

Addendum No.01 dated 18.03.2021 to the Direct RFP (Direct RFP No. HQ/SEMU/SESMRC/EDFC-2/2021 dated 26.02.2021)

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LIMITED

(A Government of India Enterprise)
Ministry of Railway

Direct RFP No.: HQ/SEMU/SESMRC/EDFC-2/2021 dated 26.02.2021

Name of Assignment: Consultancy Services for Social & Environmental Safeguard Monitoring and Review (SESMR) for 5 Qtrs (April, 2021 to June, 2022) for EDFC-2 Project section from Bhaupur to DDU (393 Km) for DFCCIL (through Direct RFP)

Sl.no	RFP Clause no.	RFP pg. no.	Amendment
1	ITC clause 17.7 & 17.9	23	The following sentence "The Proposals must be submitted no later than: Date: 29 March 2021" be read as "The Proposals must be submitted no later than: Date: 30 March 2021"
2	ITC clause 19.1	23	The sentence "Date: 29 March 2021 same as the submission deadline indicated in 17.7" be read as "Date: 30 March 2021 same as the submission deadline indicated in 17.7"
3	The Introductory (first) para of Section 8 of Part-II "Contract for Consulting Services"	65	THIS CONTRACT ("Contract") is entered into this April,2021, by and between Dedicated Freight Corridor Corporation of India Ltd, a Govt. of India Enterprise under Ministry of Railways and a company incorporated under the provisions of the Companies Act, 1956/2013 having it's registered office at 5 th Floor, Supreme Court Metro Station Complex, New Delhi-110001 represented through its <u>Designation of concerned DFCCIL Official</u> (hereinafter referred to as "DFCCIL/Client" which expression shall, unless repugnant to the context, be deemed to include it's successors and assigns, and <i>[insert Consultant's name]</i> having its principal office located at <i>[insert Consultant's address¹]</i> (hereinafter referred to as "the Consultant" Which expression shall, unless repugnant to the context, be deemed to include it's successors and assigns).
4	Clause 2 "Term" of section 8 of Part-2	65	Clause 2 "Term" of section 8 of Part-2 be read as: The Consultant shall perform the Services during the period commencing April,2021 and continuing through June, 2022 or any other period as may be subsequently agreed by the parties in writing
5	Clause 12 "Law	67	Clause 12 "Law governing Contract and Language" of section 8 of

¹ Avoid use of "P.O. Box" address

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	governing Contract and Language” of section 8 of Part-2		<p>Part-2 be read as:</p> <p>The Contract shall be governed by the laws of Government of India, and the language of the Contract shall be² English.</p> <p>The following paras may be read in addition to above:</p> <p>The consultant shall ensure compliance with all relevant Central/State laws and rules as applicable such as Tax Laws, Labour Laws and Insurance Laws etc with regard to the contract and shall be solely responsible for the same and shall keep the DFCCIL fully indemnified against the liability of any Taxes, interest, penalty etc if any arising any connection with the contract.</p> <p>The Contract shall be governed by the laws of Government of India and further mention that this agreement and the relationship between the parties shall be governed construed and interpreted in accordance with applicable laws of India. Applicable laws shall mean all laws, bye-laws, statutes, rules, regulations, orders, ordinances, codes, guidelines, notices, directions, judgements, decrees or other requirements or official directives and/or of any statutory authority in the Republic of India.</p>
6	Clause 13 “Dispute Resolution” of section 8 of Part-2	67	<p>Clause 13 “Dispute Resolution” of section 8 of Part-2</p> <p>Be read as:</p> <p>Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration in accordance with the laws of India.</p> <p>Unless otherwise agreed by the Parties, the arbitration shall be under the International Chamber of Commerce (ICC) rules with Delhi, as venue & Seat of Arbitration.</p> <p>The Governing Law shall be The Arbitration and Conciliation Act 1996 and amendments thereof.</p>
7	Clause 14 “Termination” of section 8 of Part-2	68	<p>The following para may be read in addition to provisions of Clause 14 “Termination” of section 8 of Part-2:</p> <p>“A.By client” be added as the heading to First para and points from a) through d)</p> <p>(e) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days</p> <p>B. By Consultant</p> <p>The Consultant may terminate this Contract, by not less than thirty (30) calendar days’ written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.</p>

² The law selected by the Client is usually the law of its country. However, the Bank does not object if the Client and the Consultant agree on another law. The language shall be English, French, or Spanish, unless the Contract is entered into with a domestic firm, in which case it can be the local language.

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			<p>(a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 13 of Section-8 of Part-II within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.</p> <p>(b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.</p> <p>(c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause 13 of Section-8 of Part-II.</p> <p>(d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach</p> <p>C. Cessation of Rights and Obligations</p> <p>Upon termination of this Contract pursuant to Clauses sub clauses A& B of clause 14 hereof, or upon expiration of this Contract, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 7, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 6 and to cooperate and assist in any inspection or investigation, and (iv) any right which a Party may have under the Applicable Law.</p> <p>D. Cessation of Services</p> <p>Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 14 A or 14 B, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clause 8.</p> <p>E. Payment Upon Termination</p> <p>Upon termination of this Contract, the Client shall make the following payments to the Consultant:</p> <p>(a) payment for Services satisfactorily performed prior to the effective date of termination; and</p>

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			(b) in the case of termination pursuant to paragraphs (d) and (e) of Clause 14.A, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts
8	Additional Clause No. 15 on" Force Majeure" in Section 8 of Part II		<p>Additional Clause</p> <p>15. Force Majeure</p> <p>a. Definition</p> <p>For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.</p> <p>Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.</p> <p>Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.</p> <p>b. No Breach of Contract</p> <p>The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract</p> <p>c. Measures to be Taken</p> <p>A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure</p> <p>A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such</p>

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			<p>event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible</p> <p>Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure</p> <p>During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:</p> <ul style="list-style-type: none"> (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred <p>In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to clause 13 of Section 8 of Part-II.</p>
9	Additional Clause No. 16 on "Fraud and Corruption" in Section 8 of Part II		<p>Additional clause 16. Fraud and Corruption The Bank requires compliance with the Bank's Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework, as set forth in Section-6 of Part-I.</p> <p>a. Commissions and Fees</p> <p>The Client requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract and/or sanctions by the Bank.</p>
10	Additional Clause No. 17 on "Modifications		<p>Additional Clause 17.Modifications or Variations Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the</p>

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	or Variations” in Section 8 of Part II		<p>Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.</p> <p>In cases of substantial modifications or variations, the prior written consent of the Bank is required</p>
11	Additional Clause No. 18 on “Severability” in Section 8 of Part II		<p>Additional Clause 18. Severability</p> <p>In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.</p>
12	Additional Clause No. 19 on “Intellectual Property Rights” in Section 8 of Part II		<p>Additional Clause 19. Intellectual Property Right</p> <p>All reports and other documents (collectively referred to as “Consultancy Documents”) prepared by the Consultant (or any Third Party) in performing the Consultancy Services shall become and remain the property of the Client, and all intellectual property rights in such Consultancy Documents shall vest with the Client. The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority. The Consultant shall hold the Client harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as “Claims”) which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Client.”</p> <p>The Consultant shall not infringe any Intellectual Property Rights of any third party in supplying the services and the consultant shall, during and after the contract period indemnify and keep indemnified and hold the Client harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the client may suffer or incur as</p>

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			a result of or in connection with any breach of this clause.
13	Additional Clause No. 20 on "Jurisdiction" in Section 8 of Part II		<p>Additional Clause</p> <p>20. Jurisdiction</p> <p>Jurisdiction of the courts situated at Delhi for the purpose of actions and proceedings arising out of the contract and the courts at Delhi shall have the sole and exclusive jurisdiction to hear and decide such actions and proceedings</p>
14	List of Annexes of Section 8 of Part-II	69	<p>LIST of Annexes be read as:</p> <p>Annex A: Terms of Reference Scope of Services and Consultant's Reporting Obligations <i>[This Appendix shall include the final Terms of Reference (TORs) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made; Client's input, including counterpart personnel assigned by the Client to work on the Consultant's team; specific tasks or actions that require prior approval by the Client.</i></p> <p><i>Insert the text based on the Section 7 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 of the Consultant's Proposal. Highlight the changes to Section 7 of the RFP]</i></p> <p>Annex B: Consultant's Personnel and corresponding unit rates <i>[Insert a table based on Form TECH-6 of the Consultant's Technical Proposal and finalized at the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]</i></p> <p>Annex C – Breakdown of Contract Price <i>[Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on [Form FIN-3 and FIN-4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-3 and FIN-4] at the negotiations or state that none has been made.]</i></p>
15	Item no. (xix) of 3.(a) of Section - 7		The sentence " Monitor the progress in providing unskilled/semi-skilled jobs to the PAPs and local people during construction;" be read as "Monitor the progress in involvement of local people in unskilled/semi-skilled / skilled works during construction"
16	Additional Clause No. 21 on "Liability of		<p>Additional Clause</p> <p>21. Liability of the Consultant</p> <p>The Consultant's liability under this Contract shall not exceed the</p>

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	the Consultant” in Section 8 of Part II		maximum contract amount and shall be subject to relevant contractual provisions, as the case may be and subject to applicable Indian laws.
17	Sl.no 2 of Part-A :Mandatory criteria of clause 21.1 of Part-I	24	The sentence “Minimum annual financial turnover shall not be less than INR 10 Crore “be read as “Minimum annual financial turnover of the individual firms / JV/ Consortium summed up shall not be less than INR 10 Crore. Given that in JV/Consortium no partner shall have an annual turnover less than 25% (2.5 crore) and the lead firm should have an annual turnover of minimum 40% (4 crore)”.
18	Para 12.9 of Clause 12.C of Section 2	10	The sentence “The consultant shall not sub contract the whole of the services” be read as “The consultant shall not sub contract the whole or part of the services without the permission of client.”

--end of Amendment no. 01--