

**RFP for Selection of Agency for
Application Processing & Appraisal under
EMC and M-SIPS**

(Ref no.: 2(17)/2012-IPHW Vol.II (part))

RFP release date: 28.11.2017

Last date of Proposal submission: 20.12.2017

**Ministry of Electronics and Information Technology
Government of India
Electronics Nikatan
6, CGO Complex, Delhi – 03**

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Section 1: Invitation for proposal

- a. Ministry of Electronics and Information Technology, Government of India invites the bidders to submit their technical and financial offers for providing program management services for Application Processing and Appraisal under EMC and M-SIPS, in accordance with the conditions and manner prescribed in this Request for Proposal (RFP) document.
- b. For details on eligibility, objectives, instructions for RFP submission, terms and conditions, etc., prospective bidders are requested to download the detailed document from www.meity.gov.in. Last date of submission of responses to the RFP is 20th December, 2017.
- c. It is important to note that this RFP is open to all. Bidder agencies are advised to study this RFP document carefully before submitting their proposals in response to the RFP Notice. Submission of a proposal in response to this notice shall be deemed to have been done after careful study and examination of this document with full understanding of its terms, conditions and implications.
- d. This RFP document is not transferable.

S. No	Informati	Detail
1.	RFP release date	28.11.2017
2.	Last date for submission of written queries for clarifications	13.12.2017
3.	Date of pre-bid conference	13.12.2017
4.	Release of response to clarifications	15.12.2017
5.	Bid validity period	120 days from the last date (deadline) for submission of proposals
6.	Last date (deadline) for submission of bids	20.12.2017 (3.00 pm)
7.	Opening of technical bids	20.12.2017 (3.15 pm)
8.	Place, time and date of opening of financial proposals received in response to the RFP notice	Will be intimated later

S. No	Information	Details
10.	Earnest Money Deposit (EMD) in the form of a bank guarantee	INR 10,00,000/- (Indian Rupees Ten lacs only)
11.	Contact person for queries	Mr. Anil Kumar Yadava, Scientist 'B' IPHW Division, 4253C, 4 th Floor, Ministry of Electronics and Information Technology, Electronics Niketan, 6- CGO Complex, New Delhi – 110003 Phone: 011-24301433 Email: anil.yadava@meity.gov.in
12.	Addressee and address at which proposal in response to RFP notice is to be submitted:	Mr. Rajesh Suri Dy Director Ministry of Electronics and Information Technology 4 th Floor Electronics Niketan, 6- CGO Complex New Delhi – 110003 Phone:011-2430192 Email: rajesh.suri@nic.in

Section 2: Overview

- 2.1 With proactive Government initiatives based on the specific measures suggested by the Task Force, the electronics industry, which includes semiconductor design, high-tech manufacturing, electronic components, Electronics Manufacturing Services (EMS), electronic systems design and hardware have been projected to grow from USD 29.2 billion in 2014-15 to USD 37.4 Billion in 2015-16 (Y-o-Y growth of 28%) to USD 49.5 Billion in 2016-17 (Y-o-Y growth of 32%). to USD 400 billion by 2023-24.
- 2.2 Based on the recommendations and as part of Government's effort to promote and help develop the eco-system for ESDM sector in the country, Ministry of Electronics and Information Technology (MeitY) had proposed important Policy measures, namely, Modified Special Incentive Package Scheme (M-SIPS), Electronic Manufacturing Clusters(EMC), Electronic Development Funds(EDF) etc.
- 2.3 One of the main impediments in the way of attracting investments for manufacture of semiconductors, components and electronic products is lack of availability of good and reliable infrastructure. Government of India has proposed a package of incentives to attract domestic and global investments into ESDM sector as a means to minimizing the disabilities.
- 2.4 M-SIPS aim to promote large-scale manufacturing in the ESDM sector by providing a special incentive package across the value chain including manufacturing of final product. The incentive would partially offset the disabilities faced by domestic ESDM industry due to factors like higher cost of power, finance, logistics, fragmented location of industry etc. and

thereby reduce the viability gap faced by the units, manufacturing in India. The scheme was launched by the Government in July 2012. The scheme was initially opened to receive applications for 3 years i.e. till 26-07-2015. For giving a big boost to electronics manufacturing in the country, in August 2015, the Government approved the extension of the scheme along with the few procedural simplifications and expansion of scope of new product categories. Recently, the Government has approved certain amendments in the M-SIPS policy which are notified on 30-01-2017. The amendments are expected to expedite investments in electronic manufacturing. The copy of amendment is available in public domain at http://meity.gov.in/sites/upload_files/dit/files/msips%20notification.pdf.

The scheme mainly provides 20-25% subsidy for investments in capital expenditure for setting up of electronic manufacturing facility. It also provides for reimbursement of CVD/excise for capital equipments for the non-SEZ units. The incentives are available for 44 categories of electronic products and product components. Units across the value chain starting from raw materials to assembly, testing, and packaging of these product categories are included.

2.5 The Electronics Manufacturing Clusters (EMC) scheme was notified by the Government of India vide Notification no. 252[F.No. 8(50)/2011-IPHW] dated 22nd October, 2012 in Part-I, Section 1 of the Gazette of India (Extraordinary) to provide support for creation of world-class infrastructure and facilities to attract investments into the Electronics System Design and Manufacturing (ESDM) sector. The Guidelines for operationalization were issued on 15th April, 2013. Guidelines for constitution of Special Purpose Vehicle (SPV) for implementation of EMC were issued on 30th January, 2014. The application(s) for seeking grant assistance under EMC scheme can be made either by the Chief Promoter or by an SPV. Both Private and Government agencies can promote and develop the Electronics Manufacturing Clusters. The assistance for the projects in Greenfield Electronics Manufacturing Cluster is restricted to 50% of the project cost subject to a ceiling of Rs. 50 crore for every 100 acres of land. For lower extent, the extent of support is decided by the Steering Committee for Clusters (SCC) subject to the ceiling of Rs. 50 crore. For Brownfield EMC, 75% of the cost of infrastructure, subjected to a ceiling of Rs. 50 crore is provided as Grant. This scheme is open for receiving applications for five years from the date of notification i.e. upto 21st October, 2017. Further period of five years is available for disbursement of funds to the approved applicants. The applications received under the scheme are appraised on an ongoing basis. The EMC Notification and Guidelines thereof, can be viewed on the MeitY website - www.meity.gov.in/esdm/clusters.

Section 3: Purpose

Ministry of Electronics and Information Technology (MeitY) Requests for Proposal (RFP) from bidders meeting the eligibility as laid down in the this RFP to participate with MeitY to assist the MeitY in the processing and appraisal of the proposals to be received under aforementioned policy schemes (M-SIPS and EMC).

Section 4: Scope of work

The selected bidder will be required to provide support to MeitY starting from pre-appraisal processing of received applications; appraisal of received application (s) including supporting the Appraisal committee / Screening committee and such other steps required for obtaining the final decision of the Competent Authority in the Government on the application (s) and the subsequent release of subsidy to the applicant under both the schemes, namely, M-SIPS and EMC¹. On a broad level, the scope of work has been categorized in terms of the following:

The selected bidder would be required to undertake a detailed assessment and appraisal of the application. Following is a list of indicative broad heads of the application appraisal aspects which shall be further customized² based on the requirements of both the schemes.

- a. Promoter / promoter group assessment
- b. Technology tie-ups and potential marketing assessment – A broad level assessment in terms of assessing the technology tie-ups, product market and its relevance to Indian markets, etc along-with assessment of future after sales, supply and dependence on raw materials
- c. Technology Assessment: An assessment of technology proposed for the product and the technology used in manufacturing setup in terms of its State-of-the art nature.
- d. Financial analysis including project cost, funding sources, financial projections and ratios, business model assessment, cash flow projections, commercial assumptions, sensitivity analysis
- e. Project Risk Analysis
- f. Legal methods including examination of documents furnished/agreements/bonds to be signed etc.
- g. Reasonability of Capital expenditure proposed by the applicant

More specifically for EMC, the following aspects shall be required to be covered as part of the application appraisal:

- a. Assessment of critical infrastructure like water, power, roads, buildings as well as cost estimates

- b. Review and compliance of Special Purpose Vehicle (SPV) against the EMC scheme and guidelines
- c. Environmental assessment – regulatory clearances, etc

The detailed appraisal may require site visit and meetings with bankers / Financial Institutions or other stakeholders like State Governments, etc supporting the project and seeking additional information from the applicants, if required. In addition, for large size proposals (value > INR 500 crores), the selected bidder will have to undertake an input output analysis on identified parameters like employment, sourcing of raw materials, technology market, etc for the specific projects as part of the Detailed Appraisal Note.

The selected bidder would provide complete support to MeitY in preparing and presenting the Appraisal Notes to Appraisal Committees (AC) of M-SIPS and Steering Committee for Clusters (SCC) for the EMC scheme respectively and subsequently to the Competent Authority. The selected bidder would be required to provide support to MeitY till the logical closure of received applications under both the schemes which may be either approval or rejection of the applications by the competent authority. Further, once an application is approved by the Competent Authority, the selected bidder would assist MeitY with regards to issue of approvals and signing of any agreements with the applicant.

Please note that the selected bidder shall be required to develop specific application appraisal templates for both the schemes(including all variants under each of the two schemes) separately which shall have to be got approved by MeitY before the application appraisal can be undertaken.

Team requirement

Considering the large and complex scope of work (as described in the preceding section) which will be spread over 3 years, the overall scope of the selected bidder will be divided in terms of the following:

The selected bidder will have to depute specialized teams for appraisal of the received application (s) under M-SIPS and EMC within defined timelines which are provided in Section 5. Please note that team is required to be deployment only during the appraisal time on an as and when needed basis. Further, the selected bidder will have to ensure that the proposal appraisal team (s) to be deployed will have expertise for relevant domain including electronics (as per policy verticals), financial appraisal, legal (national and international laws and policies), corporate affairs, etc. The selected bidder will have to demonstrate the same as part of the bidding process by suggesting a suitable team structure for the proposal appraisal team and also the ability to source such resources for these aspects related with project appraisal / business proposal appraisal.

Section 5: Proposed schedule for completing the assignment

Following Table provide a list of milestones and the associated timelines for both the schemes.

S. No.	Milestone	Indicative Timeline (in days)
7.	Date of issuance of Acknowledgement of completed application)	T0
8.	Date of receipt of complete documents(including land , capex, technology and Financial Closure details)	T1
10.	Submission of Detailed Appraisal Note	T1 + 15
11.	Support for Appraisal Committee (AC) meeting	T1 + 30
12.	Support to MeitY for preparation of self-contained note for approval of competent authority	T1 + 37
13.	Support to MeitY till logical closure of the application	Need based

Section 6: Payment schedule

It is proposed to enter into a “Proposal based payment ‘P’ – milestone basis” with the selected consultancy agency(s) to execute this project as per the following:

Milestone	Payment
Submission of Detailed Appraisal	50 % of P
Project approval / rejection by Government (competent authority) and	50 % of P

Unit cost of proposal (P) will be calculated as per the framework provided below:

	Project range (in INR)*	Amount payable (P)
1	≥ 500 crores	Y
2	≥ 100 and < 500 crores	Y / 2
3	≥ 10 and < 100 crores	Y / 5
4	< 10 crores	Y / 10

For projects where project cost \geq INR 500 crores, value of P will be the same as that of value of Y.

Please note that the financial bids are invited in the following format:

Unit cost for one proposal = 'Y' (taxes extra as applicable)

Where,

P = Actual amount payable for a proposal (calculated based on above table) and exclusive of applicable service tax but inclusive of OPE(Operational Expenses).

Note:

In the case of multi-phase project, applicable rate will be decided based on cost of the phase for which the complete appraisal is conducted. That is the appraisal fee for phase one will be based on cost of phase one and not the entire project cost. The appraisal fee for subsequent phases may be provided, once the follow-up application (next phase application) is also appraised by the same Consultant and if there is a level jump as per the table above(considering first phase cost + subsequent phase cost).

Section 7: Evaluation & Award criteria

The shortlisted bidders by MeitY shall be required to submit a technical and financial proposal which shall be evaluated by MeitY.

I. Technical Evaluation

- a. In this stage, the Technical Proposal will be evaluated on the basis of the bidder's experience, its understanding of the Scope of Work, proposed methodology and work plan and the qualifications and experience of Key Personnel.
- b. Each technical proposal will be assigned a technical score (ST). The maximum technical score which a bidder can attain is 100 marks.
- c. A minimum of 75 marks should be scored in the technical proposal for the bid to be declared technically qualified. The Financial Bids of only those bidders who have obtained a Technical Score of 75 or more shall be opened.
- d. The technical evaluation shall be in terms of the following parameters and marking scheme:

Technical Evaluation marks scheme

S. No.	Parameter	Max. Marks	Criteria for Technical Evaluation
1	Previous experience of bidder for project appraisal / business proposal appraisal of at least INR 1000 crores investment per project in India	20	Number of projects wherein the bidder has done project appraisal / business proposal appraisal of at least INR 1000 crores investment per project – The bidder with the maximum projects will get maximum marks whereas the other bidders will get marks on a pro-rata subject to a maximum of 10 projects.
2	Experience of having undertaken Economic Impact study in India for project / proposal where investment was of at least INR 1000 crores	10	Bidder should have undertaken at least one Economic Impact study in India for project / proposal where investment was of at least
3	Approach & Methodology	30 (10 X3)	Understanding the scope Approach & Methodology Work plan
4	Quality and competence of Team Leader (TL) and 3 Key Personnel (KP) to be deployed as part of appraisal team.	40 (10X 4)	Marks will be awarded only in respect of the CVs furnished of the proposed Key Personnel to be deployed for the project with relevant experience – Please refer table 3 below for minimum requirements of Key Personnel. Four CVs are required to be submitted by the bidder, out of which 2 CVs will be selected.
Total		100	

All the bidders which meet the minimum qualifying criteria during technical evaluation as prescribed above will be considered for opening of the financial bids. Bidders whose proposals will not meet the technical evaluation criteria or were found non-responsive to RFP will be notified as rejected and their financial proposals will be returned unopened after completing the selection process.

II. Financial evaluation

- a. In this stage, the financial evaluation of the proposal will be carried out of the bidders who qualify in the technical evaluation after determining whether the Financial Proposals are complete, unqualified and unconditional

The Financial bids shall be ranked and evaluated on the basis of the Contract Price quoted by the bidders. The bidder shall have to quote as per the financial template given in table below

Financial bid template

	Cost of 'Y' (in INR) ' Y' as defined in Section 6, Payment Schedule of this RFP
In numerals	
In words	

Note: "Y" is to be quoted exclusive of applicable taxes. Taxes will be paid extra as applicable.

- b. The Contract Price shall be all inclusive including of any stationery, telephone expenses, infrastructure requirements such as laptops, data cards, etc as may be required by any of the resources deployed. Cost of domestic visits (if any) has to be borne by the bidder.
- c. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the agency to be compensated and the liability to fulfil its obligations as per the Scope of Work within the total quoted price shall be that of the bidder.
- d. The payment shall be made on an as per actual basis for the 'Y' component.
- e. Any conditionality included in the financial bid shall lead to summary disqualification of the entire bid and forfeiture of the Earnest Money Deposit (EMD).
- f. The bidder who quoted the lowest value of Y'' in INR shall be ranked as L1 and the next higher and so on will be ranked as L2 and L3.

III. Award of work

Two bidders will be selected for the purpose of scope of this RFP. Each of them will provide two resources each. The L2 bidder will have to match the L1 price for quote on 'Y'. If L2 bidder fails to match the L1 price, the offer will be passed on to L3 bidder. The two selected bidders will get alternate applications for appraisal, in the order of date of receiving without discretion to choose cases. Each consultant shall declare on allotment of a case, that he has no conflict of interest with the appraisal. Thereafter, he shall take up the appraisal. In the event of conflict of interest, respective bidder shall re-cuse and the case shall be allotted to the other consultant. 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 appraisal of particular application(s) and the appraisal would be undertaken by engaging a the third party Consultant..

IV. Duration of Contract:

The contract will be valid for 3 years subject to satisfactory performance of the selected bidders (to be assessed on yearly basis till the validity of this contract). Further, depending upon the requirement, extension of maximum one year (beyond 3 years) can be granted on mutual consent on same tender rate.

Section 8: Instructions to Bidders

I. Completeness of response

- a. Bidders are advised to study all instructions, forms, terms, requirements and other information in the RFP documents carefully. Submission of bid will be deemed to have been done after careful study and examination of the RFP document with full understanding of its implications.
- b. The response to this RFP should be full and complete in all respects. Failure to furnish all information required by the RFP documents or submission of a proposal not substantially responsive to the RFP documents in every respect will be at the Bidder's risk and may result in rejection of its proposal and forfeiture of the bid EMD.

II. Proposal preparation costs

- a. The bidder is responsible for all costs incurred in connection with participation in this process, including, but not limited to, costs incurred in conduct of informative and other diligence activities, participation in meetings/discussions/presentations, preparation of proposal, in providing any additional information required by MeitY to facilitate the evaluation process, and in negotiating a definitive contract or all such activities related to the bid process. MeitY will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

- b. This RFP does not commit MeitY to award a contract or to engage in negotiations. Further, no reimbursable cost may be incurred in anticipation of award or for preparing this bid.
- c. All materials submitted by the bidder become the property of MeitY and may be returned completely at its sole discretion.

III. Bidder enquiries & clarifications

- a. All enquiries / clarifications from the bidders, related to this RFP, must be directed in writing exclusively to the contact person notified in this RFP document.
- b. The preferred mode of delivering written questions to the aforementioned contact person would be through fax or email. Telephone calls will not be accepted. In no event will the MeitY be responsible for ensuring that bidders' inquiries have been received by MeitY. The queries by the bidders will be provided in the following format:

S No.	Page	Section	Sub Section	Details	RFP clause on which	Clarification Required

- c. MeitY will endeavour to provide a full, complete, accurate, and timely response to all questions. However, MeitY makes no representation or warranty as to the completeness or accuracy of any; neither response nor does MeitY undertake to answer all the queries that have been posed by the bidders. The responses to the queries from all bidders will be distributed to all.
- d. No request for clarification from any bidder will be entertained after the due date.

IV. Pre-bid meeting

MeitY will hold a pre-bid meeting with the prospective bidders on as per schedule.

V. Amendment to RFP

- a. MeitY reserves the right to (a) relax or waive any of the conditions stipulated in this RFP document as deemed necessary in the best interest of the MeitY and the objective of the project without assigning any reasons thereof and (b) include any other item in the Scope of work at any time after consultation in the pre-proposal meeting or otherwise.
- b. The amendment will be notified in writing and by email to all prospective bidders who have been issued this RFP document and will be binding on them.
- c. In order to afford prospective bidders reasonable time in which to take the amendment

into account in preparing their bids, MeitY may, at its discretion, extend the last date for the receipt of bids.

VI. MeitY's right to modify submission deadline

MeitY may, in exceptional circumstances and at its discretion, can extend the deadline for submission of proposals by issuing an corrigendum through website and in writing by intimating all bidders who have been provided the proposal documents, in writing, in which case all rights and obligations of the project and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

VII. MeitY's right to terminate the process

- a. MeitY may terminate the RFP process at any time and without assigning any reason. MeitY makes no commitments, explicit or implied that this process will result in a business transaction with anyone.
- b. This RFP does not constitute an offer by MeitY. The bidder's participation in this process may result in MeitY selecting the bidder to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by MeitY to execute a contract or to continue negotiations. The MeitY may terminate negotiations at any time without assigning any reason.

VIII. MeitY's right to accept / reject all / any proposals

MeitY reserves the right to accept or reject any proposal, and to annul the bidding process and reject all Bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected bidder or bidders of the grounds for MeitY's action.

IX. Earnest money deposit (EMD)

- a. Bidders shall submit, along with their bids, EMD of INR 10,00,000/- (Indian Rupees Ten lakh only) in the form of a Bank Guarantee only in favour of "Pay and Accounts Officer, Ministry of Electronics and Information Technology, GoI", payable at Delhi, from any Commercial Bank valid for 6 months. EMD in any other form shall not be entertained.
- b. The EMD shall be denominated in Indian Rupees only. No interest will be payable to the bidder on the amount of the EMD.
- c. Unsuccessful bidder's EMD will be discharged / returned as quickly as

possible, but not later than 30 days after the award of the contract to the successful bidder .

- d. The EMD may be forfeited:
 - (i) If a bidder withdraws his / her bid or increases his / her quoted prices during the period of bid validity or its extended period, if any; **OR**
 - (ii) In the case of a successful bidder, if the bidder fails to sign the contract or to furnish Performance Bank Guarantee within specified time in accordance with the format given in the RFP.
- e. The EMD shall be submitted with the technical bid in a separately sealed envelope as mentioned in this section. Bids submitted without adequate EMD will be liable for rejection.

X. Submission of bids

- a. The bidders should submit their offers in two parts namely, “Technical bid” and “Financial bid” and in the format given in this document.
 - i) Technical Bid – Original – 1 hard Copy + 1 soft copy
 - ii) Financial Bid – Original – 1 hard Copy + 1 soft copy
- b. The bidder should submit soft copy of technical bid on a non-rewritable CD media in a sealed envelope technical bid should be in a single file in PDF format.
- c. The bidder should submit soft copy of financial bid on a non-rewritable CD media in a sealed envelope technical bid should be in a single file in PDF format.
- d. The CD media must be duly signed using a permanent pen/marker and should bear the name of the bidder.
- e. The hardcopies and softcopy of the technical proposal should be in a single sealed envelope, clearly marked as “Technical Proposal – Selection of agency for Application Processing and Appraisal under EMC and M-SIPS”.
- f. The hardcopy of the financial proposal should be in separate sealed envelope, clearly marked as “Financial Proposal – Selection of agency for Application Processing and Appraisal under EMC and M-SIPS”.
- g. All the envelopes including Technical & Financial Bid (s) shall be sealed in an outer envelope marked "RFP for Selection of agency for Application Processing and Appraisal under EMC and M-SIPS – DO NOT OPEN BEFORE hours on (date). Both technical and financial bids have to be sealed properly in separate envelopes. If any of the technical / financial bids is found open, bids will be liable to be rejected.
- h. The outer envelope shall indicate the name and address of the bidder to enable the proposal to be returned unopened in case it is declared “late”. Both inner and outer

envelopes shall be addressed to MeitY at the address specified in this section.

- i. The proposal shall be prepared in indelible ink. It shall contain no inter-lineation or overwriting, except as necessary to correct errors made by the bidder itself.
- j. Any such corrections must be initiated by the person (or persons) who sign(s) the proposals.
- k. All pages of the proposal must be sequentially numbered and shall be initiated by the authorised representative of the bidder.

XI. Venue and deadline for submission

- a. Proposals must be received at the address specified below , on or before the scheduled time on last date of submission:

Mr. Rajesh Suri
Dy. Director
Ministry of Electronics and Information Technology
4th Floor Electronics Niketan, 6- CGO Complex
New Delhi – 110003
Phone: 011-2430192

- b. Any proposal received by MeitY after the above deadline shall be rejected and returned unopened to the Bidder.
- c. The bids submitted by telex / telegram / fax / e-mail etc. shall not be considered and no correspondence will be entertained on this matter.
- d. MeitY shall not be responsible for any postal delay or non-receipt / non-delivery of the documents. No further correspondence on the subject will be entertained.
- e. Any default by the bidder in respect of tender terms and conditions will lead to rejection of the bid and forfeiture of EMD
- f. MeitY reserves the right to modify and amend any of the above-stipulated condition / criterion depending upon project priorities vis-à-vis urgent commitments.

XII. Documents comprising the bid

1. Proposal Covering letter
2. A power of attorney by the CEO or competent authority authorizing the Bidder to sign / execute the proposal as a binding document and also execute all relevant agreements forming part of RFP.
3. Earnest Money Deposit (EMD) amount in the form of a Bank Guarantee
4. Technical proposal
 - a. Understanding of scope
 - b. Approach & Methodology
 - c. Work plan
 - d. Staffing schedule

- e. Team Composition
 - f. Curriculum Vitae (CV's) of 4 personnel(one TL and 3 KP)
 - g. Forms & annexure
 - h. Others
 - i. Presentation(optional)
5. Financial proposal Cover letter
 6. Financial proposal

XIII. Contract finalization

- a. MeitY shall notify the successful bidder in writing by hand delivery, speed post or by fax, that its proposal has been accepted.
- b. Until a formal contract is signed, the notification of award along with the complete RFP document including all annexure and appendices will constitute a binding contract between successful bidder and MeitY.

XIV. Notification of award

- a. Prior to the expiration of the period of proposal validity, the successful bidder will be notified by MeitY in writing or by fax or email that its proposal has been accepted.
- b. Until a formal contract is signed, the notification of award along with the RFP document will constitute a binding Contract between Successful bidder and MeitY. Upon the Successful bidder/implementation agency's executing the contract with MeitY, MeitY will promptly notify each unsuccessful bidder

XV. Signing of contract

From the time MeitY notifies the successful bidder that its bid has been accepted, a formal contract shall be signed between the selected bidder and MeitY incorporating all agreements as provided in Annexure I.

XVI. Performance bank guarantee (PBG)

Within 15 days of the selected firms being intimated about their selection they are to submit a Performance Bank Guarantee of Rs 50 lakhs in the form of unconditional, unequivocal and irrevocable Bank Guarantee (BG) from any Commercial Indian Bank and valid for 3.5 years and any applicable extension periods as may be mutually accepted. The EMD submitted as security will be discharged after the receipt of the Performance Bank Guarantee from the selected bidder.

XVII. Failure to abide by the terms & conditions of RFP / contract

Failure of the Successful bidder to agree with the Terms & Conditions of the RFP / Contract shall constitute sufficient grounds for the annulment of the award of contract, in which event the contract may be awarded to the next most responsive bidder.

Section 9: General Terms & Conditions

I. Applicability

These general conditions shall apply to the extent that they are not superseded by provisions in any other part of the contract.

II. Standards of Performance

The Consultant shall perform the services and carry out its obligations under the contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and with professional consulting standards recognized by international professional bodies and shall observe sound management practices. The Consultant shall always act, in respect of any matter relating to the contract, as faithful advisors to MeitY and shall, at all times, support and safeguard MeitY's legitimate interests in any dealings with third parties

III. Use of contract document and information

The Consultant shall not, without MeitY's prior written consent, disclose the contract or any provision thereof, or any specification, design, drawing, pattern, sample or information furnished by or on behalf of MeitY in connection therewith, to any person other than a person employed by the Consultant in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance. The Consultant shall not without MeitY's prior written consent, make use of any document or information forming a part of this tender and/or otherwise acquired regarding MeitY including its business except for purpose of performing the contract. Any document forming a part of this tender, other than the contract shall solely remain the property of MeitY

IV. Currency of Payments

Payment shall be made in Indian Rupees (INR) only.

V. Change Orders

MeitY may at any time, by a written order given to the Consultant make changes within the general scope of the contract in the services to be provided by the Consultant. If any such change causes an increase in the cost of, or the time required for the Consultant's performance of any part of the work under the contract, whether changed or not changed by the order, an equitable adjustment shall be made in the contract price or delivery schedule, or both and the contract shall accordingly be amended. Any claims by the Consultant for adjustment under this clause must be asserted within thirty days from the date of receipt of change order by the Consultant.

VI. Contract Amendment

No variation in or modification of the terms of the contract shall be made except by written amendment signed by both parties to the Contract.

VII. Delay in Consultant's Performance

The selected bidder shall provide consultancy services in accordance with the time schedule specified in section 5 of this RFP.

Any unexcused delay by the vendor in the performance of his implementation / service / other obligations as per conditions of the contract shall render the selected bidder liable to any or all of the following sanctions;

- a. Forfeiture of his performance security, b. Imposition of liquidated damages, and / or c. Termination of the contract for default

If at any time during performance of the contract, the selected bidder should encounter conditions impeding timely implementation of the services, performance of services, the selected bidder shall promptly notify MeitY in writing of the fact of the delay, the likely duration and its cause(s), before the scheduled delivery date. MeitY shall evaluate the situation after receipt of the notice and may at their discretion extend the time schedule for delivery

VIII. Liquidated damages

If the selected bidder fails to perform the services within the time schedule specified in section 5 of the RFP, MeitY shall without prejudice to its other remedies under the contract, deduct from the contract price, as liquidated damages, a sum equivalent to the 1% of the contract price ('Y' component) for every week (seven days) or part thereof of delay, up to maximum deduction of 10% of the contract price. Once the maximum is reached, MeitY may consider termination of the contract pursuant to the conditions defined in section on Termination.

IX. No Claim Certificate

The Consultant shall not be entitled to make any claim, whatsoever against MeitY under or by virtue of or arising out of the contract, nor shall MeitY entertain or consider any such claim, if made by the Consultant after it shall have signed a "No claim" certificate in favour of MeitY in such forms as shall be required by MeitY after the works are finally accepted.

X. Force Majeure

Notwithstanding the provisions of Clause on Termination and Delay in Consultant's Performance, the Consultant shall not be liable for forfeiture of his performance security, liquidated damages or termination for default, if and to the extent that, his delay in performance or other failure to perform his obligations under the contract is caused due to circumstances beyond his reasonable control and is the result of an event of Force Majeure.

For purposes of this Clause, "Force Majeure" means an event beyond the control of the Consultant and not involving the Consultant and not involving the Consultant's fault or negligence and not foreseeable. Such events may be inclusive, but are not limited to, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes. If a Force Majeure situation arises, the Consultant shall as soon as practicably possible notify MeitY in writing of such conditions and the cause thereof. Unless otherwise directed by MeitY, the Consultant shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

XI. Governing Language

The Governing Language of the contract is English.

XII. Applicable Law

The Contract shall be interpreted in accordance with the Indian Laws for the time being in force and will be subject to the exclusive jurisdiction of a competent court of jurisdiction within the city of Delhi

XIII. Firm Prices

The prices quoted for the providing consultancy services shall be firm throughout the period of contract and shall not be subject to any change except on account of increase or decrease of applicable taxes which shall be passed on to MeitY.

XIV. Deduction

Payments, as envisaged in price schedule, shall be subject to deductions (such as TDS) of any amount, for which the Consultant is liable under the agreement against this tender.

XV. Confidentiality

The Consultant must understand and agree that all materials and information marked and identified by MeitY as 'Confidential' are valuable assets of MeitY and are to be considered MeitY's proprietary information and property.

Consultant will treat all confidential materials and information provided by MeitY with the highest degree of care necessary to ensure that unauthorized disclosure does not occur. Consultant will not use or disclose any materials or information provided by MeitY without MeitY's prior written approval.

The Consultant may disclose confidential information in the following circumstances:

- a. With the prior written consent of MeitY;
- b. To a member of Consultant's team ("Authorized person") if the authorized person needs the confidential information for performance of obligations under the contract; and the authorized person is aware of the confidentiality of such information; and
- c. To government or statutory body for audit or any other purpose as directed by MeitY

In the event the Consultant is required by judicial or administrative process, to disclose any information or material which is deemed to be confidential under the Contract and the resultant Non-Disclosure Agreement, the Consultant shall promptly notify MeitY, and if MeitY deems fit co-operate with MeitY to challenge such process before making disclosure.

The Consultant shall be liable to fully recompense MeitY for any loss of revenue arising from breach of confidentiality. MeitY reserves the right to adopt legal proceedings, civil or criminal, against the Consultant in relation to a dispute arising out of breach of obligation by Consultant under this Clause.

The requirements of use and confidentiality set forth herein shall survive the expiration, termination or cancellation of this tender.

Nothing contained in the contract shall limit the Consultant from providing similar services to any third parties or reusing the skills, know-how, and experience gained by the employees in providing the services contemplated under the contract.

The Consultant shall strictly abide by its Confidentiality obligations, and shall sign a separate Non Disclosure Agreement (NDA) as a condition precedent to signing the resultant Contract with MeitY in the format given for such NDA.

The obligations of the Consultant with regard to Confidentiality under this engagement shall cease to the extent that the recipient can prove that the disclosed Confidential Information was –

- a. Rightfully communicated to the recipient free of any obligation of confidence subsequent to the time it was communicated to the recipient by MeitY;
- b. As of the time of its disclosure, lawfully part of the public domain;
- c. Subsequently learned from a third party; or it was developed by the recipient independently of and without reference to any information communicated to the recipient by MeitY;
- d. Communicated in response to a valid order by a Court of competent jurisdiction or other governmental body, but only to the extent of and for the purposes of such order;

- provided however, that the recipient shall first notify MeitY in writing and permit MeitY to seek an appropriate protective order;
- e. Previously known by the recipient without any obligation to hold such information in confidence; and/or
 - f. Approved for release by written authorization of the disclosure, but only to the extent of such authorization.

XVI. Documents prepared by the Consultant

All documents, specifications, reports and other documents prepared by the Consultant in the execution of the Contract shall become and remain the property of MeitY and before termination or expiration of the Contract the Consultant shall deliver all such documents, prepared under the contract along with a detailed inventory thereof, to MeitY.

XVII. Non-Blacklisting

The bidder has not been blacklisted by any Central / State Government, Ministry / Department or any other Government organization; or under a declaration of ineligibility for corrupt or fraudulent practices during the last 5 (five) years as on the date of submission of the Bidders response to this RFP; involved in any major litigation that may have an impact of affecting or compromising the delivery of services as required under this assignment. If at any stage of bidding process or during the currency of the contract, any suppression/ falsification of such information is brought to the knowledge of MeitY, MeitY shall have the right to reject the bid or terminate the contract, as the case may be, without any compensation to the Bidder.

XVIII. Cancellation of the contract

MeitY reserves the right to terminate the resultant Contract for convenience at any time during its term by giving the selected bidder 15 (fifteen) days notice of the same. MeitY's only obligation towards the selected bidder in the event of termination for convenience shall be to pay the selected bidder for services performed prior to the effective date of termination to the satisfaction of MeitY.

XIX. Conflict of Interest

The bidder represents that it, its consortium members or associates are not a party to any agreement which represents a conflict of interest with its role as MeitY's consultant or the terms of the resultant Agreement which materially and adversely affects the Consultant's ability to perform the defined services for MeitY. Further, Consultant agrees it will not enter into any agreement or business relationship during the term of this Agreement that could place him in a conflict of interest position.

Bidders have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Employer, or that may reasonably be perceived as having this effect. Any such disclosure shall be made as per the Standard forms of technical proposal provided herewith. If the bidder fails to disclose said situations and if the MeitY comes to know about any such situation at any time, it may lead to the disqualification of the bidder during bidding process or the termination of its Contract during execution of assignment.

XX. Organizational Conflict of Interest

An organizational conflict of interest means that because of other activities or relationships with other persons, the selected bidder is unable or potentially unable to render impartial assistance or advice to MeitY, or the selected bidder's objectivity in performing the contract work is or might be otherwise impaired, or a potential applicant has an unfair competitive advantage. It does not include the normal flow of benefits from incumbency.

MeitY is of the view that in the current scenario potentially significant organizational conflicts of interest may arise due to the nature of the work to be performed by the selected bidder under the resultant contract due to an existing or future engagement between the selected bidder and the potential applicant. The onus of disclosure shall lie on the selected bidder as iterated above.

The bidder shall submit to MeitY a duly filled in form reflecting any existing or past engagement pertaining to the assignment.

MeitY may make a determination to allow a bidder to participate in an acquisition subject to the submission of an acceptable mitigation plan in accordance with paragraphs (1) and (2) below. Notwithstanding anything to the contrary, MeitY's exercise of discretion under this clause may not be appealed.

- (1) If MeitY requests, the bidder shall submit an organizational conflict of interest mitigation plan for MeitY's review. MeitY's determination regarding the adequacy of the mitigation plan or the possibility of mitigation is unilateral decisions made solely at MeitY's discretion and is not subject to the Disputes resolution clause. MeitY may terminate the contract for default if the selected bidder fails to implement and follow the procedures contained in any approved mitigation plan.
- (2) Any mitigation plan shall include, at a minimum, non-disclosure agreements to be executed by the bidder and the bidder employees supporting MeitY per paragraph related with MeitY's determination to allow a bidder above. Items for consideration in a mitigation plan include the following: identification of the organizational conflict(s) of interest; reporting and tracking system; an organizational conflict of interest compliance / enforcement plan, to include employee training and sanctions, in the event of unauthorized disclosure of

sensitive information; a plan for organizational segregation (e.g., separate reporting chains); and data security measures.

This clause shall survive any termination or expiry of the Contract for a period of 1 (one) year thereafter. 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.

All the employees of the selected bidder shall be trained and informed of this provision and the approved mitigation plan, and shall execute individual Non-disclosure Agreements for protection of sensitive information with MeitY

The selected bidder agrees that it will use all reasonable diligence in protecting information received by it during the bid process and thereafter. The selected bidder further agrees it will not wilfully disclose proprietary data to unauthorized parties without the prior permission of MeitY, and that proprietary data shall not be duplicated, used or disclosed, in whole or part, for any purpose other than to accomplish the contracted effort. This restriction does not limit the successful applicant right to use, duplicate or disclose such information if such information was lawfully obtained by the successful applicant from other sources.

The selected bidder agrees to enter into written agreements with all companies whose proprietary data it shall have access and to protect such data from unauthorized use or disclosure as long as it remains proprietary. The selected bidder shall furnish to MeitY copies of these written agreements. The selected bidder agrees to protect the proprietary data and rights of other organizations disclosed to him during performance of the resultant contract with the same caution that a reasonably prudent person would use to safeguard highly valuable property.

The bidder agrees that if after award it discovers a potential organizational conflict of interest, a prompt and full disclosure shall be made in writing to MeitY. This disclosure shall include a description of the actions the applicant has taken or proposes to take, to avoid or mitigate such conflicts.

MeitY may in its sole discretion waive application of this clause when it is determined to be in the best interest of the Government to do so.

MeitY shall not be liable to reimburse any expenses incurred in preparation of this bid by an applicant in case a bid is rejected for breach of this provision. MeitY's right to reject a bid under this provision shall not bar it from seeking any other equitable remedy available to it under applicable law.

XXI. Termination

The Authority may, by not less than 30 (thirty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this clause, terminate this Agreement if:

- a) The Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension, within 30 days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- b) The Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- c) The Consultant fails to comply with any final decision reached as a result of arbitration proceedings;
- d) The Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- e) Any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- f) As the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not 60 days; or
- g) The Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

XXII. Cessation of Services

Upon termination of this Agreement by notice of, 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

XXIII. Limitation of liability

The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof

The Consultant shall, subject to the limitation specified in the subsequent clause be liable to MeitY for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the MeitY's property, shall not be liable to the MeitY:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds the contract value

The limitation of liability specified in this provision clause shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the sole action of the Consultant to the extent of the Consultant's or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

XXIV. Conciliation

In the event of any Dispute between the selected bidder and MeitY, either Party may require such Dispute to be referred to the Secretary, MeitY and the authorized Chairman of the Board of Directors of the Bidder for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved either Party may refer the Dispute to arbitration in accordance with the provisions of the clause "Arbitration".

XXV. Arbitration

If efforts in conciliation fail, the Parties to the resultant contract agree to resolve their contractual disputes in accordance with the ICADR Arbitration Rules, 1996 and to have the ICADR act as appointing authority and/or provide administrative services, may use the following clauses;

If dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived therefrom, the parties agree to submit that dispute to arbitration under the ICADR Arbitration Rules, 1996.

The authority to appoint the arbitrator(s) shall be the International Centre for Alternative Dispute Resolution.

The International Centre for Alternative Dispute Resolution will provide administrative services in accordance with the ICADR Arbitration Rules, 1996.

The number of arbitrator(s) shall be 3.

The language of the arbitrator proceedings shall be English. The place of arbitration proceedings shall be New Delhi.

Section 10: Annexure

I. Cover Letter (Technical)

Date

To,

Subject: Selection of agency for Application Processing and Appraisal and support for development of EOS under EMC and M-SIPS

Reference:

Dear Sir,

With reference to your RFP Document dated, I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Consultant for Application Processing and Appraisal under EMC and M-SIPS. The proposal is unconditional and unqualified.

2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.

3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.

4. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.

5. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

6. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/We declare that:

- (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;
- (b) I/We do not have any conflict of interest in accordance with Clause on Conflict of Interest of the RFP Document;

9. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.

10. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.

11. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.

12. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority [and/ or the Government of India] in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.

13. The Bid Security of INR/- (Indian Rupees only) in the form of a Demand Draft is attached, in accordance with the RFP document.

14. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.

15. I/We agree to keep this offer valid for 120 days from the bid submission date specified in the RFP.

16. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith.

17. In the event of my/our firm/ consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form in the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.

18. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.

19. I/We agree and undertake to abide by all the terms and conditions of the RFP Document.

In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

Name:

Designation:

(Company Seal)

II. Cover Letter (Financial)

(On Applicant's letter head)

Date

To,

Dear Sir,

Subject: Selection of Agency for Application Processing and Appraisal under EMC and M -SIPS Reference:

I/We, _____ (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for above.

I/We agree that this offer shall remain valid for a period of 120 days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

Name:

Designation:

(Company Seal)

Note: The Financial Proposal is to be submitted strictly as per forms given in the RFP.

III. No Deviation Certificate

(To be submitted in the Bidder's letter head)

To,
The

Subject: No Deviation Certificate

Reference:

Dear Sir,

With reference to above, this is to confirm that as per tender conditions, we have understood the requirements before submission of our offer. We also confirm that we have not changed / modified the tender documents as appeared in the website/ issued by you and in case of such observance at any stage, it shall be treated as null and void.

We hereby confirm that we have not taken any deviation from tender Clauses together with other references as enumerated in the above referred Tender. We hereby confirm our unqualified acceptance to all terms & conditions, unqualified compliance to all the terms and conditions in the above referred tender.

Yours Sincerely

Name:

Designation:

(Company Seal)

IV. Draft Contract

The Agreement is made on this _ day of month _____, 2012.

BETWEEN

xxxxxxx, having its registered office at xxxxxxx (hereinafter referred to as the “Consultant” which term shall unless repugnant to the context include representatives and assigns of the Consultant).

AND

The President of India, acting through the (Insert Designation), **Ministry of Electronics and Information Technology**, having its office at **6, Electronics Niketan, C.G.O. Complex** (hereinafter referred to as the “Client”)

The Consultant and the Client may be called collectively as Parties or individually as Party where the context so requires.

NOW THEREFORE, in consideration of mutual premises, representations, covenants and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree with the following terms and conditions and to be bound thereby:

1. Scope of Work

The Consultant agrees to provide consultancy services to the Client to assist the MeitY in the processing and appraisal of the proposals to be received under aforementioned policy schemes (M-SIPS and EMC).

2. Priority of Documents

The documents forming the Agreement are to be taken as mutually explanatory of one another. In the event of conflict between the documents constituting the Agreement, they shall have priority in the following order:

- a) the Agreement;
- b) the Request for Proposal document
- c) the Expression of Interest document
- d) the Consultant’s “Technical Proposal” and “Financial Proposal” submitted in response to the RFP

3. Payment

The total fees payable to the Consultant under the Agreement is Rs. _____ /- (in words) inclusive of applicable taxes.

4. Indemnity

The Consultant agrees to indemnify and hold harmless MeitY, Officers, employees and agents (each a "Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys fees and disbursements) and expenses (collectively, "Losses") to which the Indemnified Party may become subject, in so far as such losses directly arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by the Consultant or (ii) the failure by the Consultant to fulfill any agreement, covenant or condition contained in the Agreement, including without limitation the breach of any terms and conditions of the Agreement by any employee or agent of the Consultant or (iii) any claim or proceeding by any third party against MeitY arising out of any act, deed or omission by the Consultant. For the avoidance of doubt, indemnification of Losses pursuant to this section shall be made in an amount or amounts sufficient to restore each of the Indemnified Party to the financial position it would have been in had the losses not occurred.

Any payment made under the Agreement to an indemnity or claim for breach of any provision of the Agreement shall be net of applicable taxes.

5. Severability

If any section or paragraph, or part thereof, of the Agreement or any agreement or document appended hereto or made a part hereof is rendered invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future laws effective during the term of the Agreement, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause the Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement, or enter into suitable amendatory or supplementary agreements, as will best preserve for the Parties the benefits and obligations under such provision.

6. Adherence

An agency engaged as consultant by a particular Client will not be allowed to undertake any project implementation related work of that Client either directly or through consortium or through any of its affiliate.

IN WITNESS WHEREOF, the Parties have signed the Agreement by their duly authorized representatives in Two (2) original copies.

MeitY

Authorized representative:

Name:

Title:

(Signature): Date of signing:

XXXXX

Authorized representative: Name:

Title:

(Signature): Date of signing

Witness:

Name:

Signature:

Date of signing:

Witness:

Name: Signature:

Date of signing:

V. Draft NDA

This Non Disclosure Agreement (“Agreement”) is made effective from this day of [month year] between [agency name] having office at [address of agency] and MeitY, having office at Electronics Niketan, 6 CGO Complex, Lodhi Road, New Delhi - 110003 (“Client”).

(Client and [agency name] shall be individually referred to hereinafter as a “Party” and collectively as the “Parties”)

WHEREAS, the Client has appointed [agency name] for rendering < consultancy> services at < MeitY, Electronics Niketan, 6 CGO Complex, Lodhi Road, NewDelhi – 110003> during the period commencing from <ddmmy> to < ddmmy>

WHEREAS, the parties hereto are willing to execute this Agreement in order to protect certain information to be disclosed to each other for the aforesaid purposes.

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants set forth herein, the Parties agree that:

1. It is hereby agreed that the discretion applied at the time of disclosure would provide the best protection of Confidential Information of either Party. Accordingly, a Disclosing Party shall ensure that only those Confidential Information which serve the engagement objectives shall be disclosed as per an agreed procedure to the identified individuals at the recipient’s end.
2. Recipient agrees to protect Confidential Information received from the Disclosing Party with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature. Recipient agrees to promptly inform the Disclosing Party of any unauthorised disclosure of the Disclosing Party’s Confidential Information.
3. In the case of Confidential Information that is disclosed only orally, Disclosing Party shall, within seven days after such disclosure, deliver to the Receiving Party a brief written description of such Confidential Information; identifying the place and date of such oral disclosure and the names of the representatives of the Receiving Party to whom such disclosure was made. It is expected that such information will bear a legend or label of “Confidential” or other similar designation manifesting intent that the information is confidential (“Confidential Information”).
4. The restrictions set forth in this Agreement on the use or disclosure of Confidential Information shall not apply to any information which:
 - a. is independently developed by the Recipient ; or
 - b. is rightfully received free of restriction from another source having the right to so furnish such information; or
 - c. has become generally available to the public; or
 - d. at the time of disclosure to the Recipient was rightfully known to such party or its affiliated companies free of restriction as evidenced by documentation in its possessions; or
 - e. the non-Disclosing Party agrees in writing to be free of such restrictions; or
 - f. is required to be furnished to any authority, department, office or body by a decree, order or authorization of law.

5. Each Party shall use Confidential Information of the other Party which is disclosed to it only for the purpose of this Agreement and shall not disclose such Confidential Information to any third party, without the other Party's prior written consent, other than to [agency name] subcontractors and to each other's employees on a need-to-know basis.
6. All information shall remain the property of the Disclosing Party and shall be returned upon written request or upon the Recipient's determination that it no longer has a need for such information except that both parties may retain copies of the Confidential Information, to the extent required to comply with applicable legal and regulatory requirements.
7. 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.
8. 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
9. The authorised representatives from [agency name] side shall be –
 - a. <xx>
10. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by in accordance with the Arbitration and Conciliation Act, 1996. Any claim for losses under this Agreement shall be restricted to direct losses only.
11. This Agreement constitutes the entire understanding between the Parties hereto as to the information and merges all prior discussions between them relating thereto. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective authorised officers or representatives.
12. The Parties agree that the laws of India, other than its conflict of laws provisions, shall apply in any dispute arising out of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth above.

For and on behalf of

For and on behalf of

Sig.:

Sig.:

Name:

Name:

Title:

Title:

Place:

Place:

Witness :

Signature:

Name: Title:

V. Proforma for Bank Guarantee towards Performance Security (From Any commercial bank)

This Deed of Guarantee executed on this _____ day of _____, 2012 at _____ by _____ (from any commercial bank), having its Head Office/Registered Office at _____ and inter-alia a Branch Office at _____ (hereinafter referred to as the Bank. or 'the Guarantor', which expression shall unless it be repugnant to the subject or context hereof be deemed to include its successors and assigns)

In favor of

The Ministry of Electronics and Information Technology, Ministry of Communications & Information Technology, Government of India, Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi-110003 (hereinafter referred to as "DIT")

WHEREAS

A. [.....], a company within the meaning of the Companies Act, 1956 and having its Registered Office at [.....] (herein after referred to as "the Consultant", which expression unless repugnant to the subject or context includes its successors, legal representatives and permitted assigns) has been awarded the contract **for Application processing and Appraisal under EMC and M-SIPS & support for development of EOS** vide Agreement dated_;

B. In terms of clause _____ of the said Agreement, the Consultant has to provide a Performance Guarantee for an amount equivalent to ----- of the Bid Price in the format specified;

C. At the request of the Consultant, the Guarantor has agreed to provide this guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Vendor of its obligations under the said contract during the implementation period.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS

A. The Guarantor hereby irrevocably guarantees the due and punctual performance by the Consultant of all its obligation under the said Agreement during the implementation period;

B. The Guarantor shall, without demur, pay to MeitY sums not exceeding in aggregate Rs. _____ (Rupees_____) within five (5) calendar days of receipt of a written demand therefrom MeitY stating that the Contractor has failed to meet its performance obligations under the said contract during the implementation period. The Guarantor shall have not to go into the veracity of any breach or failure on the part of the Consultant or validity of the demand so made by MeitY and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Vendor or any other person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof;

C. In the event of delay on the part of the Guarantor to pay on demand, the Guarantor shall be liable to pay interest at the rate of fifteen (15) per cent, compounding quarterly, to MeitY. There shall not be any delay in payment of the guaranteed amount and payment of interest shall not be an excuse for delaying the payment of guarantee amount. Time is the essence of this Performance Guarantee;

RFP for selection of agency for application processing and appraisal & support for development of EOS under EMS and M-SIPS

D. The Guarantor shall also indemnify and keep MeitY indemnified against all losses, damages, costs, charges claims and expenses whatsoever which MeitY may suffer, pay or incur by reason of or in connection with any default on the part of the Vendor, including legal proceedings taken against the said Consultant and/or the Guarantor for the recovery of the monies referred to above;

E. The Guarantor hereby agrees that without the concurrence of the Guarantor, MeitY and the Consultant shall be at liberty to vary, alter or modify the terms and conditions of the contract executed by the MeitY with the Consultant, and in particular to defer, postpone or revise the payment schedule under the contract, modify the work at site and payment of interest or other monies under the contract on such terms and conditions as maybe considered necessary by MeitY;

F. The Guarantor agrees that its liability under this guarantee shall in no manner be affected by any such variation, alteration, modification, waiver dispensation with or release of security and that no further consent of the Guarantor is required for giving effect to any such variation, alteration, modification, waiver dispensation with or release of security;

G. This Guarantee shall be enforceable against the Guarantor notwithstanding that any security or securities comprised in any instrument executed or to be executed by the Consultant in favor of MeitY may at the time when the proceedings are taken against the Guarantor of this guarantee be outstanding or unrealized or lost. In order to give effect to this Guarantee, MeitY shall be entitled to treat the Guarantor as the principal debtor;

H. This Guarantee shall be irrevocable and shall remain in full force and effect until _____ unless discharged/released earlier by MeitY in accordance with the provisions of the said contract. The Guarantor's liability in aggregate shall be limited to a sum of Rs. _____ (Rupees _____ only);

I. This Guarantee shall not be affected by any change in the constitution or winding up of the Consultant/the Guarantor or any absorption, merger or amalgamation of the Consultant/the Guarantor with any other person;

J. The Guarantor has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under _____.

All future correspondence with reference to this Guarantee shall be made to(Bank Name and Address).

The jurisdiction in relation to this Guarantee shall be the Courts at New Delhi and Indian Law shall be applicable.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED by _____ Bank by the hand of _____, its
_____ and authorized official.