

Government of India
Ministry of Communications and Information Technology
Department of Electronics and Information Technology
(IPHW Division)
RFP No. 28(9)/2013-IPHW

Clarification/Corrigendum regarding RFP for Selection of Professional Law Firm for support to DeitY to setup Semiconductor Wafer Fab facilities in India

Sl	Content of RFP requiring Clarification(s)	Points for Clarification	Corrigendum/Clarification
1	<p>Paragraph 3.10.4; p.27</p> <p>DeitY will require the selected bidder to provide a Performance Bank Guarantee, within 15 days from the Notification of award, for a value equivalent to 10% of the total cost of ownership. The Performance Guarantee should be valid for a period of at least six months. The Performance Guarantee shall be kept valid till completion of the project and Warranty period. The Performance Guarantee shall contain a claim period of three months from the last date of validity. The selected bidder shall be responsible for extending the validity date and claim period of the Performance Guarantee as and when it is due on account of non-completion of the project and Warranty period.</p>	<p>This provision envisages the furnishing of a performance bank guarantee (PBG) by a successful bidder. It is not industry practice for law firms to provide a PBG, and such a requirement would be without precedent in our experience. Please consider removing this requirement from the RFP.</p> <p>Further, and without prejudice to the aforementioned, (a) there is ambiguity about the meaning of the term ‘completion’ as used in paragraph 3.10.4, and it is unclear if this refers to completion of the project as a whole (which would not be within the control of the law firm) or only the completion of the mandate of the law firm, (b) extending the PBG through the ‘Warranty period’ would be untenable as this is to be provided by the project developer/ contractor and not the law firm, and (c) it is unclear whether the term ‘vendor’ used in this paragraph refers to one of the two selected consortia or to the successful bidder/ law firm in this RFP.</p>	<p>The requirement of Performance Bank Guarantee is mandatory for the successful bidder. PBG amount is reduced from 10% to 5%. DeitY will require the selected bidder to provide a Performance Bank Guarantee, within 15 days from the Notification of award, for a value equivalent to 5 % of the total cost of ownership.</p> <p>The term ‘completion’ in para 3.10.4 stands for the completion of final milestone as mentioned in para 3.14 ‘Payment schedule’.</p> <p>The term ‘Vendor’ in the referenced para would stand to mean the selected Law Firm.</p>
2	<p>Paragraph 2.1(c); p.9 Paragraph 3.9.3(e); p.25</p> <p>DeitY reserves the right to extend the Term for a period or periods of up to one year (twelve months) with a</p>	<p>A joint reading of paragraphs 2.1(c) and 3.9.3(e) indicates that an extension of up to 6 years is possible, and that services would have to continue to be provided for the entire period, at a fixed rate. It would not be feasible to provide services at a fixed rate, since cost escalations would be inevitable over</p>	<p>Cost escalation of upto 5% per annum may be allowed subject to the performance of the firm being satisfactory.</p>

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	<p>maximum of six such extensions on the same terms and conditions.</p> <p>The bidder would be bound to provide services in the period desired (for extension) at the same rates without any escalation.</p>	<p>such an extended period of time. It is requested that suitable provisions relating to escalation in costs are considered in the context of extensions.</p>	
3	<p>Paragraph 3.10.5; p.28</p> <p>DeitY reserves the right to terminate the services of the successful bidder at any stage of the work for reasons of unsatisfactory performance or for any reasons not in control of DeitY (for example, non-response of the applicants at any stage of the process)</p>	<p>It is unclear what kind of eventualities are covered by the phrase ‘reasons not in control of DeitY’, and it is requested that a clarification is provided which more clearly illustrates this, or alternatively that this phrase is removed. Further, it is requested that in the context of termination of services, a cure period could be provided where the successful bidder is given the opportunity to rectify any shortcomings which are communicated by DeitY.</p>	<p>Example of reasons beyond control of DeitY is non-response of the applicant consortia at any stage of the process.</p> <p>In such case, payments for milestones already completed would be made to the Law Firm.</p> <p>DeitY would provide a reasonable cure period (with mutual agreement) before services are terminated due to unsatisfactory performance of the Law Firm.</p>
4	<p>Paragraph 3.14, point 3 in the tabular column; p.35</p> <p>Milestone for payment - On initiation of negotiations for final agreement’</p>	<p>It is possible that different agreements will begin being negotiated at different points in time. In such a case, it is unclear when the payment will be made, and what the quantum of such payment will be – e.g. will the amount be 30% of the cost for all agreements to be paid as soon as negotiations begin on the first agreement, or 30% of the cost associated with only those agreement(s) on which negotiations have commenced on that date?</p>	<p>The payment milestone will be applicable for each agreement; i.e. in case one agreement starts negotiation earlier, then 30% of the fee would be payable at that time.</p>
5	<p>Paragraph 3.14(a); p.35</p> <p>The bid price is inclusive of all applicable taxes (excluding service tax) and out-of-pocket expenses. The bidder is required to make a reasonable estimate of the same and factor in the bid price.</p>	<p>It is standard practice for OPE to be reimbursed at cost, since it is not feasible to provide a realistic estimate at such an early stage. Further, it is specifically requested in the specific context of paragraph 3.14(b) that local travel also be included within the scope of ‘travel’.</p> <p>It is requested that all travel and OPE are reimbursed</p>	<p>No change. Bidders are requested to estimate out-of-pocket expenses and include it in overall bid price.</p>

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		at cost upon submission of documentary proof.	
6	<p>Paragraph 3.14(a); p.35</p> <p>The bid price is inclusive of all applicable taxes (excluding service tax) and out-of-pocket expenses. The bidder is required to make a reasonable estimate of the same and factor in the bid price. Any change in rates of taxation shall not be made good by DeitY and will have to borne in full by the successful bidder.</p>	<p>At present, Service Tax at a particular rate is applicable, and it possible that this rate may increase in the future. Since the RFP states that changes in rates of taxation shall not be made good by DeitY, it should be clarified whether any such differential (on account of an increase in the rate of Service Tax) would have to be borne by the successful bidder/ law firm, or by DeitY.</p> <p>Further, we understand that as of date there are no taxes other than Service Tax which would be attracted. Clarification is required on whether, in the event any new tax is levied which is applicable, DeitY would bear such tax.</p>	<p>The bidders are expected to quote prices exclusive of service tax.</p> <p>Service tax is to be borne by DeitY at actuals on a reverse charge basis.</p> <p>DeitY would pay only the bid price quote.</p>
7	<p>Form 2C; p.50</p> <p>[Entire form]</p>	<p>It would not be feasible to provide information in the level of detail which is mentioned, since it is not possible to accurately estimate the exact workflow of the team without knowing the exact level of complexity of the documents, the number of documents, the extent of negotiations, and other details of the project. Therefore, it is requested that removal of Form 2C is considered.</p>	<p>This form is to provide estimation on a best effort basis.</p>
8	<p>Form 4; p.42</p> <p>Documents required: Completion Certificates from the client; OR</p> <p>Work Order + Self Certificate of Completion (Certified by the Statutory Auditor); OR</p> <p>Work Order + Phase Completion Certificate (for ongoing projects) from the client</p>	<p>This provision should be amended to reflect the additional ‘supporting documents’ mentioned in paragraph 3.9.2(4), such as ‘Mandate Letter from Client’, ‘Email from Client Official email ID’ or ‘Deal Sheet from top research agencies...’.</p>	<p><i>Specific Requirement : Experience relevant to this engagement</i> of Form 4 at page 42 of the RFP is be amended as under:</p> <p>From:</p> <p>Completion Certificates from the client; OR</p> <p>Work Order + Self Certificate of Completion (Certified by the Statutory Auditor); OR</p>

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			<p>Work Order + Phase Completion Certificate (for ongoing projects) from the client</p> <p>To:</p> <p>Completion Certificates from the client; OR</p> <p>Work Order + Self Certificate of Completion (Certified by the Statutory Auditor); OR</p> <p>Work Order + Phase Completion Certificate (for ongoing projects) from the client; OR</p> <p>Certified copy of work contract + Self Certificate of Completion (Certified by Statutory Auditor); OR</p> <p>Mandate Letter from Client or Email from Client Official email ID; OR</p> <p>Deal Sheet from top research agencies such as Thomson Reuters, Mergermarket and Dealogic (bringing out the data required for evaluation)</p>
9	<p>Form 9.1; p.45</p> <p>Column 5 - 'Time committed for the engagement'</p>	<p>It is unclear what is meant by 'time committed for the engagement', and whether this means total number of hours, or hours per week, or some other formula/measure. It is requested that removal of this requirement is considered.</p>	<p>Total number of hours/days committed should be inserted.</p>
10	<p>Form 9.2; p.45</p> <p><i>[Entire form]</i></p>	<p>Once a commitment has been given with reference to undertaking the work done, it is unclear why the specific % time commitment of each team member is required to be provided. It is requested that removal of Form 9.2 is considered.</p>	<p>This data is necessary to estimate the amount payable in case of scope or time extension, as per para 2.1 and para 3.16 of the RFP.</p>
11	<p>2.1(c), pg. 9</p>	<p>Will the extensions be within a total period of 1 (one) year?</p>	<p>Extensions are possible in one year tranches of upto six years.</p>

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	DeitY reserves the right to extend the Term for a period or periods of up to one year (twelve months) with a maximum of six such extensions on the same terms and conditions.		
12	<p>3.4.3(a), pg. 14</p> <p>Bidders shall submit, along with their Bids, EMD of Rs. 2,00,000/- (Rupees Two Lakhs Only).</p>	Law firms generally work for clients without any demand from the latter for submission of EMD. JSA will like the condition of EMD dropped.	No Change. Non furnishing of Demand Draft or Bank Guarantee as EMD with the proposal would lead to the bid being summarily rejected
13	<p>Para 3.7, pg. 18</p> <p>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.</p>	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’.</p> <p>For guidance purposes, a ‘material’ deviation would be one due to which, in view of the Proposal Evaluation Committee, the capability of the law firm to deliver the project successfully may be compromised OR the Committee is rendered unable to evaluate the bid in full.</p> <p>Illustrative examples of material deviation are given below:</p> <ul style="list-style-type: none"> ○ Non provision of resource against a profile requirement ○ Non-compliance with the documentation requirements ○ 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 negotiations are envisaged for the same.</p>

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14	<p>Para 3.8.4, pg. 20</p> <p>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.</p>	<p>It is possible to identify the domain where outside expertise is required and indicate it in the bid, the appointment of the expert may be permitted after the bid owing to time constraint.</p>	<p>The bidder is expected to identify the expertise required from the scope of work, where outside expertise may be required. The appointment may be done post the bid, however a consent of the external expert must be provided that he is willing and committed to be appointed (and provided with the bid).</p> <p>Notwithstanding the above, timelines should not be delayed due to delay in hiring of external expert.</p>
15	<p>Para 3.9.1, pg. 21</p> <p>Against item 3 “Legal Entity” of the Chart in last column, copy of Certificate of Incorporation; and</p>	<p>To cover partnership firms, words “or other equivalent document” may be added as is the case against item 1.</p>	<p>Para 3.9.1 S. No. 3 Document Required in case of Legal Entity is amended as under:</p> <p>From</p> <p>copy of Certificate of Incorporation; and</p> <p>To</p> <p>Copy of Certificate of Incorporation; Or Equivalent Document</p>
16	<p>Para 3.10.4, pg. 27</p> <p>DeitY will require the selected bidder to provide a Performance Bank Guarantee, within 15 days from the Notification of award, for a value equivalent to 10% of the total cost of ownership.</p>	<p>Law firms may find it hard to submit BG and therefore, for the sake of good response the condition may be dropped.</p>	<p>As explained in SI No. 1 above.</p>
17	<p>Para 3.16, pg. 36</p> <p>In such a case, the additional effort</p>	<p>It is requested that the basis of such cost may only be the commercial bid.</p>	<p>No change</p>

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	<p>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.</p>		
18	<p>Form 1 under Appendix I, pg. 38 Item 8 “Consortiums not allowed”</p>	<p>The position regarding sub-contracting may be clarified here by adding the words “however, sub-contracting in accordance with the terms laid down in item 3.8.4 is permitted”</p>	<p>Form 1 under Appendix 1, is amended in line with Para 3.8.4, as under:</p> <p>From: Consortium not allowed.</p> <p>To: 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.</p>