

Clarifications to Queries for Tender dated 23/01/2012

Tender No : APGDC/FSRU/2012/01

S.No.	Reference of Tender Document - Clause No:	Applicant's Query	Clarifications
1	2.1.2 & Annexure 2 - PFA - Section 4	Are costs for the detailed feasibility study shared on a 50:50 basis between APGDC and the Strategic Partner or in proportion to the proposed equity stake of each partner in the SPV?	Costs for the detailed feasibility study shall be shared equally - 50:50 between APGDC and the Strategic Partner. And on formation of SPV the total cost incurred by the partners will be capitalised.
2	2.1.3	What will be the cost of the preliminary study to the Strategic Partner?	The cost of preliminary study will be shared in 50:50 ratio in line with clause 2.1.2. The share of Strategic partner would be Rs. 5-7 lakhs. And on formation of SPV the total cost incurred by the partners will be capitalised.
3	2.1.4 i	Please provide additional details on the commercial structure of the project and the SPV. For instance, if the Strategic Partner take an equity stake in the terminal but does not take capacity, would the Strategic Partner be liable for any ongoing operational costs of the SPV (e.g. FSRU charter, O&M) or would its obligations be limited to the initial equity stake? Also, if the Strategic Partner does not take capacity in the terminal how will the sale of this capacity be managed and will the strategic partner receive all income from this capacity sale?	The right for capacity is an additional incentive for the Strategic Partner over and above the equity being offered. This tolling capacity shall be utilized by the Strategic Partner as per clause 2.1.4 (ii) and the fees towards regasification as per Tolling Service Agreement will have to be paid to the SPV. If the Strategic Partner does not take any capacity then as per Clause 2.1.4 (iv) and 2.1.4 (v) it shall accrue to APGDC. Further, APGDC shall pay the fees towards regasification as per Tolling Service Agreement to the SPV. The SPV will be responsible for incurring all the operational costs. The SPV would earn revenues as per Tolling Service Agreement. The returns to the equity shareholders will be reflective of the performance of the SPV. The Strategic Partner together with APGDC would play an active role in the functioning of the SPV.

4	2.1.4 ii & Annexure 2 - PFA - Section 3	Please provide additional details of the TSA (e.g. term, capacity cost etc)	The Strategic Partner together with APGDC will decide the modalities and details of the TSA subsequent to the detailed feasibility study.
5	2.1.4 iv & Annexure 2 - PFA - Section 3	Please provide additional details of how the Strategic Partner would be compensated for the sale of its capacity to APGDC.	It is expected that Strategic Partner and APGDC would utilize their respective tolling capacities for the success of the Project. However, if at any stage, the Strategic Partner is not willing to use its capacity and surrender the same to APGDC, no monetary compensation will be made by APGDC to the Strategic partner. However, the strategic partner would earn by way of dividends which it would be entitled to receive from the SPV.
6	2.1.4 vi & Annexure 2 - PFA - Section 3	How will revenues from unutilized capacity that has been made available to third parties be distributed? For instance, if the Strategic Partner does not utilize its capacity and APGDC, APGIC, GAIL choose not to utilize this unutilized capacity, does the strategic partner receive all the revenues from third party resulting from this capacity sale?	As explained in reply to the query at sl. no. 3 & 5, the revenue from the FSRU operations would accrue to the SPV and in turn to the shareholders of the SPV by way of dividend payments.
7	2.1.4 ix	Will the costs of obtaining these licenses be shared equally by the SPV partners or will most of these costs be internal costs for APGDC? Please provide an estimate of likely costs.	The SPV will bear the costs of obtaining any licenses. APGDC and/or its promoters or their parent / affiliate companies will extend assistance in securing any approvals/licenses.
8	2.1.4 X & Annexure 2 - PFA - Section 17	The exclusivity provision is problematic as it could restrict bidders current or prospective business activities. Please advise why this provision has been included.	Please refer addendum
9	2.1	Under what circumstances could APGDC draw on the EMD or the security deposit?	EMD of the unsuccessful Applicant shall be returned as per Clause 2.11.1. APGDC reserves the right to invoke the EMD /Security Deposit of the selected applicant, if it does not execute the Project Framework Agreement or for any reason abstains from further participation before/during the development of detailed feasibility report.

10	3.2.2 & Format 9	This requires Applicants to include signed O&M service contract documents. These are confidential documents and cannot be shared with third parties. Please advise what other evidence can be provided in place of these contracts.	Please refer addendum.
11	3.2.3 & Format 10	The information included in the GSAs is confidential. Could APGDC consider other an alternative method of proving quantities of LNG supplied?	Certificate(s) from the statutory auditors or the firm of auditors which audits the annual accounts or external third party legal firm or the relevant portions of the signed agreement that can be shared will be considered. Further, APGDC reserves the right to verify the same as per Clause 2.12.3
12	3.3	Applicants are required to include a budget for technical and other studies. Does APGDC consider this to be binding or is the budget just a best estimate subject to confirmation?	This is only a best case estimate and will not be considered as a binding estimate
13	3.2.1 & Formats 15	This requires the applicant to prove its ownership and development experience and requires that a statutory auditor completes Format 15. Would APGDC accept a Legal Opinion as a substitute for the statement from the Statutory Auditor? A Legal Opinion can be obtained at lower cost and in a shorter time frame than a statement form a statutory auditor.	Please refer addendum.

14	3.2.2 & Format 9	<p>1. This requires applicants to provide signed O&M contracts as evidence of O&M experience of third party terminals. These O&M contracts are confidential documents and confidentiality obligations would restrict the applicant's ability to do this. Would APGDC accept a Legal Opinion confirming the applicants O&M experience rather than copies of the O&M contracts which cannot be shared with third parties.</p> <p>2. This requires that a statutory auditor confirms the applicants O&M experience at the applicants own terminals. Would APGDC accept a Legal Opinion as a substitute for the statement from the Statutory Auditor? A Legal Opinion can be obtained at lower cost and in a shorter time frame than a statement form a statutory auditor.</p>	Please refer addendum.
15	3.2.3 & Format 10	<p>This requires applicants to provide relevant pages of GSAs to prove its experience. The GSAs are confidential documents and confidentiality obligations would restrict the applicant's ability to do this. As a substitute for this would APGDC accept a Legal Opinion that the applicant (a) has Master Sales Agreements with a broad range of counterparties, and (b) confirming that agreements with respect to cargoes have been entered into and performed representing more than X cargoes and more than Y of revenues over a defined period?</p>	Please refer addendum.
16	Annexure 2 - PFA - Section 4	<p>COMMENT: All requests by APGDC or others to expand or alter the DFR scope of work, or any requirement for the use of third parties to perform confirming or additional work, should be subject to the following elements:</p> <ul style="list-style-type: none"> i) Partner B must approve the addition or change to the scope of work in advance, and ii) The Partners must agree on the pricing for such additional work in advance. In short, the scope should not be expanded unless there is an agreement on the need for the expansion and on the additional compensation for it. 	Scope and other details for preparing DFR shall be agreed in the Joint Study Agreement.

17	Annexure 2 - PFA - Section 6	Please confirm that Partner B will not be disqualified from proposing to provide any service envisioned to form a part of the Project (EPC role, vessel provision, O&M, etc.), nor from serving in any such role if it is the successful bidder for that element of the work.	There is no disqualification for a Strategic partner to render its services / goods to SPV provided all such transactions shall be made through a competitive bidding process or any other method which satisfies arms length philosophy
18	Annexure 2 - PFA - Section 10	COMMENT: Partner B should be allowed to form a consortium with equity interests in the SPV taken up by its consortium members in such quantities as Partner B may approve.	The equity in the SPV shall be taken only by the Strategic Partner (Applicant) and not by a Consortium formed by the Strategic Partner.
19	Annexure 2 - PFA - Section 11	Please confirm that CEO, CFO and COO are not needed for the SPV until it enters into service. Partner B should have a veto on selections to the extent it reasonably concludes that the persons selected are not qualified. Compensation levels for these positions should be set in advance, so that the costs for these positions, and all other SG&A costs of the SPV can be evaluated accurately.	These positions shall be filled as and when required as per the decisions of the board of the SPV. Other details such as their selection process, remuneration etc. shall be covered in the Shareholders' Agreement which will be mutually agreed among the Shareholders.
20	Annexure 2 - PFA - Sections 14 & 15	<ol style="list-style-type: none"> 1. The disposition under the ROFR should, as is traditional, be at the third party offered price, not at an appraised price. For example, if Partner B has a ROFR, and Partner A wants to sell, Partner A would find a buyer and inform Partner B of the offered price; Partner B should then have a right to buy at the offered terms. 2. As a minority equity owner, Partner B should have a tag-along right on any proposed sale by Partner A. 	The ROFR shall be as per Section 14 and 15. However, the detailed procedure shall be agreed in the Shareholders Agreement.

21	Annexure 2 - PFA - Section 20 & 22	<p>1. COMMENT: Applicant can agree to Indian law and local arbitration for the feasibility study period only, but should note that, in the definitive agreements for port construction and operation, industry standard, which we will require as a bidder, is for English law to govern (given the centrality of maritime law issues) and for disputes to be resolved by a forum that is not within the national boundaries of any party—e.g., arbitration before the LCIA.</p> <p>2. COMMENT: Section 22 and 20 appear to be contradictory; 20 calls for arbitration while 22 says that disputes are solely to be handled by local courts.</p>	<p>1. We don't foresee any applicability of English law as the FSRU project will be located inside the Indian territory.</p> <p>2. In case of any dispute, parties will first go for arbitration as per section 20 of PFA and if it is not resolved, the matter will be referred to Court as per section 22 of PFA.</p> <p>It is further clarified that the Strategic Partner may putforth his views on this during the formation of the SPV or at the time of execution of the SHA</p>
22	Annexure 2 - PFA - Section 21	COMMENT: An outside time limit of 3 years for confidentiality obligations is standard.	Can be considered.
23	Entire document	<p>Please clarify the desired role of the Strategic Partner and the nature of the project:</p> <p>§ Our confusion arises because</p> <p>§ The strategic partner is asked to indicate their level of equity commitment to the SPV (section 3.2.4).</p> <p>§ The purpose of the SPV is for FSRU Project development (see title and 1.3)</p> <p>§ FSRU is a defined term meaning a vessel able to receive and regasify LNG</p> <p>§ Project is a defined term meaning development of the FSRU on the Andhra Pradesh Coast and to carry out the Commercial Operations (undefined)</p> <p>§ We infer from the entirety of the document that the desired role of the Strategic Partner is to bring expertise and to co-invest in the infrastructure of an FSRU based LNG import facility, this is not actually stated. Therefore please clarify the desired role of the Strategic Partner and the nature of the project.</p>	<p>The inference is correct and it is to further clarify as follows:</p> <p>Role of Strategic Partner:</p> <p>1. The Startegic Partner is expected to bring the expertise to undertake a detailed feasibility study jointly with APGDC to establish an FSRU based LNG import facility in Andhra Pradesh coast.</p> <p>2.The Strategic partner and APGDC would form an SPV and co-invest, in case the project is found to be techno-commercially viable out of such joint study subject to the respective board approvals.</p> <p>Nature of Project:</p> <p>1. The SPV would be responsible for development of the FSRU based LNG import facility (FSRU Project) and subsequent commercial operations of the Project.</p>

24	Entire Document	<p>Please review use of the terms FSRU and FSRU terminal throughout the document. The term FSRU appears to be used differently to the meaning of FSRU as a defined term eg:</p> <p>§ Clause 1.3 says “The FSRU is required at the earliest possible timeframe at the East Coast of Andhra Pradesh” Review of the use of the Term FSRU would provide clarity as to whether the requirement is for the early delivery of a vessel, or the early delivery of the infrastructure necessary to receive and discharge an FSRU vessel.</p> <p>Please clarify if the intent of 1.3 is that “The FSRU LNG Import Facility is required at the earliest possible timeframe at the East Coast of Andhra Pradesh</p>	<p>Both the terms FSRU and FSRU Terminal used in the document means the FSRU based LNG import facility which inter alia includes all the facilities that are required for receipt, regasify LNG and discharge RLNG including the FSRU vessel.</p>
25	Clause 3.2.1	<p>Please review the scope of development experience considered.</p> <p>§ We believe that site selection, concept definition and feasibility studies/detailed feasibility in the Indian context would be experience relevant to APGDC. However since there are currently no operating FSRU projects in India section 3.2.1 does not permit any such previous experience by an applicant to be considered in the tender as these projects are incomplete.</p> <p>§ To enable such experience to be considered, we suggest that a sub category be created within 3.2.1, worth say 5 or 10 points, which would consider relevant pre FID experience in India regarding LNG, Site selection, met ocean analysis, detailed feasibility studies etc undertaken either for own use or for third parties. This could be scored against the number of such projects, rather than size, since size would be difficult to measure at this feasibility stage.</p>	<p>It is clarified that the evaluatiuon would be based on the development experience anywhere in the world.</p> <p>The entity may highlight their experience under the approach and work plan presentation and in the note to be submitted as part of Envelop 2</p>

26	Clause 2.1.3	Please clarify the level of past costs described in section 2.1.3, how these past costs will be evidenced by APGDC, and the share of past costs to be taken on by the Strategic Partner (in proportion to Equity committed to the SPV or in equal proportion between APGDC and the Strategic Partner).	The cost of preliminary study will also be shared in 50:50 ratio in line with clause 2.1.2. The share of Strategic partner would be Rs. 5-7 lakhs. And on formation of SPV the total cost incurred by the partners will be capitalised.
27	Clause 2.7.1	Section 2.71 requires pertinent passages from foreign language documents to be translated into English. This may result in either the submission of several unlinked statements, or a large volume of translation. Please clarify it is acceptable to provide an English language summary of the relevant information from foreign language documents together with a statement from the auditor.	This is acceptable.
28	Format 7B, 9, 10, 12, 13, 15	<p>In the context of the current tender, and after consulting our auditors, we have been informed by them that the only type of reports they can deliver are those in accordance with ISRS 4400 standard on agreed upon procedures, the certification will actually be an acknowledgment of the auditors for the data requested (whether it is financial capabilities, O&M experience, LNG supplying experience, JV experience with government entities or eligible experience) based on the submission by the entity to the auditors of a valid document establishing such data.</p> <p>Please note that our auditors advise that the formats provided by APGDC do not comply with the ISRS 4400 standard .</p> <p>Please clarify that Format 7B, 9, 10, 12, 13, 15 requiring information to be certified by auditors can be provided by the Applicant in the form of an Agreed Upon Procedure.</p>	<p>Can be considered as long as all the back up documents are certified by the auditors.</p> <p>In case the formats differ, owing to some standards being followed, it should not result in any material change and the essence of the certification required. The details sought must be clearly substantiated/ certified.</p>

29	Format 7B, 9, 10, 12, 13, 15	According to international auditing standards, our auditors cannot be in a position to co-sign documents with us as they have to comply with ISRS international standards when expressing their opinions. These standards do not authorise auditors to co-sign with their clients. Please clarify that the following process is acceptable to APGDC : instead of the co-signing by the Applicant and its auditors of Format 7B, 9, 10, 12, 13, 15, we suggest that said Formats be completed and executed internally by the Applicant and be the basis for the performance of relevant agreed upon procedures duly signed by auditors.	Can be considered as long as all the back up documents are certified by the auditors. In case the formats differ, owing to some standards being followed, it should not result in any material change and the essence of the certification required. The details sought must be clearly substantiated/ certified.
30	Format 1, 2, 3, 4, 5, 6, 7A, 7B, 8, 9, 10, 11, 12, 13, 14, 15, 17.	Please note that the submitting entity has no company Seal as this is no longer a legal requirement under the company law of the applicant.	This is acceptable
31	Format 9, 10	For confidentiality reasons, it is not possible to provide the relevant pages of the signed Gas Sale Agreement (GSA) as required in Format 10. Please clarify that evidence of the contracts (eg the title page of the contract or the press release relating to the contract) together with validation of the quantities by our Auditors will be satisfactory.	Please refer addendum
32	Annexure 3A	Our banks have requested a few minor amendments to the form of Bank Guarantee for EMD, notably: <ul style="list-style-type: none"> · Currency – USD only to avoid fluctuation issues · Insertion of a “claim date” to clarify validity of claims · Information prior to assignment to comply with anti money laundering requirements. 	This is acceptable

33	Clause 2.11.1	<p>In clause 2.11.1 (p19) APGDC indicates that “the EMD will be <u>converted</u> as part of the “Security Deposit” for the successful Applicant”. In Annexure 3B, the Security Deposit is for USD 1 Million (rather than a complement worth USD 800,000).</p> <p>Please clarify that the following process would be acceptable:</p> <ol style="list-style-type: none"> 1) A Bank Guarantee is issued for USD 200,000 as EMD when the application is submitted; 2) The EMD Bank Guarantee of the successful tender applicant is released; 3) At the same time 2) occurs, a new Bank Guarantee will be issued for USD 1 Million as Security Deposit. 	The EMD BG shall be returned upon receipt of SD BG for the full amount.
34	Clause 1.6	<p>Please consider extending the last date of Application Submission to 29th February</p> <p>Please consider revising the Presentation of Approach and work plan to the week commencing 5th March 2012</p>	Please refer addendum