

No.N-14070/72/2009-Infra
Government of India
Planning Commission
(Secretariat for Infrastructure)

Yojana Bhawan, Sansad Marg
New Delhi-110001
Dated, 8th April, 2010.

REQUEST FOR PROPOSAL

Subject:- Engagement of a Legal Firm for Legal Scrutiny of Concession Agreements for Secretariat for Infrastructure.

- 1. JOB REQUIREMENT:** As per detailed Terms of Reference at Annexure I.
- 2. ESSENTIAL QUALIFICATIONS:**

Conditions of Eligibility of Firm

(A) **Technical Capacity:** The Firm shall have, over the past 5 (five) years preceding the due date, undertake a minimum of 5 (five) Eligible Assignments as under eligible projects.

Eligible Assignments

For the purposes of satisfying the Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments granted by the government, regulatory commission, tribunal, statutory authority or public sector entity in respect of review and/or preparation of concession agreements and other similar documents, and/or in relation to the bidding process or other transactions, as the case may be, for the following projects shall be deemed as eligible assignments (the “**Eligible Assignments**”):

- An infrastructure project undertaken through Public Private Partnership (PPP) or other forms of private participation and having an estimated capital cost (excluding land) of at least Rs. 100 crore (Rupees one hundred crore) in case of a project in India, and US \$ 50 million (US\$ fifty million) for infrastructure projects undertaken elsewhere through PPP or other forms of private participation (the “**PPP Projects**”);
- an infrastructure project having an estimated capital cost (excluding land) of at least Rs. 100 crore (Rupees one hundred crore) in case of a project in India, and US \$ 50 million (US\$ fifty million) for projects elsewhere, provided that the payment of professional fee to the Firm was at least Rs. 5 lakh (Rupees five lakh) in case of a project in India,

and US \$ 25,000 (US\$ twenty five thousand) for any infrastructure project elsewhere (the “**Other Projects**”); or

- (c) an assignment relating to rules, regulations, orders, appraisal, approval or any other matter pertaining to infrastructure, but only if the payment of professional fee to the Firm was at least Rs. 1 lakh (Rupees one lakh) (the “**Regulatory Projects**”):

Provided that all Eligible Assignments relating to projects based on the same Model Concession Agreement and awarded by the same public entity shall be counted as one Eligible Assignment.

- (B) **Financial Capacity:** The firm shall have received a minimum of Rs. 5 crore (Rs. five crore) or US \$ 2 (two) million per annum as professional fees during each of the three financial years preceding the PDD. For the purpose of evaluation, Firms having comparatively larger revenues from professional fees shall be given added weightage. For the avoidance of doubt, professional fees hereunder refers to fees received by the Firm for providing advisory or consultancy services to its clients and shall not include professional fee for undertaking dispute resolution proceeding before courts, tribunals or arbitrators.
- (C) **Availability of Key Personnel:** The firm shall offer and make available all Key Personnel meeting the requirements specified in Sub-clause (D) below.
- (D) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

| Key Personnel | Educational Qualification | Length of Professional Experience | Experience on Eligible Assignments |
|-----------------------------|----------------------------------|--|---|
| Legal Expert | Bachelor in law or equivalent | 15 years | He should have 15 years experience in commercial contracts. He should have led the legal teams for not less than three Eligible Assignments. |
| One/two Associate Lawyer(s) | Bachelor in law or equivalent | 3 years | He should have worked as an Associate Lawyer for not less than two Eligible Assignments. |

3. DURATION:

Firm selected will be appointed on contract basis for an initial period of one year. This term can be extended upto maximum 5 years depending on the performance of the

Firm/need of the Planning Commission. However, the maximum duration of the contract will not be extended beyond five years.

4. FEE:

Remunerations/Consultation Fee

- i) The firm would be paid Rs.60,000/- plus 10% clerkage for each project/case based on a MCA.
- ii) For repeat proposals of similar nature – 50% of the fee mentioned above (i.e. Rs.30,000) plus 10% clerkage for each project/case
- iii) Rs. 90,000/- plus 10% clerkage for Concession Agreement, of each project/case, which are not based on any sector specific Model Concession Agreement (MCA).
- iv) Up to two meetings per document will be covered in the fee. Outstation visits, if involved, will be paid extra.
- v) Out of pocket expenses, telephones etc. are covered within the 10% clerkage. There will be no extra payment on this account.
- vi) All local visits to Planning Commission would be covered in the fee.
- vii) 20% of the fee will be payable in advance. The rest will be paid on completion of the assignment.

5. CRITERIA FOR EVALUATION:

Evaluation of Technical Proposals

The Proposal will be evaluated on the basis of the experience of the Firm and the Legal Expert. Only those Firms whose Proposals score 70 points or more out of 100 shall be empanelled.

The Legal Expert must score a minimum of 70% (seventy per cent) marks for the Firm to qualify.

The scoring criteria to be used for evaluation shall be as follows.

| Item Code | Criteria | Marks | Criteria |
|------------------|--|--------------|--|
| 1. | Relevant Experience of the Firm | 30 | 30% of the maximum marks shall be awarded for the number of Eligible Assignments undertaken by the Firm. The remaining 70% shall be awarded for: (i) the comparative size and quality of Eligible Assignments; (ii) other similar work in the infrastructure sectors; and (iii) overall turnover, experience and capacity of the firm. |

| | | | |
|--------------------|--|------------|--|
| 2. | Relevant Experience of the Legal Expert | 70 | <p>a) 30% of the maximum marks shall be awarded for the number of Eligible Assignments the Legal Expert has worked on, as described below. The remaining 70% shall be awarded for: (i) the comparative size and quality of Eligible Assignments; and (ii) other similar work in infrastructure sectors.</p> <p>b) He should have worked as leader or head of the legal team for at least 3 (three) Eligible Assignments.</p> <p>c) He should have accounted for at least 20% of the total professional fee received by the firm for the relevant assignment.</p> |
| Grand Total | | 100 | |

While awarding marks for the number of Eligible Assignments, the Firm or Legal Expert, as the case may be, that has undertaken the highest number of Eligible Assignments shall be entitled to the maximum score for the respective category and all other competing Firms or respective Legal Expert, as the case may be, shall be entitled to a proportionate score. No score will be awarded to a Firm/ Legal Expert for fulfilling the eligibility criteria of a minimum number of Eligible Assignments and only projects exceeding the eligibility criteria shall qualify for scoring. For the avoidance of doubt and by way of illustration, if the minimum number of Eligible Projects for meeting the eligibility criteria is 3 (three), then an equivalent number will be ignored for each Firm/ Legal Expert and only the balance remaining will be considered for awarding scores relating to the number of Eligible Assignments on a proportionate basis. However, for assigning scores in respect of the size and quality of Eligible Assignments, all Eligible Assignments of the Firm/ Legal Expert shall be considered.

6. SUBMISSION OF PROPOSAL:

Interested firms may send their applications in the enclosed formats provided in the appendices by post on or before April 30, 2010 at the following address.

Shri C.K.Sharma,
Section Officer (Infra),
Room No. 244, Yojana Bhavan,
Sansad Marg, New Delhi-110001
Telefax No. 23313791

Firms who are already empanelled with the Planning Commission (Secretariat for Infrastructure) need not apply in response to this Request for Proposal.

Terms of Reference for engagement of Legal Firm

1. The Firm would undertake a detailed desk review of the contractual/concession agreements, received for Viability Gap Funding (VGF) from various states and statutory entities in accordance with the guidelines for financial support to Public Private Partnerships (PPP) in Infrastructure and also proposals received for central sector PPP projects in accordance with the guidelines on formulation, Appraisal and Approval of PPP Projects.
2. The firm would suggest amendments to specific articles/clauses for safeguarding the interest of the Government or statutory entity and the users, as the case may be, and conforming to the guidelines issued for funding projects under VGF by Government of India and also the central sector PPP projects.
3. The firm would suggest alternative formulations, wherever necessary, for specific articles/clauses with the purpose of establishing that concession agreements are in accordance with best practices and applicable laws.
4. The firm should ensure that the concession agreements allocate legal, financial and other risks in such a fashion that the government or statutory entity granting the concession does not at a future date become liable to pay compensation or damages for any unintended/unidentified risk. In the unlikely event that such a liability arises, the consultants shall suggest provisions that safeguard public interest including the interests of users of the infrastructure.
5. The firm would suggest provisions that would ensure that the agreements are in line with the global best practices, and that such agreements when operationalised shall attract the required amount and quality of private investment at reasonable cost and risk levels.
6. The firm will also advise on specific issues referred to them by the Secretariat for Infrastructure or any other related issues regarding concession agreements/documents.
7. The firm shall submit an undertaking to Government of India/Planning Commission declaring that they have no conflict of interests in advising and consulting on these proposals. The firm shall be free to advise their clients on matters unrelated to the proposals concerning which the documents are reviewed and vetted by them for the Planning Commission. However, the firms will have to inform the Planning Commission of the same at the earliest.
8. The firm will be required to submit their comments/advice on the documents/concession agreements etc. referred to them by the Secretariat for Infrastructure within a period of seven working days.

APPENDICES

APPENDIX-I

Form-1

Particulars of Key Personnel

| S. No. | Designation of Key Personnel | Name | Educational Qualification | Length of Professional Experience | Present Employment | | No. of Eligible Assignments [#] |
|--------|------------------------------|------|---------------------------|-----------------------------------|--------------------|----------------|--|
| | | | | | Name of Firm | Employed Since | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 1. | Legal Expert | | | | | | |
| 2. | Associate Lawyer(s) | | | | | | |
| 3. | Other Personnel, if any | | | | | | |

Refer Form 3 of Appendix I Experience of Key Personnel

APPENDIX-I

Form-2

Abstract of Eligible Assignments of the Firm[#]

| S.No | Name of Project | Name of Client | Estimated capital cost of Project (in Rs. crore/ US\$ million) | Professional fee ^{##} received by the Firm (in Rs. crore) [£] |
|------|-----------------|----------------|--|---|
| (1)* | (2) | (3) | (4) | (5) |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |

The Firm should provide details of only those assignments that have been undertaken by it under its own name.

Exchange rate should be taken as Rs. 46 per US \$ for conversion to Rupees.

£ In the event that the Firm does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: "Above Rs. 5 (five) lakh" in respect of a particular project.

* The names and chronology of Eligible Assignments included here should conform to the project-wise details submitted in Form-4 of Appendix-I.

Certificate from the Statutory Auditor^{\$}

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Firm and/ or the clients.

(Signature, name and designation of the authorised signatory)

Date:

Name and seal of the audit firm

^{\$} In case the Firm does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Firm.

APPENDIX-I

Form-2A

Abstract of other relevant experience of the Firm[#]

| S.No | Name of Project | Name of Client | Estimated capital cost of Project (in Rs crore/ US\$ million) | Professional fee ^{##} received by the Firm (in Rs crore) [£] |
|------|-----------------|----------------|---|--|
| (1)* | (2) | (3) | (4) | (5) |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |

The Firm should provide details of only those assignments that have been undertaken by it under its own name.

Exchange rate should be taken as Rs. 46 per US \$ for conversion to Rupees.

£ In the event that the Firm does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: "Above Rs. 5 (five) lakh" in respect of a particular project.

* The names and chronology of the projects included here should conform to the project-wise details submitted in Form-4A of Appendix-I.

Certificate from the Statutory Auditor^{\$}

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Firm and/ or the clients.

(Signature, name and designation of the authorised signatory)

Date:

Seal of the audit
firm

^{\$} In case the Firm does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Firm.

APPENDIX-I

Form-3[@]

Abstract of Eligible Assignments of Key Personnel[§]

Name of Key Personnel:

Designation:

| S.No | Name of Project* | Name of Client | Estimated capital cost of project (in Rs cr./ US\$ million) | Name of firm for which the Key Personnel worked | Designation of the Key Personnel on the assignment | Date of completion of the assignment | Man hours spent on the assignment |
|------|------------------|----------------|---|---|--|--------------------------------------|-----------------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |
| 4 | | | | | | | |
| 5 | | | | | | | |

@ Use separate Form for each Key Personnel.

§ In the case of Legal Expert, only those assignments shall be included where the Legal Expert accounted for at least 20% of the total professional fee received by the firm for the relevant assignment.

* The names and chronology of projects included here should conform to the project-wise details submitted in Form-5 of Appendix-I.

APPENDIX-I

Form-3A[@]

Abstract of other relevant experience of Key Personnel[§]

| Name of Key Personnel: | | | | Designation: | | | |
|------------------------|------------------|----------------|---|---|--|--------------------------------------|-----------------------------------|
| S.No | Name of Project* | Name of Client | Estimated capital cost of project (in Rs cr./ US\$ million) | Name of firm for which the Key Personnel worked | Designation of the Key Personnel on the assignment | Date of completion of the assignment | Man hours spent on the assignment |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |
| 4 | | | | | | | |
| 5 | | | | | | | |

@ Use separate Form for each Key Personnel.

[§] In the case of Legal Expert, only those assignments shall be included where the Legal Expert accounted for at least 20% of the total professional fee received by the firm for the relevant assignment.

* The names and chronology of assignments included here should conform to the project-wise details submitted in Form 5A of Appendix-I.

APPENDIX-I

Form-4

Eligible Assignments of Firm

| | |
|---|--|
| Name of Firm: | |
| Name of the Project: | |
| Length in km or other particulars | |
| Description of services performed by the Firm: | |
| Name of client and Address: | |
| Name, telephone no. and fax no. of client's representative: | |
| Estimated capital cost of Project (in Rs. crore or US\$ million): | |
| Payment received by the Firm as professional fees (in Rs. crore): | |
| Start date and finish date of the services (month/ year): | |
| Brief description of the Project: | |
| | |

Notes:

1. Use separate sheet for each Eligible Assignment.
2. Exchange rate should be taken as Rs. 46 per US \$ for converting to Rupees.

APPENDIX-I

Form-4A

Other relevant assignments of Firm

| | |
|---|--|
| Name of Firm: | |
| Name of the Project: | |
| Length in km or other particulars | |
| Description of services performed by the Firm: | |
| Name of client and Address: | |
| Name, telephone no. and fax no. of client's representative: | |
| Estimated capital cost of Project (in Rs. crore or US\$ million): | |
| Payment received by the Firm as professional fees (in Rs. crore): | |
| Start date and finish date of the services (month/ year): | |
| Brief description of the Project: | |
| | |

Notes:

1. Use separate sheet for each assignment.
2. Exchange rate should be taken as Rs. 46 per US \$ for converting to Rupees.

APPENDIX-I

Form-5

Eligible Assignments of Key Personnel

| | |
|---|--|
| Name of Key Personnel: | |
| Designation of Key Personnel: | |
| Name of the Project: | |
| Length in km or other particulars | |
| Name of Consulting Firm where employed: | |
| Description of services performed by the Key Personnel (including designation): | |
| Name of client and Address: | |
| Name, telephone no. and fax no. of client's representative: | |
| Estimated capital cost of the Project (in Rs. crore or US\$ million): | |
| Start date and finish date of the services (month/ year): | |
| Brief description of the Project: | |

Notes:

1. Use separate sheet for each Eligible Assignment.
2. In the case of Legal Expert, only those Eligible Assignments shall be included where at least 20% of the total professional fee received by the firm was on account of the man hours provided by the Legal Expert.
3. Exchange rate should be taken as Rs. 46 per US \$ for converting in Indian Rupees.

APPENDIX-I

Form-5A

Other relevant assignments of Key Personnel

| | |
|---|--|
| Name of Key Personnel: | |
| Designation of Key Personnel: | |
| Name of the Project: | |
| Length in km or other particulars | |
| Name of Consulting Firm where employed: | |
| Description of services performed by the Key Personnel (including designation): | |
| Name of client and Address: | |
| Name, telephone no. and fax no. of client's representative: | |
| Estimated capital cost of the Project (in Rs. crore or US\$ million): | |
| Start date and finish date of the services (month/ year): | |
| Brief description of the Project: | |

Notes:

1. Use separate sheet for each assignment.
2. In the case of Legal Expert, only those assignments shall be included where at least 20% of the total professional fee received by the firm was on account of the man hours provided by the Legal Expert.
3. Exchange rate should be taken as Rs. 46 per US \$ for converting in Indian Rupees.

APPENDIX-I

Form-6

Financial Capacity of the Firm

| S. No. | Financial Year | Annual Revenue (Rs./US \$ in million) |
|---------------|-----------------------|--|
| 1. | | |
| 2. | | |
| 3. | | |

Certificate from the Statutory Auditor^{\$}

This is to certify that(name of the Firm) has received the payments shown above against the respective years on account of professional fees.

(Signature, name and designation of the authorised signatory)

Date: Name and seal of the audit firm

^{\$} In case the Firm does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Firm.

Note:

1. Please do not attach any printed Annual Financial Statement.