



**REPLY TO BIDDER'S PRE-BID QUERIES - 4**  
**PROCUREMENT OF FIRE AND GAS SYSTEMS**  
**Tender No : AGCL/BD/PMC/GHT/F&GS/2020/20**



Sr. No.	Tender Clause No. / Annexures	Page No	Clause No	Subject	Bidders Comments / Queries	VCS Reply
<b>COMMERCIAL QUERIES</b>						
25			Clause 21- Terms of Payment / page 53 of 91  CORRIGENDUM #3 Date: 07.04.2020 PROCUREMENT/ sl.no.4	<p><b>7.1 60% against successful Factory Acceptance Testing (FAT),</b> receipt and acceptance at site, submission of invoice in triplicate, indemnity bond of the contract value and following documents: a. LR or GR (original) b. Packing List. c. Inspection release note by Purchaser/Consultant. d. Dispatch instructions/clearance by purchaser/consultant. e. Proof of customs clearance including payment of customs duty for imports permitted in the Contract. f. Receipt and acceptance of all material designated store at site on submission of Goods Receipt Voucher (GRV) &amp; Certificate for receipt of all Goods as per PO issued by Purchaser/Consultant/ Engineer – in - Charge (EIC) at site. (The material shall be checked as per the packing list of the vendor without opening of the boxes for physical verification (must be verified jointly by Purchaser/Consultant during FAT and recorded). Physical verification will be done during erection of the material along with the representatives of Purchaser/Consultant/ Engineer – in -Charge (EIC)). g. Client Site Visit</p> <p><b>7.2 20% value shall be paid pro-rata on completion of Erection</b> at individual station and on submission Certification for completion of Erection, issued by Purchaser/ Engineer – In -Charge / representative at site.</p> <p><b>7.3 10% value shall be paid on successful Site Acceptance Testing.</b> Trial run, overall commissioning and on submission of Certification for completion of successful SAT, Trial, overall commissioning issued by Engineer – in -Charge / representative at site.</p> <p><b>7.4 10% of supply value on completion of all works including final acceptance,</b> Handing over and submission of Certification for completion of all works including final acceptance, All documents as specified in tender document; Submission of "As built drawing/ documents" and handing over issued by Purchaser/Consultant/ / Engineer – In -Charge (EIC) / representative at site.</p>	<p><b>80% against receipt and acceptance at site,</b> submission of invoice in triplicate, indemnity bond of the contract value and following documents: a. LR or GR (original) b. Packing List. c. Inspection release note by Purchaser/Consultant. d. Dispatch instructions/clearance by purchaser/consultant. e. Proof of customs clearance including payment of customs duty for imports permitted in the Contract. f. Receipt and acceptance of all material designated store at site on submission of Goods Receipt Voucher (GRV) &amp; Certificate for receipt of all Goods as per PO issued by Purchaser/Consultant/ Engineer – in - Charge (EIC) at site. (The material shall be checked as per the packing list of the vendor without opening of the boxes for physical verification (must be verified jointly by Purchaser/Consultant during FAT and recorded). Physical verification will be done during erection of the material along with the representatives of Purchaser/Consultant/ Engineer – in -Charge (EIC)). g. Client Site Visit</p> <p><b>10% value shall be paid pro-rata on completion of Erection</b> at individual station and on submission Certification for completion of Erection, issued by Purchaser/ Engineer – In -Charge / representative at site. If erection is delayed for 90 days from the date of receipt of material at site for the reasons not attributable to Honeywell, then payment shall be made against submission of BG of equivalent amount.</p> <p><b>5% value shall be paid on successful Site Acceptance Testing.</b> Trial run, overall commissioning and on submission of Certification for completion of successful SAT, Trial, overall commissioning issued by Engineer – in -Charge / representative at site. If SAT is delayed for 120 days from the date of receipt of material at site for the reasons not attributable to Honeywell, then payment shall be made against submission of BG of equivalent amount.</p> <p><b>5% of supply value on completion of all works including final acceptance,</b> Handing over and submission of Certification for completion of all works including final acceptance, All documents as specified in tender document; Submission of "As built drawing/ documents" and handing over issued by Purchaser/Consultant/ / Engineer – In -Charge (EIC) / representative at site. If Final acceptance is delayed for 120 days from the date of receipt of material at site for the reasons not attributable to Honeywell, then payment shall be made against submission of BG of equivalent amount.</p>	Tender Conditions shall Prevail. However, for Clause 7.2, 7.3 & 7.4, Refer Corrigendum #6.
26			Clause 9 - Modification in Contract /page 46 of 91	<p>9.1 All modifications leading to changes in the CONTRACT with respect to technical and/or commercial aspects including terms of delivery, shall be considered valid only when accepted in writing by PURCHASER/CONSULTANT by issuing amendment to the CONTRACT. Issuance of acceptance or otherwise in such cases shall not be any ground for extension of agreed delivery date and also shall not affect the performance of contract in any manner except to the extent mutually agreed through a modification of contract.</p> <p>9.2 PURCHASER/CONSULTANT shall not be bound by any printed conditions or provisions in the SELLER's Bid Forms or acknowledgment of CONTRACT, invoices, packing list and other documents which purport to impose any conditions at variance with or supplemental to CONTRACT.</p>	We are okay with the present clause except that modification shall be mutual based i.e. signed and agreed by both parties. This is suggested since modification in technical and/or commercial aspects including terms of delivery is done unilaterally i.e. by Purchaser. Though provision of amendment to contract implies that the same be approved and signed by both the parties and any variation in order quantity shall be affected as <b>change order</b> .	Tender Conditions shall prevail. However quantity variation shall be done on mutual agreement of both parties.



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27			Clause 10 - Use of Contract Documents & Information/page 46 of 91	<p>10.1 The Seller shall not, without the PURCHASER's/ CONSULTANT's prior written consent, disclose the CONTRACT or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the PURCHASER in connection therewith, to any person other than a person employed by the SELLER in the performance of the CONTRACT. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purpose of such performance.</p> <p>10.2 The SELLER shall not, without the PURCHASER's prior written consent, make use of any document or information enumerated in Article 10.1. except for purpose of performing the CONTRACT.</p>	We propose a cap on confidentiality period and mutual confidentiality obligations. Any document that is confidential information shall be shared by writing 'confidential' before sharing by HALL.	Tender Conditions shall prevail.
28			Clause 11 - Patent rights, liability & Compliance of Regulations / page 46 of 91	<p>11.1 SELLER hereby warrants that the use or sale of the materials delivered hereunder will not infringe claims of any patent covering such material and SELLER agrees to be responsible for and to defend at his sole expense all suits and proceedings against PURCHASER based on any such alleged patent infringement and to pay all costs, expenses and damages which PURCHASER and/or CONSULTANT may have.</p>	<p>For Clause 11.1- Seller will indemnify for damages due to patent infringement however costs and expenses for the proceedings will be on the account of Purchaser. We will not indemnify the Consultant.</p> <p>Following is proposed in place of the existing Clause:            "Seller will defend any suit against Buyer claiming that a Deliverable infringes a valid United States patent or copyright existing as of the effective date of the Agreement and will indemnify Buyer for any final judgment against Buyer resulting from the suit provided that Buyer (a) gives Seller prompt notice when Buyer becomes aware of a third-party claim, (b) gives complete authority and assistance (at Seller expense) for disposition of the claim, and (c) makes no prejudicial admission with respect to the claim.            (ii) Seller has no liability for:(a) Deliverables supplied pursuant to Buyer designs, drawings or specifications,(b) Deliverables used other than for the purpose for which they were delivered,(c) claims resulting from combining any Deliverable with any product or software not supplied by Seller(d) any modification of a Deliverable by other than Seller,(e) any compromise or settlement made without written Seller consent; or(f) costs or attorney fees incurred by Buyer.            (iii) If infringement claim is made or is likely, Seller may at its option and expense:(a) procure the right for Buyer to continue using the Deliverable,(b)modify the Deliverable to be non-infringing, or (c)accept return of the Deliverable (and terminate Buyer's applicable software license) and credit Buyer the purchase price paid for the Deliverable, less reasonable depreciation for use, damage and obsolescence.            (iv) Failure of Buyer to accept any of the above remedies in lieu of the infringing Deliverable will relieve Seller of any liability for infringement. Failure to ship infringing Deliverables will not breach the Agreement.            (v) This section states Seller's entire liability and buyer's sole recourse and exclusive remedies with respect to infringement. All warranties against infringement of intellectual property rights, whether statutory, express or implied, are disclaimed."</p>	Tender conditions shall prevail.
				11.3 SELLER shall also protect and fully indemnify the PURCHASER from any claims from SELLER'S workmen/employees or their heirs, dependants, representatives, etc. or from any other person/persons or bodies/companies etc. for any acts of commissions or omission while executing the CONTRACT.	2. Clause 11.3- Suggested that indemnification is mutual and negligence based.	Tender Conditions shall prevail.



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					3. We hereby proposing following clause to protect our Intellectual Property rights in the work delivered.  "No right, title or interest in the Seller Intellectual Property will be transferred to Buyer under this Agreement, including Intellectual Property which existed prior to or is created independent of the performance of the Agreement. All Intellectual Property and results of Services, including software, models, designs, drawings, documents, inventions, and know-how ("Inventions"), conceived or developed by the Seller in connection with the Agreement are the sole property of the Seller and Buyer has no right or license to the Intellectual Property or Inventions except as granted in the Agreement. Intellectual Property means all copyrights, trademarks, trade secrets, patents, utility models and other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations."	Tender Conditions shall prevail.
29			Clause 25 Delays In The Seller's Performance/page 54 of 91		Delete in its entirety. Article 26 & 14.4 should provide adequate protection against Sellers delay.	Tender Conditions shall prevail.
30			Clause 26 on Liquidated Damages /page 55 of 91	In case of delay in delivery of equipment/materials or delay in completion, total contract price shall be reduced by ½ % (half percent) of the total contract price per complete week of delay or part thereof subject to a maximum of 5% (five percent) of the total contract price.	Liquidated Damages to be calculated on the value of un-delivered goods rather than total contract price.	Tender Conditions shall prevail.
31			Clause 28.3- Termination for Convenience / page 57 of 91	28.3.1 The PURCHASER may, by written notice sent to the SELLER, terminate the CONTRACT, in whole or part, at any time for his convenience. The notice of termination shall specify that termination is for the PURCHASER's convenience, the extent to which performance of work under the CONTRACT is terminated and the date upon which such termination becomes effective. 28.3.2 The GOODS that are complete and ready for shipment within 30 days after the SELLER's receipt of notice of termination shall be purchased by the PURCHASER at the CONTRACT terms and prices. For the remaining GOODS, the PURCHASER may opt: a) to have any portion completed and delivered at the CONTRACT terms and prices, and /or b) to cancel the remainder and pay to the SELLER an agreed amount for partially completed GOODS and for materials and parts previously procured by the SELLER.	Termination on convenience is unidirectional. We hereby proposig 30 days of notice period prior to termination.	Tender conditions shall prevail . However, PURCHASER may, without prejudice to any other remedy for breach of CONTRACT, by written notice of default sent to the SELLER, terminate the CONTRACT in whole or in part If the SELLER, in either of the above circumstances, does not cure his failure within a period of 30 days (or such longer period as the PURCHASER may authorize in writing) after receipt of the default notice from the PURCHASER. Refer cl. 28.1.1 C of GCC of Commercial Volume I of II.
32			Clause 29 -Force Majeure /page 57 of 91	29.1 Shall mean and be limited to the following: a) War/hostilities b) Riot or Civil commotion c) Earthquake, flood, tempest, lightning or other natural physical disaster. d) Restrictions imposed by the Government or other statutory bodies which prevents or delays the execution of the Contract by the SELLER.  The SELLER shall advise PURCHASER/ CONSULTANT by a registered letter duly certified by the local Chamber of Commerce.....	1. Payment to be made by Purchaser under the contract to be made as an exception to the Force Majeure events/Clause.  2. New Sub Clause (e) under Clause 29.1 is proposed: "Any other circumstances beyond the reasonable control of the parties."  3. Also, new Clause proposed for Buyer's delay - "If Buyer causes delay, Bidder is entitled to adjust price, schedule and other affected terms."	Tender conditions shall prevail.  In the event of circumstances beyond resonable shall be dealt as per notification by govt as required during period of contract  Tender conditions shall prevail.



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33			Clause 30 - Resolution of Dispute /page 58 of 91	<p>30.1 The PURCHASER and the SELLER shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.</p> <p>30.2 If, after thirty days from the commencement of such informal negotiations, the PURCHASER and the SELLER have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred for resolution to the formal mechanism as specified hereunder.</p> <p>30.3 Legal Construction The Contract shall be, in all respects be construed and operated as an Indian Contract and in accordance with Indian Laws as in force for the time being and is subject to and referred to the Court of Law situated within Dibrugarh, Assam.</p> <p>30.4 All disputes arising under this Guarantee shall be referred to a tribunal comprising three (3) arbitrators under the (Indian) Arbitration and Conciliation Act, 1996. Each Party to the arbitration shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the "Arbitral Tribunal"). The decision(s) of the Arbitral Tribunal, shall be final and binding on the Parties. The venue of arbitration shall be Dibrugarh, Assam. This Clause shall survive the termination or expiry of this Guarantee. The governing law of the arbitration shall be the substantive laws of India.</p>	<p>The right to choose the arbitrator shall be done mutually. Suggesting name of 3 persons by AGCL and Seller to choose one as Sole arbitrator still does not evade biasedness. Therefore, it is suggested the AGCL and Seller choose arbitrators by mutual consent.</p>	Tender conditions shall prevail.
					Article 30.5 We propose to follow the Arbitration rules under the Arbitration and Conciliation Act 1996. Thus this article is not acceptable to us.	Tender conditions shall prevail.
34			Buyer Delay Clause- new clause suggested	New Clause Proposed	If Buyer causes delay, Honeywell is entitled to adjust price, schedule and other affected terms.	Tender conditions shall prevail.
35			Cyber Disclaimer- new clause suggested	New Clause Proposed	CYBER SECURITY: Cyber security services will be provided in professional and workmanlike manner. Honeywell makes no guaranty that the cyber security products ("CS Products"), inclusive of equipment, software and services will prevent or mitigate the impact of any cyber-attack. Honeywell's sole liability, for failure of the CS Products is replacement of the defective product and/or re-performance of the defective service, provided Buyer notifies Honeywell of the defects during the warranty period. Third Party CS Product, if any, are provided to customer subject to such Third Parties' standard terms and conditions (including software license terms) and Honeywell has no liability with respect to the performance or non-performance of the same.	Tender conditions shall prevail.
36			Personal Data Protection- new clause suggested	New Clause Proposed	PERSONAL DATA PROTECTION: Each Party acknowledges and agrees that it may process certain business contact details relating to individuals engaged by the other Party in the performance of that other Party's obligations under this Agreement ("Staff"). Each Party will take appropriate technical and organizational measures to protect such personal data against any security breaches and shall securely delete it once no longer required for the purposes for which it is processed. Where appropriate and in accordance with the applicable data protection legislation, each Party shall inform its own Staff that they may exercise their rights in respect of their personal data against the other Party by sending a written request with proof of identity to the other Party to the address set forth in this Agreement.	Tender conditions shall prevail.
37			33 TAXES & DUTIES / Page 58 of 91 Statutory Variation in TAX	A domestic Seller shall be entirely responsible for all taxes, duties, licence fees etc. incurred until the delivery of the contracted goods to the PURCHASER. However applicable GST on finished products shall be reimbursed by PURCHASER.	Any changes in the existing tax structure owing to change in GOVT policy or otherwise, any increase/decrease or introduction of new levies, taxes, duties, cess of whatever nature or abrogation of existing levies, taxes, duties, cess after submission of bid document or during the contractual delivery period or within extended delivery period for which input tax credit is available or not shall be in the scope of purchaser and shall be paid to seller at actual in case the reasons of delay is not attributable to Supplier".	Refer Clause 100 of GCC of Commercial Volume I of II



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38			Delay- <b>new clause suggested</b>	New Clause Proposed	In case delay in overall completion of the project/Contract/Purchase Order / scope of work is attributable to Customer then Honeywell reserves its right to claim charges for:- <ul style="list-style-type: none"><li>• the extension of the stay at site, if applicable</li><li>• extension of the Bank Guarantee, if applicable</li><li>• extension of the Insurance cover, if applicable</li></ul>	Tender conditions shall prevail.
39			Delay in start- <b>new clause suggested</b>	New Clause Proposed	Though the prices are firm however, the seller reserves its right to claim price variation in case the project doesn't start within 30 Days from the date of PO or gets delayed from original contractual delivery period for the reasons not attributable to Seller. The revised prices shall be mutually discussed and agreed by both the parties.	Tender conditions shall prevail.
40			material movement- <b>new clause suggested</b>	New Clause Proposed	Honeywell reserves its rights to change nature of transaction/Change in material movement methodology from indirect (From vendor to customer ) to direct (From HAIL to Customer) or vis a versa under intimation to customer. Owing to this change or arrangement, Would there be any impact under taxation perspective i.e. rate of IGST/CGST/SGST/UTGST the same shall be to the account of customer.	Tender conditions shall prevail.
41			Works Contract- <b>new clause suggested</b>	New Clause Proposed	"Since we shall be supplying goods & providing services in line with scope define in the BID does not fit into definition of Works contract, in line with section 2 (119) of GST act. Kindly clarify and share notification which specify the same.  Based on scope defined we shall be charging GST @ 18% which shall be over and above basic sale price."	Tender conditions shall prevail. Bidder to quote as per SOR and tender documents.

NOTE:  
Bidder to submit signed & stamped copy of this Reply to Pre-Bid Queries along with Un-Price Bid.