

CLARIFICATION TO THE RFP

RFP No. 2(17)/2012-IPHW Vol. II(Part)

Subject: RFP for selection of Agency for processing of application and appraisal under M-SIPS floated on 28.11.2017 on Government procurement portal

Issuing Agency: Ministry of Electronics and Information Technology

Pre-bid conference: 13.12.2017

Following clarification are provided to the RFP:

#	Query of Bidders	MeitY Response	Remarks
1	The last date of submission is requested to be 3 weeks from date of pre bid meeting i.e. 5 January 2018.	The last date of submission of bid has been extended to 05.01.2018.	Please refer amended RFP.
2	Please clarify if the scope of work includes EMC application also. In case EMC evaluation also needs to be undertaken, the fee for EMC should be at least 2X the fee for MSIPS project of same size as the effort required is much more. Also, please clarify if support for development of EOS is included in the scope and payment terms thereof as the same is included in every page of the RFP.	The EMC Scheme has been closed w.e.f 21 th October, 2017. Hence EMC related work is being removed from the scope of this RFP.	Please refer amended RFP.
3	We request you to reduce the value of EMD considering the value of each assignment, usually which varies from 5% to 10% of the value of the assignment provided one assignment is given at a time. Please specify the number of assignments to be given at a time if it is more than one.	No change in EMD.	Keeping in view of the scope of the work, the EMD of Rs.10 lakh is appropriate.
4	Representative of M/s PWC has enquired whether EMD can be submit in the form of Demand Draft (DD)	Yes, it can be submitted in the form of DD payable to Pay and Accounts Officer, MeitY	Please refer amended RFP.
5	Representative of M/s PWC has requested that the indicative timeline for completing the assignment should be in working days and not days	No change	Timeline for completing the assignment is as per the requirement.
6	This seems to be very open ended. Kindly clarify the "need based" so that the team duration can be effectively mapped. Please clarify if the logical closure of the application would mean approval / rejection / closure of the project.	No change	Logical closure means till the incentives are disbursed to the applicant. There may be assistance/ support required from the appraising Consultant even at the stage of verification of disbursement claims on issues pertaining to land, capex, technology etc.. is issued. In some cases even after approval

			letter is issued, there is need of clarification like issues related to gross block for P&M in case of expansion/diversification project, land lease issues etc.
7	Historically, there are several instances where the appraisal of a particular application is undertaken but due to non submission of complete documents the application does not go through. However since there is considerable effort involved in such situations, then how would the fee be paid in such cases?	No change	The payment against the rejected case will only be limited to the cases where substantial effort is done by the Consultant in arriving at rejection of the application. No payment will be made against the cases which would be closed on the ground of not submitting essential documents or withdrawal of their application..
8 9 10	<p>The payment for the unit cost of proposal should be changed as follows</p> <p>(>= 500 crores) - Y</p> <p>(> = 100 and < 500 crores) - Y/2</p> <p>(>= 10 and < 100 crores) - Y /3</p> <p>< 10 crores - Y / 5</p> <p>For Projects above Rs. 3000Cr, the due diligence is very high and requires considerably more effort. Hence requesting you to revise the Project fee for projects above 300 Crs to 2*Y</p> <p>It is mentioned that the quoted amount of fees “Y” would be paid for the projects above Rs 500 crores, however the average project cost for the schemes such as EMC is lesser than Rs 500 crores due to which all the projects are liable to come under the second slab.</p> <p>Also, the amount of fees “Y” is proposed to be in numerical value in the financial proposal, due to which there would be no relevance to the project size, their efforts for appraisal by the PMA and fees charged by them. We therefore request MeitY to either accept the financial proposals in % basis; OR with a mix of fixed amount of fees for appraisal and some % on sanction. This is also due to the fact that certain efforts for both type of project would remain constant.</p>	No change	May please quote the value of Y as per the payment terms defined in the amended RFP
11	Due to inception of GST, service tax would not be applicable here. Hence, this should be exclusive of GST	Agreed	Please refer amended RFP.
12	The appraisal fee should be calculated separately for each phase and paid to the shortlisted bidder in that order rather than being assessed cumulatively.	No change	Appraisal of Follow-up application requires mainly examination of Financial Closure and Capex list. Therefore phase applications will not be treated independently. For the purpose of appraisal fee.
13	Out of Pocket Expenses for Site Visits should be payable as per actuals for the team visiting the site for inspection. An additional 10% of project fee may be provided for	No change	May please subsume this cost in value of Y.

	each site visit.		
14	As most of the EMC applications sanctioned till date are of around Rs 100 Crores per project, and the average size of previous MSIPS sanctioned is around Rs 250 crores per application, we request MeitY to kindly reduce the appraisal size to Rs 100 crores investment per project.	EMC related work is being removed from the scope of work.	-
15	Does the “investment” mentioned in section 7 (I) of RFP include the total investment brought in by the industry? Please clarify.	No, it is investment of a single project	-
16	While it is important to understand the impact of the project on Indian economy, no particular Economic Impact Study is expected to be carried out as a part of this study as per scope of the work even for large size proposals. Hence, we request MeitY to remove such clause / condition please or reduce the size of the project to investment of Rs 100 crores. Instead of the above, experience of working with the industry for proposals under EMC / MSIPS should be considered for better understanding of the implementation of project point of view. MeitY may suitably incorporate the same if found appropriate.	As per RFP	Please refer amended RFP.
17	There should be extra marks given for experience of appraisal in electronics industry	Not considered	As per RFP
18	The number of projects to get maximum marks should be specified	Breakup of the marks given in amended RFP	Please refer amended RFP.
19	In section 8, bidder wishes to clarify that any document submitted to MeitY shall be Bidder’s intellectual property and MeitY shall have the limited license to use it for evaluation of the bid. Further, if MeitY doesn’t return the materials submitted by Bidder, it will have to maintain the materials in strict confidence until it’s permanently destroyed.	As per RFP	No change
20	We wish to clarify: Our bid is based upon the information provided by MeitY in the RFP, if at a later stage it is found that the information was not correct and the same impacts the commercials, we assume that the Bidder shall have the right to make the necessary changes and submit the revised price. Bidder will not be able independently validate any information provided to it by MeitY, its agents or third parties and shall be entitled to rely upon such information.	Bidder has not right to make the necessary changes.	As per RFP
21	Please specify if you want the CD to be duly signed the authorised signatory using a permanent pen/marker.	Soft copy is not required. One original and one hard copy of the bid is required	Please refer amended RFP.
22	Please remove the forfeiture of EMD provision as Parties should seek remedy through the dispute settlement mechanism provided herein. Further, this rejection shall be applicable only for the pre-award stage. Any termination/rejection after the award will be governed by the subsequent Contract executed by the Parties.	No change	As per RFP
23	Request to clear as to what documents do we have to submit as part of Forms & Annexure and Others	May please refer section 7(I) S.No. 3.	As per RFP
24	Bidder wishes to clarify that the RFP document and the annexures will be subject to any deviation agreed by MeitY at the pre-award stage or subsequently agreed to by MeitY.	No deviation agreed by MeitY	As per RFP

25	We request you to reduce the value of PBG considering the value of each assignment, usually which is 10% of the value of the assignment provide one assignment is given at a time. Please specify the number of assignments to be given at a time if it is more than one.	PBG is as per RFP. Number of assignments to be given at a time to agency depending on number of application received	No change
26	Bidder wishes to clarify that it reserves the right to negotiate the provisions of the RFP, which have been agreed by MeitY at the pre-bidding stage, during the contracting stage.	No negotiate in the amended RFP.	As per RFP
27	The rejection in section 8(XVII) shall be applicable only for the pre-award stage. Any termination/rejection after the award will be governed by the subsequent Contract executed by the Parties.	No change	As per RFP
28	Request to remove the standard of performance under section 9(II) as it's very vague and subjective. We propose the following standard for the performance: <i>“Consultant services shall be performed in a good and workmanlike manner with reasonable skill and care and shall comply with the specifications as agreed between the parties in the Contract. Consultant disclaims all implied warranties, including without limitation that of merchantability or fitness for intended purpose”</i>	No change	As per RFP
29	Bidder wishes to clarify that all changes should be routed through a formal change mechanism process. Further, Bidder will not be liable to undertake any additional/modified scope of work unless a change request document has been mutually executed by the Parties.	No change	As per RFP
30	Bidder wishes to clarify, that performance of services under section 9 as per the project plan is dependent on multiple factors including client or third party appointed by Client in fulfilling their obligations. Bidder shall be responsible for any delay caused solely due to reasons attributable to the Bidder. Further, request to remove the right to exercise a variety of sanctions for delay under the Clause. The Clause provides for multiple remedies against a single breach. Bidder is willing to provide LDs for damages which would take care of MeitY's concern and also incentivize Bidder to perform services in a timely manner.	No change	As per RFP
31	In regard to the liquidated damages, we propose the following conditions: (i) Liquidated damages to be the sole and exclusive remedy of MeitY against all delays; (ii) Such liquidated damages shall only be imposed if the delays can be solely attributable to the acts of the Bidder; (iii) the maximum liability of the Bidder with respect to all LD or Penalty mentioned under this Agreement in aggregate to be 3% of the cost of activity delayed; (iv) Liquidated damages shall be counted towards the overall liability of the Bidder while computing the overall liability of the Bidder during each phase; (v) In the event Bidder meets the overall Project timelines agreed under the Agreement, the Bidder shall be paid back Liquidated Damages levied on the bidder during the term of the Contract; (vi) In the event Bidder completes the work ahead of the Project timelines scheduled in the Contract, the Bidder shall receive incentive payments, over and above agreed		No change

	amounts. (vii) Bidder shall not be responsible for any delays or non-performance of other parties or MeitY. We wish to reserve the right to negotiate this clause at the time of contracting.		
32	Request to remove section 9(IX) as Bidder does not agree to waive any of its rights as provided under applicable law.	No change	As per RFP
33	Please specify the format of the No Claim certificate	Agency has to submit it in its letter head.	As per RFP
34	The Bidder wishes to clarify that, where a Force Majeure Event subsists for more than thirty (30) days, Bidder may give written notice to the other party and immediately terminate the Contract. Upon such termination, MeitY shall pay Bidder for all Services performed up to the date of such termination under the Contract.	No change	As per RFP
35	There should be provision of annual increase in prices after discussion with the shortlisted bidders	No change	As per RFP
36	Bidder wishes to clarify that, if there is any change in scope of the services, the same will be subject to a change order request.	No change	As per RFP
37	Please clarify the intent of section 9(XIII). Will this be only subject to Tax and duties related deductions at source?	Payments shall be subject to deductions of TDS as applicable.	As per RFP
38	Request to make section 9(XV) mutual in form as Bidder will also share confidential information during the course of providing the services. Please make the obligation standard as that of reasonableness and not that of strict liability. As a matter of practice, Bidder is willing to accord same degree of treatment to MeitY's information as it provides to its own information of like nature. Any co-operation provided to MeitY if it challenges any disclosure order, Bidder will get paid for any cost incurred due to that. Bidder wishes to clarify that, Any damages paid to MeitY for breach of this clause will be subject to the overall liability cap agreed between the Parties under the Contract. Bidder's confidentiality obligation under the Contract or NDA shall survive for three years after the termination of the Contract. Bidder should not be liable for perpetual confidentiality obligation as the data exchange will practically lose its importance after that period.	No change	As per RFP
39	Under section 9(XVI), there should be protection for the internal deliverables of the shortlisted bidder	No change	As per RFP
40	Can the standard Non blacklisting template submitted by PwC for other tenders be submitted?	Fresh Non – Blacklisting certificate has to submit by agency as per section 9(XVII) of RFP.	As per RFP
41	In case of cancellation of the contract for convenience at any time, some compensation should be given to the aggrieved party	No change	As per RFP
42	We propose making section 9(XVIII) mutual. The right to terminate the agreement for convenience shall not be available to either party during first [3] years from the commencement of services. Further, MeitY should be liable to make the following payments to the vendor: i. charges for the services performed and deliverable delivered on pro rata basis till the	As per RFP	No change

	date of the termination; and ii. any reimbursable expenses incurred by the vendor including but not limited to demobilization cost, deferred expenses etc.		
43	Requesting to revise the clause as given under. This clause shall survive till any termination or expiry of the Contract. The bidder shall apply this clause to any consortium members / subcontractors or consultants, who have access to information, participate in the development of data, or participate in any other activity, related to this contract which is subject to terms of this clause, unless the Applicant includes an acceptable alternate subcontractor provision in its mitigation plan	As per RFP	Please refer amended RFP.
44	Any termination for not following mitigation plan shall be subject to the same cure period as proposed in the termination clause. MeitY shouldn't terminate the contract for any small breach without any kind of mitigation opportunity. Bidder employees will not execute any kind of agreement with MeitY. Bidder will undertake overall responsibility for acts and omissions of its employees. Bidder will not execute separate agreements with companies who wish to participate in the MeitY's scheme. As Bidder will receive information through MeitY, the confidentiality obligations with MeitY will be sufficient to protect any of the participating company's information. Bidder wishes to reserve the right to appeal for any termination/determination made by MeitY pursuant to this clause, if there is any perceived flaw in decision making.	As per RFP	Please refer amended RFP.
45	Instead we will sign an NDA with MeitY (as per the document) and MeitY can then sign these agreements with the companies	Not agreed	As per RFP
46	We wish to clarify that MeitY's right to terminate under this clause and anywhere else in the Agreement shall only be for material breach of bidder's obligations under the Agreement which are not remedied within 30 days of written notice from MeitY. We understand that Bidder shall have equal termination rights in case of any material breach by MeitY of any of its obligations under the RFP or subsequent agreement which are not remedied within 30 days of written notice from MeitY. Further, in case of termination of the RFP, the following payments shall be made to the Bidder: Payment of services performed till the date of such termination.	-	As per RFP
47	Bidder wishes to clarify that upon the termination of the Agreement, Bidder will not be liable to undertake any additional work. Any transition assistance shall be subject to a separate agreement and as per the pricing agreed therein.	-	As per RFP
48	Bidder proposes the alternate liability provision: Bidder's liability (whether in contract, tort (including, without limitation, negligence or breach of statutory duty), to MeitY concerning performance or non-performance by Bidder, or in any manner related to this Agreement, for any and all claims, shall be limited to an aggregate amount equal to 100% of the total fees paid or payable by MeitY to Bidder hereunder with respect to the work involved under the applicable Agreement.		As per RFP

	Bidder shall not be liable for incidental/consequential or indirect damages including loss of profit or saving		
49	The risk of the consultant should be capped to the contract value	No change	As per RFP
	The liability of 3 (three) times the Agreement value seems to be too high. Requesting the Ministry to limit the value to one time of the agreement value	No change	As per RFP
50	Arbitration will be governed by the Arbitration and Conciliation Act, 1996 and the procedural laws of India	No change	As per RFP
51	Request of deletion of this point as the bidder can discuss as to what were the reasons for rejection of their application	No change	As per RFP
52	This clause should be modified to just include investigations against the organization and not employees as investigations against employees in their personal capacity should not be part of this declaration	No change	As per RFP
53	Request to remove the certification requirement under section 10 (III). Bidder reserves the right to negotiate on the issues agreed upon by MeitY at the pre-bidding stage or the deviations approved of by MeitY following the queries submission.	No change	As per RFP
54	<p>We agree in principle on the indemnification from the Bidder, but it would in the interest of both the parties to be specific on the language in order to avoid any unambiguous or broad indemnities. Please remove the existing broad indemnity language and we suggest the following similar language as below:</p> <p>“a) Bidder shall indemnify MeitY, and shall always keep indemnified and hold MeitY, its employees, personnel, officers, directors, (hereinafter collectively referred to as “Personnel”) harmless from and against any and all losses, liabilities, claims, actions, costs and expenses (including attorneys' fees) relating to, resulting directly from or in any way arising out of any third party claim, suit or proceeding brought against MeitY as a result of any or all Deliverables or Services infringing any trademarks, copyrights of third parties by the Bidder.</p> <p>b) Bidder shall indemnify for event mentioned above, provided MeitY complies with the following:</p> <p>(i) notifies the Bidder in writing as soon as practicable when MeitY becomes aware of the claim; and</p> <p>(ii) Cooperates with the Bidder in the defense and settlement of the claims.</p> <p>However, (i) the Bidder has sole control of the defense and all related settlement negotiations (ii) MeitY provides the Bidder with the assistance, information and authority reasonably necessary to perform the above and (iii) MeitY does not make any statements or comments or representations about the claim without the prior written consent of the Bidder, except where MeitY is required by any authority/regulator to make a comment / statement / representation.</p> <p>If use of deliverables is prevented by injunction or court order because of any such claim or deliverables is likely to become subject of any such claim then the Bidder, after due inspection and testing and at no additional cost to MeitY, shall forthwith either 1) replace it with a non-infringing equivalent; or 2) obtain a license for MeitY to continue the use of the service, as required by MeitY as per the terms and conditions of this Tender and subsequent Agreement; or 3) modify it to make it non-infringing provided that such replacement or modification does not result in a</p>	No change	As per RFP

	<p>degradation of the performance or quality of the Services or Deliverable. If such option is not available on commercially reasonable terms, the Indemnifying Party will so notify MeitY will cease use of such item and return it to the Bidder, and the parties will mutually discuss the way forward. In such event the parties will seek to establish mutually acceptable alternative arrangements and to make any appropriate adjustments to their respective obligations under this Agreement though the execution of a Change Request.</p> <p>Bidder shall not be liable for defects or non-conformance resulting from any change, not made by or on behalf of the Bidder, to some or all of the deliverables supplied by the Bidder or modification thereof, provided the infringement is solely on account of that change”.</p>		
55	We require more clarification about the intent of section 10(IV) 6. What kind of restrictions is being referred to over here? Is this applicable on Bidder?	This is in line with section 9(XIX) and 9(XX) of RFP.	-
56	<p>Repetitive of M/s Accenture has requested to add following client responsibilities in RFP:</p> <ul style="list-style-type: none"> • MeitY shall retain responsibility for its compliance with all applicable laws and regulations and for ensuring the compliance of the Services and Deliverables with all laws applicable to MeitY and its business. • MeitY shall obtain all consents necessary from third parties required for Bidder to perform its obligations under this Agreement. • MeitY understands that Bidders performance is dependent on MeitY's timely and effective performance of the MeitY Responsibilities and timely decisions and approvals by MeitY. Accenture shall be entitled to rely on the accuracy and completeness of the information shared by the MeitY, all decisions and approvals of MeitY in connection with the Services. Changes in decisions and approvals are subject to change request procedure. 	Not agreed	-
57	Confidential Information needs to be shared on a strict need to know basis for the purposes relating to this project. Subject to confidentiality restrictions, PwC should be given a one-time approval to refer to this engagement for client citation purposes.	This may subject to compliance section 9(XV) of RFP.	-
58	While we are ok to return hard copies of confidential information made available by client and/or delete or make reasonably inaccessible any electronic copies thereof - however we need to retain our internal working papers and central IT archives as per our organizational data policies. That said, we are ok to state that any retained copies of confidential information by us shall be maintained in confidence as per the terms of this agreement.	This may subject to compliance section 9(XV) of RFP.	-
59	Is subcontracting allowed as part of the engagement	Not allowed. However, selected bidder may take services from specialised agency if required.	-