

NIELIT hereby brings out following clarifications i.r.o of queries raised by Tata Consultancy Limited vide its letter dated 1st September 2016 regarding suggestion on some clauses in “RFP of Examination Infrastructure Services & Support for Computer Based Examination conducted by NIELIT” (e-Tender ID: 2016_DIT_105646_1):

S.No	Suggestion by TCS Limited	NIELIT Clarification
1	Inclusion of “Processing Norms” clause for clarifying responsibilities of each party in execution of the contract.	The conduct of examination as well as the examination cycle of a particular examination is governed by its well defined Standard Operating Procedure of NIELIT
2	Inclusion of a clause for “Representation and Warranties” clarifying scope of services and warranties of Bidder, and is a mandatory clause in all service agreement as per the Indian Contract Act	The concern is already addressed in the RFP at Page 9 Chapter 4 Point 4 which says, Bidders are advised to attach a letter from an authorized signatory of the company clearly detailing the deliverables / ownerships and rights for implementation, service, warranty and post sales support.
3	Inclusion of “Limitation of Liability” clause which limits liability of both the parties under this agreement and modification of tender clauses relating to Standard of Performance/Penalty/Liquidated Damages to be subject to “Limitation of Liability” clause.	<p>The total aggregate liability of the vendor under this Agreement shall not exceed the total Exam Value to be paid to the vendor by NIELIT for that particular/specific Exam which gives rise to such liability. However, in case of violation of any law of the land or any act against the public policy or due to any such act for which the matter is referred to the court, the liability fixed by the court in the matter if any shall be borne by the vendor and shall not be limited to the total Exam Value to be paid to the vendor by NIELIT for that particular / specific Exam which gives rise to such liability.</p> <p>For example, in the event of the vendor is unable to conduct the exam at specified location(s) due to whatsoever reason and the exam is conducted by NIELIT or any other organisation as engaged by NIELIT, under such circumstances the total value for conduct of the exam at such specified location(s) by NIELIT or any such other Institute under the direction of NIELIT, the entire expenditure as informed by NIELIT for the said examination & for the said specified location(s) shall completely be borne by the vendor irrespective of the limit of amount, and as specified in work/purchase order which may be to the extent of a maximum of the total cost of that particular/specific Exam.</p>
4	Modification of “Intellectual Property Right” clause to protect TCS proprietary product used in this contract.	IPR shall remain vested in the original owner of the IPR including for customisation; however, In case any software module, utility, or service is developed as per requirement & inputs of NIELIT the IPR of the same shall be of NIELIT to safeguard the interest of the NIELIT
5	Modification of “Confidentiality” clause to protect confidential information and data of both parties	The concern is already addressed in the RFP at Page 43 Chapter 9 Point 12 which says, “The secrecy during the entire process of examination or thereafter after shall be maintained at all times.” This is applicable both on vendor as well as NIELIT.

6	Modification of "Terms of Payment" clause to include payments based on clearly defined Milestones.	The conduct of examination under a particular examination cycle is governed by its well defined Standard Operating Procedure. The examination cycle is comprised of pre-examination, examination and post-examination activities that commences from registration of candidates for examination and concludes with declaration of results and/or publishing of certificates, as the case may be which in normal case is 15 days from the date of successful completion of the Examination. The payment terms & schedule have been clearly defined in the RFP in accordance with prior experience of NIELIT in conduction of examination, discussion with various stakeholders and in order to take into account lapses in conduction of examination by bidder and any other violation of contract terms by the bidder within this period. <u>Thus, the payment terms shall remain as per RFP.</u>
7	Modification of "Termination" clause to be mutually applicable to both parties.	Termination clause cannot be made mutual as any refusal by selected bidder for conduction of an examination will be detrimental to the interest and reputation of NIELIT, as well as stake of public at large.
8	Modification of "Settlement of Disputes" clause to allow arbitration in cases where decision of Standing Committee is not acceptable to the Bidder.	<p>There are already three modes defined in RFP for Settlement of Disputes viz.</p> <ol style="list-style-type: none"> I. Through Standing Committee (NIELIT) II. Through Arbitration (As per Arbitration and Conciliation Act, 1996) III. Through Legal proceedings in the court. <p>However, if any dispute between the vendor and NIELIT during the execution of contract is not settled amicably by mutual discussions, it shall be referred to the empowered standing committee for recommendations. In case the decision of standing committee is not acceptable to any party, that party is free to take up the matter as per Arbitration clause defined in the RFP.</p>

Kindly note: All other clauses shall be as per RFP only and henceforth, above clarifications shall form the part of the RFP.