

**Ministry of Electronics and Information Technology  
(IPHW Division)**

**Clarifications**

Dated: 01.07.2022

**RFP Ref number:** 38/28/2021-IPHW dated 13/06/2022

**RFP Title:** Selection of Agency for Transaction Cum Legal Adviser (“TA”) for Modernization/Commercialization of Semi-Conductor Laboratory, Mohali.

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1.	7&8	6	<p><i>Preparing the deal collateral for the transaction including drafting of the following documents but not limited to:</i></p> <p><i>b) Preliminary Information Memorandum (“PIM”) with intent to providing prospective buyers information about SCL, Mohali and its business to enable them to send in their Expression of Interest.</i></p> <p><i>g) Assist MeitY in fixing the range of the fair reserve price considering the valuation of SCL, Mohali, based on the methods employed in the financial services sector and highlighting the pros and cons of various methods and also highlighting the fact that many variations of these valuations exist. MeitY will have the option of valuation done from any other agency</i></p> <p>We request the Authority to kindly clarify the following</p> <ul style="list-style-type: none"> <li>● Whether the basic data of projections of future cash flow (valuation purpose) would be provided by Authority.</li> <li>● Also is the selected TA cum legal advisor expected to get the valuations done from registered valuers?</li> </ul>	<p>Asset valuation (Land &amp; Building, Movable Assets such as Plant &amp; Machinery, Office Equipment, Computer, Furniture Fixture, Vehicles) is being carried out by MeitY, separately. However, business valuation/ enterprise valuation shall be part of the contract. Documentation and relevant information w.r.t. asset valuation shall be furnished by MeitY.</p>
2.	7&8	Clause 6 - Roles and responsibilities of Transaction cum Legal adviser	<p>As per point (g) of <i>Clause 6 – Roles and responsibilities of Transaction cum Legal adviser</i>, scope of work also includes assisting MeitY in fixing the range of fair reserve price considering the valuation of SCL Mohali. In this regard, please clarify the following:</p>	<p>Asset valuation (Land &amp; Building, Movable Assets such as Plant &amp; Machinery, Office Equipment, Computer, Furniture Fixture, Vehicles) is being carried out by MeitY, separately. However, business valuation/ enterprise valuation shall be part of this contract. Documentation and relevant information w.r.t. asset</p>

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			<ol style="list-style-type: none"> <li>1. whether MeitY would appoint a separate asset valuer for the purpose of valuation?</li> <li>2. Is business valuation covered under the scope of TA?</li> </ol>	valuation shall be furnished by MeitY.
3.	8 and 16	Clause 6(h) - Roles and responsibilities of Transaction cum Legal adviser and Clause 14.2(d)	<p>As per point (h) of <i>Clause 6 – Roles and responsibilities of Transaction cum Legal adviser</i>, scope of work also includes preparation and execution of legal documents. The said clause is reproduced hereunder:</p> <p><i>“Preparation and execution of requisite agreements (share purchase agreement, shareholders’ agreement etc.), and all legal documentation required for execution of the transaction on behalf of MeitY, on mutually acceptable terms with the successful bidder.”</i></p> <p>Further, as per clause 14.2, MeitY shall bear the following expenses</p> <p><i>“Fees and expenses related to external legal advisors appointed by MeitY for drafting and providing shareholders agreement and such other related agreements related to the strategic sale”</i></p> <p>It seems that there is an overlap for certain activities/work stream, hence please clarify whether <u>preparation/drafting of shareholders agreement and such other related agreement</u> is covered under the scope of TA or a separate external advisor will be appointed by the MeitY for the same.</p>	<p>All legal services shall be provided by the agency only. MeitY will not appoint any separate legal adviser / transaction adviser.</p> <p>The clause 14.2 (d) has been inadvertently added in the RFP.</p>
4.	9&10	Clause 7 - Key Deliverables	<p>As per clause 7 of the RFP document, sub-contracting of the assignment is not permissible. However, Deloitte Touche Tohmatsu India LLP (“DTTILLP”) is not authorised to provide nor take responsibility for legal services or legal advice.</p> <p>Based on the perusal of the RFP document we understand that scope of the TA also includes legal services as well. Further, we understand that the bid can be submitted in a consortium.</p> <p>(a) Accordingly, request you to kindly confirm if the bid can be submitted in a consortium.</p>	Bid may be submitted in consortium mode with one lead partner (Transaction Advisor) and a legal partner.

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			<p>(b) Further, kindly consider including the below language in the engagement letter or contract:</p> <p><i>“Since DTTILLP is not authorized to engage itself on legal issues, it therefore has subcontracted the work to _____ (“Law Firm”) to address such parts of the scope of work which require to be addressed from the legal angle. In respect of all legal issues concerning the Project/Contract, the advice provided by the Law Firm would have to be relied upon by the Client.”</i></p>	
5.	10	Clause 8 - Eligibility Criteria	For conditions prescribed under Clause 8(b) and 8(c), can we consider a specific transaction for both of the said clauses or are the transaction should be mutually exclusive?	Clause 8(b) states that the bidder should have completed at least 3 transactions in the last 5 years. Clause 8(c) states that the size of at least one transaction out of these three should be of Rs.500 Crore (Rupees Five Hundred Crore Only) or more.
6.	10	8(d)	<p><i>The company/LLP should be a reputed professional firm having overall experience of at least 10 years in providing advisory services for strategic disinvestment or strategic sale or Merger &amp; Acquisition activities or private equity investment transactions etc.</i></p> <p>Kindly note that BDO India LLP (part of BDO Global) has been in existence for over 8 years. We hence request for a dilution of the referred clause up to 7 years in order to facilitate our participation in the process. Alternatively, in case our consortium partner has an overall experience of over 10 years, will the same be acceptable.</p>	No Change
7.	7 & 11	6/8(e)	<p><i>The Transaction adviser (TA) cum Legal adviser shall be a company/LLP and will be required to undertake tasks related to all aspects of the proposed strategic commercialization culminating into successful completion of the transaction and would, inter-alia, include but not limited to advising and assisting MeitY on modalities of modernization/ commercialization and the timing;</i></p> <p><i>The selected bidder must have specialized teams for legal advisory and transaction advisory to be deputed for this assignment having a team of at least 15 partners having at least 4 partners as lawyer.</i></p> <p>We request the Authority to kindly allow the consortiums to bid for</p>	Bid may be submitted in consortium mode with one lead partner (Transaction Advisor) and legal partner.

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			<p>the Project.</p> <p>As per extant regulations, potential transaction advisors who are also audit firms, cannot provide legal services.</p>	
8.	11	Clause 8 - Eligibility Criteria	Please clarify whether the condition mentioned on point 8(e) i.e., minimum requirement of 15 partners is applicable only as an eligibility criterion or the requirement is to have 15 partners as part of the engagement team for the proposed assignment?	8(e) is the eligibility criteria. All partners shall not be required to depute for the task. Marks will be awarded as per the no. of partners.
9.	11 and 12	Clause 9.2 - Technical Evaluation marks scheme	Whether any presentation is required for supporting the parameter (point 1) mentioned for technical evaluation? If so, please share the details for the same such as date, time and mode etc.	Supporting Documents w.r.t the parameter mentioned in point 1 of the Clause 9.2 will suffice.
10.	12	Clause 9.2 - Technical Evaluation marks scheme	<p>For Point 2 of the table, criteria for technical evaluation mentions that work done in sectors should be indicated by the bidder (as reproduced hereunder). However, the parameter does make reference to any specific sector.</p> <p><i>“Based on the company size for which the transaction was done. Indicate work done in the sector like studies or research undertaken and exhibit strength/expertise in the sector, if any”</i></p> <p>Please clarify whether the reference here is made to semi-conductor sector or all the sectors are covered?</p>	Preference in awarding marks shall be given to relevant sectors such as semiconductors, electronics manufacturing, telecom, Renewal Energy, Automobile etc.
11.	14	Clause 9.4 - Bid evaluation and Award of Work	<p>As per clause 9 of the RFP, “The firm achieving the highest combined technical/ financial score will be H1 Bidder and will be invited for negotiations for the purpose of scope of this RFP. <u>In the event of conflict of interest, H1 bidder shall recuse, and the case shall be allotted to the H2 bidder. If the situation so arises that both the bidders have worked for the applicant at some stage in any capacity both the bidders will recuse from the assignment and the assignment would be undertaken by engaging H3 Bidder.</u>”</p> <p>Based on the perusal of the RFP document, we understand that the</p>	“Conflict of Interest” shall be as per DIPAM guidelines.

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			meaning of “conflict of interest” is not defined in the RFP document. Request you to kindly define the same. Please consider ““conflict of interest” as defined under DIPAM guidelines.	
12.	14 and 15	10 Submission of RFP	For eligibility, the RFP document requires applicant to enclose supporting proofs and documents as necessary to prove the eligibility criteria. Is there any specified list of documents which shall be accepted as supporting document to substantiate the eligibility or bidder can submit the relevant document(s) by their own?	Bidder can submit the relevant supporting document(s) as they deem fit to substantiate the eligibility. However, if required, MeitY may seek additional supporting documents.
13.	16	13 Payment Terms	<p>Considering substantial efforts would be required in the initial phase i.e., finalisation of modalities/structuring of transaction, finalisation of timing, finalisation of EOI/PIM. Accordingly, we sincerely request if the existing payment terms (as laid down in clause 13) can be revised as follows:</p> <ul style="list-style-type: none"> <li>○ on finalization of modalities/transaction structure – <b>10%</b></li> <li>○ on issuance of the Eol/PIM, if required – <b>20%</b></li> <li>○ on issuance of the RFP and CIM – <b>20%</b></li> <li>○ completion of transaction by selection of party/ies and approval of Share Purchase Agreement/Company Incorporation with or without a JV Partner – <b>40%</b></li> <li>○ successful completion of commercialization of SCL, Mohali and on-boarding of a commercial partner – <b>10%</b></li> </ul>	No Change in payment terms.
14.	16	14. Expense of parties	<p>As per clause 14, In performing its services, selected bidder/agency shall bear the following expenses which inter-alia include “All fees and expenses related to external professionals appointed by agency”.</p> <p>Request you to kindly provide the list of external professionals required to be appointed by the bidder/agency.</p>	It is up to agency to hire any relevant external professionals for performing its services.
15.	16	14. Expense of parties	It is provided that bidder shall bear the expenses related to external professionals appointed by the bidder. Please clarify which external professionals can be appointed by the bidder since we understand as per terms of RFP that sub-contracting of assignment is not	Sub-contacting to other company is not allowed. However, any specialized professionals may be hired by the agency, if required or the bid can be submitted in consortium mode with one lead partner (Transaction Advisor) and a legal partner.

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			<p>allowed.</p> <p>Further, whether appointment of valuers is included in scope of work of Transaction advisor or will be directly appointed by MeitY?</p>	
16.	16	14.2(d)	<p><i>Fees and expenses related to external legal advisors appointed by MeitY for drafting and providing shareholders agreement and such other related agreements related to the strategic sale</i></p> <p>Will MeitY be appointing external legal advisors for draft of documents and agreements because on the basis of our understanding of the scope of services mentioned in clause 6(h) on page 8 of the RFP document, we as transaction cum legal advisors need to draft the agreements referred to in the clause. Kindly provide clarification with regards to the same.</p>	<p>All legal services shall be provided by the agency only. MeitY will not appoint any separate legal adviser / transaction adviser.</p> <p>The clause 14.2 (d) has been inadvertently added in the RFP.</p>
17.	17	15.1.2(b)	<p><i>Such misrepresentation/ improper response shall lead to the disqualification of the Applicant. If the Applicant is a Consortium, then the entire Consortium and each Member may be disqualified / rejected.</i></p> <p>We seek clarification with respect to the number of members that can form a consortium, eligibility criteria for consortium and rules governing consortium.</p>	<p>Sub-contacting to other company is not allowed. All professionals should be the part of the agency. However, the bid can be submitted in consortium mode with one lead partner (Transaction Advisor) and a legal partner.</p>
18.	19	Clause 16.3 - Performance Bank Guarantee (PBG)	<p>Within 15 days after intimation of selection, the selected firms shall have to submit a Performance Bank Guarantee equivalent to 3% of the project cost in the form of unconditional, Selection of transaction cum legal adviser for Modernisation/Commercialization of SCL, Mohali unequivocal and irrevocable Bank Guarantee (BG) from any Commercial Indian Bank and valid for 3 years and any applicable extension periods as may be mutually accepted.</p> <p>We understand that project cost means the amount of financial bid submitted by the H1 bidder. Request you to kindly confirm the same.</p>	<p>PBG will be the 3% of the final contract price</p>
19.	20	Clause 16.3.2 - Proposal security forfeiture	<p>Please clarify what is Proposal Security? Is this the same as Earnest Money Deposit of INR 1 lakh referred to in clause 16.4?</p>	<p>Proposal Security may be referred as EMD</p>

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			Further, we understand that the Proposal Security is separate from the Performance Bank Guarantee mentioned in clause 16.3. Trust our understanding is correct?	
20.	25	Annexure III Draft NDA – C clause 7	<p>As per point 7 of the NDA, “The Parties agree that during the existence of the term of this Agreement, neither Party shall solicit directly or indirectly the employees of the other Party”</p> <p>In light of the above, request you to kindly consider to-add the below clause in the NDA:</p> <p><i>“This shall not prevent either party from running recruitment campaigns nor from offering employment to any partner, employees, officers, directors, or staff of either party who may respond to such campaigns.”</i></p>	NDA mentioned in the RFP is a template. It shall be finalized at the time of award.
21.	25	Annexure III Draft NDA – Clause 8	<p>As per clause 8 of the NDA, The term of this Agreement shall be xxxx from the date of its execution by both Parties. Both the parties shall jointly review this Agreement after end of xxxx and shall extend it for xxxxx at a time if mutually agreed upon by both the parties</p> <p>Requesting you to kindly add the below in the above clause:</p> <p><i>“..and shall automatically terminate upon the earlier of (i) the parties entering into a definitive engagement agreement for providing services or (ii) one year from the date of this Agreement.”</i></p>	- do-
22.	25	Annexure III Draft NDA – Clause 10	<p>Requesting you to kindly consider the below modified clause:</p> <p><i>“Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by <u>a soler arbitrator mutually appointed by the Parties in accordance with</u></i></p>	- do-

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			<i>the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be Mumbai, India. Any claim for losses under this Agreement shall be restricted to direct losses only.</i>	
23.	26	Annexure III Draft NDA – Clause 12	After clause 12, request you to kindly consider including the below clause:  “Nothing in this Agreement is intended to confer any rights/remedies under or by reason of this Agreement on any third party.”	- do-
24.	26	Annexure III Draft NDA	We understand that the as a part of our bid, we need to accept the format (including terms and conditions of the NDA) and the NDA shall be executed at the time of execution of contract. Please clarify.	- do-
25.	27	Annexure IV - Proforma for Bank Guarantee towards Performance Security	We understand that the as a part of our bid, we need to accept the format (including terms and conditions of the PBG). Please clarify.	- do-
26.		-	Draft engagement letter / contract is not mentioned in the RFP document. Request you to kindly share the same. Further, we are hereby annexing our general business terms and conditions (“GBT”) for your reference. Request you to kindly take note of the same.  We will further corroborate GBT with the draft engagement letter/ contract, once shared with us.	Engagement Letter/ Letter of Award shall be finalized at the time of award after negotiation.
27.	NA	NA	Draft Contract to be signed with Finalized TA cum legal advisor  We request the Authority to kindly provide the draft agreement for the said works. Further we request the Authority to kindly consider adding the following clauses in the draft agreement.	The contract will be signed with the agency. Agreement will be finalized after negotiation and time of award.



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			<p>The TA cum Legal Advisor may terminate this Agreement, or any particular Services, immediately upon written notice to the Client if the Consultant reasonably determines that it can no longer provide the Services in accordance with applicable law or professional obligations.</p>	
28.	NA	NA	<p>Draft Contract to be signed with Finalized TA cum legal advisor</p> <p>We request the Authority to kindly provide the draft agreement for the said works. Further we request the Authority to kindly consider adding the following clauses in the draft agreement.</p> <p>The Client shall not recover from the Consultant, in contract or tort, under statute or otherwise, any amount with respect to loss of profit, data or goodwill, or any other consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.</p>	-do-