

Government of India
Ministry of Communications and Information Technology
Department of Electronics and Information Technology
(IPHW Division)

Minutes of Meeting of Pre-Bid Meeting regarding Request for Proposal (RFP) for selection of Professional Law Firm for meeting the requirements of professional legal advice/documentation for support to DeitY and GoI to set up Semiconductor Wafer Fab facilities in India, held on 24.3.2014 at 02:30 PM at DeitY, Electronics Niketan, New Delhi

List of participants is as under:

1. Dr. Debashis Dutta, GC(R&D in Electronics), DeitY
2. Mr. S.K. Marwaha, Director, DeitY
3. Mr. Rajesh Suri, Dy. Director, DeitY
4. Mr. Bharat Bhushan Arora, Scientist B, DeitY
5. Mr. S.P. Purwar, Head, Telecom, J. Sagar Associates
6. Mr. Sameer Guha, Counsel, Trilegal
7. Ms. Kiron Prabhakar, Partner, PAV Law Offices
8. Mr. Ashish Pareek, Associate, Luthra & Luthra Law Offices

Committee welcomed the participants to the meeting and discussed the queries.

Queries as shared with DeitY were discussed one by one in order to understand bidders' point of view and other issues related to the RFP for selection of Professional Law Firm for meeting the requirements of professional legal advice/documentation for support to DeitY and GoI for setting up of Semiconductor Wafer Fab facilities in India. Floor was opened for participants to share their queries with the Committee members. These queries were debated and discussed. Queries and Clarifications arrived at by the Proposal Evaluation Committee are placed at **Annexure**.

Proposed Clarification/Corrigendum regarding RFP for Selection of Law Firm

Sl	Reference	Content of RFP requiring Clarification(s)	Points for Clarification	Clarification/ Corrigendum
1	Section 3.4.3 Page 14	Ernest Money Deposit (EMD) Bidders are required to furnish a demand draft (DD) or bank guarantee (BG) in favor of 'Pay and Accounts Officer, Department of Electronics and Information Technology'	Could the provision of furnishing the DD or the BG be relaxed? If a bidder does not furnish the DD or BG, would it lead to disqualification?	No change. Non furnishing of Demand Draft or Bank Guarantee as EMD with the proposal would lead to the bid being summarily rejected.
2	Section 3.9.1, page 21	Serial no. 3 of the Pre-Qualification Criteria states: 'Should be Company registered under Companies Act, 1956 or a partnership firm registered under LLP Act, 2008'	Please confirm if a partnership registered under the Indian Partnerships Act, 1932 will be regarded as an eligible entity.	A partnership firm registered under the Indian Partnerships Act, 1932 will also be regarded as an eligible entity.
3	Section 3.9.2, page 22	The supporting documents under Serial no. 4 of the Technical Evaluation Criterion (Relevant Past Experience) require the submission of completion certificate from the client, work orders or certified copies of the work contract.	Can we rely provide self-certification of experience along with providing reference details of the client instead of procuring completion certificates and work orders/contract?	In case documents mentioned in RFP are not available, a client letter/email (from client official ID) bringing out the data (comprehensive) required for evaluation may be furnished. No representation further to that would be entertained and responsibility for compliance lies with the bidder.
4	Section 3.10.4, page 27	Performance Bank Guarantee (PBG) The selected bidder is required to furnish a performance bank guarantee.	Could the provision of furnishing the PBG be relaxed?	No change, provision cannot be relaxed.
5	Section 3.14, page 34	Payment Schedule The payment milestones are linked to DeitY achieving certain milestones, i.e. issuing LoI, successful execution of final agreement etc. There is a prohibition on success fee from the Bar Council of India.	Can the payment schedule be modified so as to link it to our deliverables to DeitY instead of DeitY's successful milestones, as per applicable law?	The payment milestones are linked to the effort estimated at each stage of the engagement and may not be construed as 'success fee'. Since the completion of work at each stage can be evaluated only by the completion of milestones, payment schedule remains unchanged.
6	Para 3.9.2 Point 4	The supporting documents include "completion certificates from the client OR Work Order + Self Certificate of Completion (Certified by the Statutory Auditor); OR Work Order + Phase Completion Certificate (for ongoing projects) from the client; OR Certified copy of work contract + Self Certificate	Kindly note as a matter of practice and because of the nature of engagement, we are not provided such "completion certificates" or "work orders" by our clients. We request you to kindly let us know any other piece of evidence that we could furnish to establish that the project was undertaken by us. Also, can a simple	In case documents mentioned in RFP are not available, a client letter/email (from client official ID) bringing out the data(comprehensive) required for evaluation may be furnished. No representation further to that would be entertained and responsibility for compliance lies with the bidder.

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		of Completion (Certified by Statutory Auditor)".	self-certificate from the bidder would suffice for this purpose?	
7	Para 3.13	Scope of work	<p>We understand (as provided in the background) that the scope of work pertains to the two projects only to which the Government of India has granted the approval. Please clarify if our understanding is correct. This is relevant since depending upon the number of projects/ consortium etc., the drafting/ negotiation time that would be spent by us would vary if the number of projects/ consortium increases.</p> <p>Kindly also clarify that as part of the scope, would the selected bidder be required to prepare only model documentation/ agreements or would the Selected Bidder be required to prepare all documentation/ agreements separately with respect to each project.</p>	<p>The understanding is correct. However, for the final agreements, one or two of the proposals may be taken forward as the case may be, depending upon the response of consortia. The commercial bid structure reflects the same.</p> <p>All other work (apart from final agreements) would involve preparation of model documents and configure for individual consortia. In short, broadly the nature of work involved would be similar except mutatis mutandis changes required for each of consortia. However, the final agreements would be required to be customized individually as per the requirements.</p>
8	Para 3.13	Demonstration of Commitment and Final Stage	<p>It is stated "Legal review of all documents (with the exception of the Detailed Project Report or DPR, which shall be reviewed by a separate third party) submitted by the applicant consortia." While we understand it may be difficult to outline a precise list of these documents, we request if at least the principal documents (as understood by the Department at this stage) that would be required to be reviewed by the selected bidder could be outlined. For instance, it is stated that "1. Incorporation of SPV for the project, in accordance with proposed equity structure" and "7. Submission of proof of legal possession of adequate and suitable land as outlined in the proposals". So, would the selected bidder be required to legally review the joint venture agreement between the consortia members, or would the selected bidder</p>	<p>The documents to be reviewed would include supporting documents for all applicable 'conditions precedent' to the stage applicable. Principal documents (apart from the final agreement/s) would include performance guarantee agreements, guarantee, various undertakings, formats for other legal documents etc. However, the list is not exhaustive and would be finalized at various stages.</p> <p>(Document containing Indicative scope of work for Law Firm including Details of Consortia and Incentive Structure is appended)</p>

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			would also be required to perform diligence on such JV company, or would the selected bidder would be required to perform diligence on the validity of legal possession of suitable land parcel etc.	
9	2.1(c), pg. 9	DeitY reserves the right to extend the Term for a period or periods of up to one year (twelve months) with a maximum of five such extensions on the same terms and conditions.	<p>(1) Will the extensions be for a total period of 1 (one) year?</p> <p>(2) If the contract is extended beyond 1 (one) year, please specify the terms of compensation.</p>	In para 2.1.c, 'five' should be read as 'six'. In case of extension beyond one year, please refer to para 3.9.3 (e) of the RFP. However, no extensions beyond one year are envisaged.
10	3.4.3(a), pg. 14	Bidders shall submit, along with their Bids, EMD of Rs. 2,00,000/- (Rupees Two Lakhs Only), in the form of a Demand Draft OR Bank Guarantee (in the format specified in Appendix 1: Form 3) issued by any nationalized bank in favour of "Pay and Accounts Officer, Department of Electronics and Information Technology" payable at New Delhi, and should be valid for at least six months from the due date of the RFP.	Since some law firms may not have accounts with nationalized banks, Bank Guarantee may also be allowed to be issued by a scheduled commercial bank like the Document Fee in Clause 3.4.2.	In the RFP, the term "Nationalized bank" or "Nationalized scheduled commercial bank" should be read as "scheduled commercial bank"
11	3.7, pg. 18	The Proposal evaluation committee would evaluate and classify them as "material deviation" or "non material deviation". In case of any material deviations, the Committee would be entitled to reject the bid.	Kindly specify the grounds for classifying a deviation as 'material' or 'non-material'.	<p>It would be the sole prerogative of the proposal evaluation committee to determine whether any deviation is 'material' or 'non material'. For guidance purposes, a 'material' deviation would be one due to which, in view of the Proposal Evaluation Committee, the capability of the consultant to deliver the project successfully may be compromised OR the Committee is rendered unable to evaluate the bid. Illustrative examples of material deviation are given below:</p> <ul style="list-style-type: none"> o Non provision of resource against a profile requirement o Noncompliance with the documentation requirements o Project citations provided do not match the supporting documents provided <p>However, the decision of the Proposal Evaluation Committee in this regard would be final and no</p>

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				negotiations are envisaged for the same.
12	3.8(d) , pg. 18	The Proposal Evaluation Committee may fix meetings with the Bidders to seek clarifications on their proposals.	Please indicate if these meetings will include presentations.	The Proposal Evaluation Committee would call for meetings if required. No presentations are envisaged at this point. However, a minimum of 2 working days' notice would be given in case a presentation is required.
13	3.8.4, pg. 20	For the purposes of this RFP, consortiums are not allowed. The bidders also may not sub-contract part or whole of the work.	As law firms generally focus on corporate, commercial, financial and litigation work, a consortium of 3 (three) law firms may be considered in order to get the best pool of talent. Even for the main projects, the Government has gone in for 2 (two) consortia of 3 (three) companies each in order, most probably, to attract the best pool of talent. In this connection, your attention is invited to Clause 3.9.2(5), where non-Indian professionals have been proposed in an advisory capacity which underscores the need for outside expertise.	Para 3.8.4 of the RFP may be read as follows: "For the purposes of this RFP, consortiums are not allowed. The bidders may however, sub-contract part of the work which requires specialized domain expertise (details of subcontracting should be provided in the work plan). However, the responsibility for the work would remain with the lead bidder."
14	3.9.1(3) , pg. 21	Should be Company registered under Companies Act, 1956 or a partnership firm registered under LLP Act, 2008	This provision may be considered to include partnerships firms registered under the Indian Partnership Act, 1932. Most law firms in India are neither companies under the Companies Act, 1956 nor partnerships registered under the Limited Liability Partnership Act, 2008. They are partnerships registered under the Indian Partnership Act, 1932.	A partnership firm registered under the Indian Partnerships Act, 1932 will also be regarded as an eligible entity.
15	3.9.4(a) , pg.26	The technical and financial scores secured by each bidder will be added using weightage of 70% and 30% respectively to compute a Composite Bid Score.	Please specify whose price will apply when the scorer of the highest composite bid is identified, whether his price or the L1 price.	The price of the successful bidder would apply.
16	3.10.4, pg. 27	DeitY will require the selected bidder to provide a Performance Bank Guarantee, within 15 days from the Notification of	Please define 'ownership' as the performance bank guarantee is to be equivalent to 10% of the "total cost of	'Total cost of ownership' would be defined as the total contract value of the engagement of the legal consultant (arising out of this RFP).

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		award, for a value equivalent to 10% of the total cost of ownership.	ownership.”	
17	3.16, pg. 35	In such a case, the additional effort estimated by the bidder and its costs would be discussed and finalized in discussions with the Bidder. The basis of this cost would be the commercial bid OR the most relevant rate empanelment of the Consultant with any Central / State Government, as may be determined to be fair by DeitY at such time.	It is requested that the basis of such cost may only be the commercial bid.	The term “central/state Government” shall be read as “central government”.

Indicative scope of work for Law Firm, Details of Consortia and Incentive Structure

Indicative scope of work for Law Firm

1. Documents to be reviewed (primary due diligence not envisaged):
 - a. Demonstration of commitment:
 - i. MoA and AoA of the SPV, including shareholding agreements.
 - ii. Documents related to the equity structure to confirm shareholding and equity infusion.
 - iii. Legal agreements between consortium partners
 - iv. Legal validity of debt commitment letters
 - v. Legal validity of land documents
 - b. Final Stage:
 - i. Documents related to the equity structure to confirm shareholding and equity infusion.
 - ii. Financial closure documents
 - iii. Bank Guarantee documents
2. Documents to be prepared (and negotiated with applicant consortia):
 - a. Model documents (with customization for each consortia):
 - i. Performance guarantee agreements
 - ii. Undertaking for compliance with terms and conditions of Letter of Intent and Letter of Commitment
 - iii. Undertaking for non-limitation of end use of technology
 - iv. Undertaking for ethical conduct and good corporate practices
 - v. Undertaking for performance commitment
 - b. Documents to be prepared individually with each consortia:
 - i. Shareholding agreements with GoI
 - ii. Commercial agreements (including funding agreements) with GoI
 - iii. Undertakings with regard to end use to GoI funds

Note: It must be reasserted that the list of documents given above is *only indicative* and may change (including additions) during the course of the engagement as may be directed by the Empowered Committee. All document preparation and review would involve seeking clarifications and negotiations with the applicant consortia on behalf of GoI.

Details of Consortia

1. M/s Jaiprakash Associates Limited (with IBM, USA and Tower Semiconductor Limited, Israel as partners)
2. M/s HSMC Technologies India Pvt. Ltd. (with ST Microelectronics and Silterra Malaysia Sdn. Bhd. as partners)

Incentive structure

1. 25% subsidy on capital expenditure and tax reimbursement as admissible under Modified Special Incentive Package Scheme (M-SIPS) Policy.
2. Exemption of Basic Customs Duty (BCD) for non-covered Capital items
3. 200% deduction on expenditure on R&D as admissible under Section 35(2AB) of the Income Tax (IT) Act.
4. Skill development expenditure to be reimbursed as per various schemes of NSDC.
5. Investment linked deductions under Section 35AD of the IT Act subject to appropriate amendments to IT Act.
6. Disbursement under MSIPS to be on quarterly basis rather than annual basis.
7. Interest free loan of approx. Rs. 5124 Crore each. (Exact to be calculated on Detailed Project Report appraisal).
8. In consideration of the support provided by the Government, the promoters shall offer a golden share to the Government of India (GoI) or to the CPSU(s) to be nominated by the Government of India. An appropriate Shareholders Agreement shall be put in place to give effect to the foregoing requirements.
