONTRACT. f. GST TDS: OWNER may, in relation to any payment it is required to make to the CONTRACTOR, withhold from that payment any amount it is required to withhold under the GST ACT and shall provide such document to the CONTRACTOR as may be prescribed under the GST ACT. OWNER's decision regarding the above shall be final and binding to the CONTRACTOR. 7.11 Invoices which are incomplete, incorrect or in a form which is unacceptable to the OWNER, shall be returned to CONTRACTOR un-actioned. If the CONTRACTOR submits invoices that contain erroneous billings repetitively in a manner perceived by the OWNER to be excessive, the CONTRACTOR will be assessed a penalty being a percentage of the value of the erroneous invoice, as decided by OWNER.	GEL may deduct amounts due under any account. Kindly limit to undisputed dues. The penalty for repeated invoice errors from Bidder's side is not definite, please clarify amount/cap the same.	Tender Term Prevails

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4	SECTION IV: GTC Page 14-15 of 34; GTC, Section 14	LIQUIDATED DAMAGES	Without prejudice to the OWNER's other rights available under the CONTRACT and/or Law, in case the CONTRACTOR fails to meet the Delivery and/or Completion Schedule as specified in the CONTRACT and/or as intimated by OWNER REPRESENTATIVE, for the reasons other than Force Majeure and/or reasons attributable to OWNER alone, the OWNER shall, unless otherwise specified differently in the Special Terms of Contract, recover, as ascertained and agreed, Liquidated Damages , and not by way of penalty, a sum equivalent to half percent (0.5%) of the value of delayed GOODS / SERVICES per week of delay or part thereof, on basic value of delayed GOODS / SERVICES, subject to maximum of 5% of the basic value of the delayed portion of the GOODS/SERVICES. The decision of the OWNER in regard to the actual delay shall be final and binding on the CONTRACTOR.	0.5% per week up to 5% of delayed services is too huge, kindly reduce it. Please confirm if Bidder has sole remedy under this clause.	Tender Term Prevails
5	SECTION IV: GTC Page 16-17 of 34; GTC, Section 17	RIGHT TO GET GOODS/SERVICES THROUGH OTHER AGENCIES	17.2 In such event, the OWNER, at its sole discretion, shall be entitled to recover the additional expenses incurred for procuring the GOODS/SERVICES from alternate agencies, in addition to administrative and other expenses incurred by OWNER for the same. The decision of OWNER in determining such amount to be recovered from the CONTRACTOR shall be final and binding on the CONTRACTOR. The CONTRACTOR's liability in this respect shall be unlimited without exception.	Unlimited recovery of additional costs from contractor; kindly provide a cap for the same,	Tender Term Prevails
6	SECTION IV: GTC Page 19 of 34;	ASSIGNMENT	The OWNER shall be permitted to assign and re-assign (whether on one or several occasions) all or any of the provisions of this CONTRACT to any of its Affiliates	Kindly make this clause mutual.	Tender Term Prevails

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	GTC, Section 22		and/or Group Companies by giving advance intimation to the CONTRACTOR.		
7	SECTION IV: GTC Page 22-24 of 34; GTC, Section 31	INSURANCE	vii. CONTRACTOR's All Risk Insurance Policy (CAR)	Extensive insurance obligations, including CAR, liability and transit insurance. Confirm applicability to SMS provider.	Tender Term Prevails

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8	SECTION IV: GTC Page 24-25 of 34; GTC, Section 32	INDEMNITY	32.1 To the fullest extent permitted by Law, CONTRACTOR shall indemnify, defend, and hold harmless OWNER, its affiliates, and subsidiary companies or entities, and its and their respective officers, directors, agents, and employees from and against all claims, liabilities, damages, losses, costs, and expenses including, but not limited to, attorneys' fees and costs of court (collectively, the "Claims"), arising out of, connected with, or alleged to arise from or be connected with any event or circumstance which occurs or exists, or is alleged to have occurred or existed, in any way related to the manufacture, delivery, performance or installation of the GOODS/SERVICES, either directly or indirectly, including (without limiting the generality of the foregoing) all Claims on account of personal injury, death, or property loss to CONTRACTOR, OWNER, or any other party, including any Claims based upon or arising out of CONTRACTOR's sole, joint, or contributory negligence or strict liability, except to the extent that any such Claim arises out of, or is attributable, to OWNER's gross negligence or wilful misconduct. 32.2 The CONTRACTOR shall at all times indemnify and keep indemnified OWNER against all CLAIMS, loss, demands, proceedings, charges and expenses, liability of personal injury (including death), and/or damage omission or default by the CONTRACTOR or his representative and arising out of or connected with the performance of CONTRACT and arising out of non-compliance with the Law. 32.3 The CONTRACTOR undertakes responsibility for and shall indemnify OWNER or their employees from all liability, CLAIMS, costs, expenses, taxes and assessments including penalties, punitive damages, attorney's fees and court cost with respect to any breach of the CONTRACTOR's obligation under the CONTRACT or for which the CONTRACTOR has assumed under any order local or national Law or Laws.	Indemnity includes death, injury, property damage, taxes, legal costs etc. Kindly restrict indemnity provision for third party IPR infringement claims, statutory claims and claims arising out of gross negligence. Also, kindly agree to include Customer Indemnity for content infringement claims and regulatory violations caused by Bank instructions. Further, the indemnity should be subject to the agreed limitation of liability. Kindly make it mutual.	Tender Term Prevails

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9	SECTION IV: GTC Page 25 of 34; GTC, Section 35	LIMITATION OF LIABILITY	The aggregate total liability of the CONTRACTOR under the CONTRACT or otherwise shall be limited to 100% of the CONTRACT VALUE. Cap for limitation of liability shall not apply and the CONTRACTOR shall continue to remain responsible for all liabilities which arise on account of: a. Breach of Applicable Laws by the CONTRACTOR b. Gross negligence, fraud, or willful misconduct of the CONTRACTOR. c. Infringement of any Intellectual Property Rights of the OWNER. d. Indemnification of OWNER as per Clause 32 of GTC and as specified elsewhere in the CONTRACT. e. Provisions under Clause 17.2 of GTC	100% capped, but indemnity, IPR, law breaches and risk-cost procurement remain uncapped. Kindly cap the same.	Tender Term Prevails

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10	SECTION IV: GTC Page 25 of 34; GTC, Section 36	CONFIDENTIALITY	36.1 The CONTRACTOR and/or the CONTRACTOR's PERSONNEL shall not, during the continuance of this CONTRACT, or at any time thereafter, publish or disclose to any third party, except with the written consent of the OWNER or by requirement of the Legislation, any information, data or process which is confidential or of a commercially sensitive nature connected with the business or affairs of the OWNER which shall come or have come to its or their knowledge in or by reason of the engagement by the OWNER of the CONTRACTOR under this CONTRACT, provided that this restriction shall not apply to any information: However, these obligations do not apply to documents for which it can be demonstrated that: a. Such documents were already in the public domain before these were communicated to the other PARTY, or have become part of the public domain since without any fault or negligence of the PARTY concerned, or b. Such documents were already in its possession without having obtained them directly or indirectly from the other PARTY, or c. Such documents were obtained from an independent source that had neither direct nor indirect secrecy commitment to the other PARTY. 36.2 The experts appointed by the OWNER are not considered as third parties, and for this reason they have to respect, towards the CONTRACTOR, the same obligations as the OWNER in these matters. 36.3 Any document, other than the Agreement itself, enumerated shall remain the property of the OWNER and shall be returned (all copies) to the OWNER on completion of the CONTRACTOR's obligations under the Agreement, if so required by the OWNER.	Kindly make this clause as mutual confidentiality.	Tender Term Prevails

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11	SECTION IV: GTC Page 26 of 34; GTC, Section 38	INTELLECTUAL PROPERTY RIGHTS (IPR) AND TRADEMARKS	Subject to the OWNER's rights pursuant to this CONTRACT, the CONTRACTOR shall retain all intellectual property in all documents including (without limitation) drawings, transparencies, prints, photographs, negatives, computer files, working notes and books and inventions created by the CONTRACTOR prior to this CONTRACT and which shall not have been prepared by the CONTRACTOR at the request of the OWNER or pursuant to a previous contract or arrangement with the OWNER.	Please include ownership of pre-existing IP remains with bidder.	Tender Term Prevails
12	SECTION IV: GTC Page 27 of 34; GTC, Section 40	FORCE MAJEURE	If performance of the CONTRACTOR is suspended by FORCE MAJEURE conditions for a period of 2 (two) weeks or more, then OWNER may in its sole discretion terminate this CONTRACT with immediate effect either in whole or in part at any time thereafter by giving notice thereto.	GEL may terminate if FM continues beyond 2 weeks. Kindly provide wider timeline of at least 60 days. Kindly mention that the payments for the services rendered shall also be paid with immediate effect if this clause is invoked.	Tender Term Prevails
13	SECTION IV: GTC Page 28-29 of 34; GTC, Section 42.1	TERMINATION AND EFFECT OF TERMINATION	Termination for Cause	No express cure period. Requesting 30-day cure opportunity.	Tender Term Prevails

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14	Page 28-29 of 34; GTC, Section 42.2	TERMINATION AND EFFECT OF TERMINATION	Termination for Convenience	Kindly make this clause mutual-No exit route for the bidder provided kindly allow the bidder to give notice of termination under few circumstances like bidder ceasing to offer service on account of any statutory requirements. Also, payment for all services rendered up to the date of termination. Additionally, exit assistance services may be provided on mutually agreed commercial terms.	Tender Term Prevails
15	SECTION IV: GTC Page 29-30 of 34; GTC, Section 43	DEBARMENT OR SUSPENSION	43.1 OWNER reserves the right of Debarment or Suspension for the CONTRACTOR, upon occurrence of any events including but not limited to the following, in line with OWNER prevailing Policy for ACTIONS TO BE TAKEN AGAINST VENDORS/ CONTRACTORS FOR DEFAULTS IN TENDER/CONTRACT TERMS, DISCHARGE OF CONTRACTUAL OBLIGATIONS, CORRUPT/FRAUDULENT/COLLUSIVE/COERCIVE PRACTICES, available on OWNER website, by giving written intimation to the CONTRACTOR.	The debarment rights are very broad and have subjective standards. Requesting objective process and hearing rights.	Tender Term Prevails
16	SECTION IV: GTC Page 30 of 34; GTC, Section 44.3	GOVERNING LAW AND ARBITRATION	The arbitration shall be conducted by a sole arbitrator who shall be appointed by the OWNER.	Sole arbitrator appointed by GEL, Ahmedabad venue and jurisdiction. Kindly make mutual appointment mechanism.	Tender Term Prevails

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17	SECTION I: INSTRUCTIONS TO BIDDERS (ITB) Pg No. 13	22. EVALUATION AND COMPARISON OF BIDS	c) OWNER may, at its discretion, conduct Reverse Auction with the number of required techno-commercially qualified bidders selected in order of their commercial ranking. Kindly refer attached Annexure-RA for detailed terms & conditions of Reverse Auction.	Please confirm whether Reverse Auction will take place or not.	Refer Annexure RA of SECTION I: Instructions to Bidders (ITB) wherein, Reverse Auction is mandatory as per tender terms.
18	Clause 11.8	Earnest Money Deposit (EMD)	EMD exemption is limited to Micro and Small Enterprises with CSPO/NSIC/Udyam/DGS&D registration. Medium enterprises and traders/distributors/sole agents are excluded.	We request the authority to relax the Earnest Money Deposit requirement for eligible MSMEs/Startups and emerging service providers to encourage wider participation.	Refer Clause No. 11 of SECTION I: Instructions to Bidders (ITB) wherein, BIDDER(s) eligible for exemption from payment of Earnest Money Deposit (EMD)/ tender fees, as per Government rules, shall submit the relevant certificate/ proof/ document, valid as on the last date of bid submission, to substantiate the eligibility for exemption along with their bid within the bid submission deadline.
19	**Jun-16**	Section-I ITB Clause 11	Bid Processing Fee: ₹5,000/- (non-refundable). EMD: ₹4,80,000 (refundable).	Whether the Bid Processing Fee of ₹5,000/- and EMD of ₹4,80,000 shall be exempted/waived for eligible Government/PSU entities as per the Gujarat Government Procurement Policy, 2024, vide Resolution No. SPO-102021-188460-CH dated 14/03/2024, Section 4(A)(d) and 4(A)(g). The relevant provisions of the Resolution are attached for ready reference.	

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20	SECTION I: INSTRUCTIONS TO BIDDERS (ITB)	BID to be addressed to	Original hard copy is required ONLY for Primary Bid in case EMD is submitted in the form of Bank Guarantee and which is required to be submitted at below address:	Please clarify Wether hardcopy of technical bid to be submtted or only EMD in the form of BG is required	No. With reference to Clause No. 15 of Section I – Instructions to Bidders (ITB), it is clarified that only the Earnest Money Deposit (EMD), if submitted in the form of a Bank Guarantee, is required to be submitted in hard copy. All other documents shall be submitted electronically through the prescribed online tendering portal.