

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

Yojana Bhawan, Sansad Marg
New Delhi-110001
Dated: 18th August, 2011

REQUEST FOR PROPOSAL

Subject: - Preparation of a Panel of Law Firms for Legal Scrutiny of Concession Agreements for Infrastructure Division.

Background:

1. The Infrastructure Division conducts appraisal of Public Private Partnership projects as a part of approval process of the Central Government. For this purpose, it is proposing to empanel Law Firms, not exceeding 5 in number, to assist in legal scrutiny of Concession Agreements of PPP projects.

Request for Proposal:

2. Under Secretary (Infra), Planning Commission, for and on behalf of the President of India, hereby invites proposals from Law Firms who have experience of working in the Infrastructure Sector.

Validity of the Proposal:

3. The proposal shall be valid for a period not less than 90 days from the due date for receiving the proposal.

Job Requirement:

4. As per detailed Terms of Reference at Schedule I.

Conditions of Eligibility of Firm

5. To be considered for empanelment, the Applicant must fulfil the following conditions of eligibility:

(A) **Technical Capacity:** The Firm shall have, over the past 3 (three) years preceding the due date, undertaken a minimum of 15 (fifteen) Eligible Assignments as described below:

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 for the following projects shall be deemed as eligible assignments (the “**Eligible Assignments**”):

- (a) 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**”);
 - (b) an assignment relating to rules, regulations, orders, appraisal, or any other matter pertaining to infrastructure, but only if the payment of professional fee to the Firm was at least Rs. 50,000 (Rupees fifty thousand) (the “**Regulatory Projects**”); or
 - (c) 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**”).
- (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 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 any amounts received by way of reimbursement or fee for payment to external counsels, senior advocates or external professional retained by the firm for its clients.
- (C) **Availability of Personnel:** The firm shall undertake to make available the personnel meeting the requirements specified below during the period of contract:

Personnel	Educational Qualification	Length of Professional Experience	Experience on Eligible Assignments
Legal Expert	Bachelor in law or equivalent	10 years	He should have 10 years experience in commercial contracts. He should have led the legal teams for not less than four Eligible Assignments in two different sectors.
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 in two different sectors.

6. Since a majority of the proposals appraised by the Planning Commission are from NHAI, the Law Firms empanelled with the National Highway Authority of India (NHAI) would not be considered for empanelment in the Planning Commission. Any firm that has received more than 5 (five) assignments from NHAI during 2010-11 shall be deemed to be empanelled with NHAI; provided, however, that a firm empanelled with NHAI shall be eligible for empanelment hereunder if it gives an undertaking that it will not accept any assignments from NHAI while it remains empanelled in the Planning Commission.

Duration:

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

Brief Description of the Selection Process:

8. A two stage selection process will be adopted in evaluating the Proposals. In the first stage, a technical evaluation will be carried out followed by a financial evaluation in the second stage.

Criteria for Evaluation: Technical Proposals:

9. The Proposal will be evaluated on the basis of the experience of the Firm. Only those Firms whose Proposals score 70 points or more out of 100 shall qualify for the second stage.

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

Criteria	Marks	Criteria
Relevant Experience of the Firm	100	60% of the maximum marks shall be awarded for the number of Eligible Assignments undertaken by the Firm. The remaining 40% shall be awarded for: (i) the comparative size and quality of Eligible Assignments (15%); (ii) overall turnover, experience and capacity of the firm (15%); and (iii) other similar work in the infrastructure sectors (10%).

Evaluation of Financial Proposals:

10. The financial bids of all Applicants who secure 70% or more marks in technical evaluation shall be opened and the lowest financial bid shall be determined.

Negotiation and Empanelment:

11. After the lowest financial bid is determined, all the other Applicants whose financial bids have been opened shall be called upon to match the lowest financial bid. All the Applicants who agree to carry out the proposed assignment at the rate offered by the lowest bidder shall be considered for empanelment. In case this process does not enable the empanelment of at least 3 (three) firms, then differential rates would be considered.

Right to reject any or all Proposals:

12. Notwithstanding anything contained in this RFP, the Planning Commission reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
13. The Planning Commission reserves the right to reject any Proposal if:
- (a) at any time, a material misrepresentation is made or uncovered, or
 - (b) the Applicant does not provide, within the time specified by the Planning Commission, the supplemental information sought by the Planning Commission for evaluation of the Proposal.

Submission of Proposals:

14. The Proposal shall be typed or written in indelible ink and signed by the Applicant who shall initial each page, in blue ink. All the alterations, omissions, additions, or

any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed as detailed below:

15. While submitting the Technical Proposal, the Applicant shall ensure that the Applicant meets the Conditions of Eligibility.
16. Failure to comply with the requirements spelt out in Clause 15 above shall make the Proposal liable to be rejected.
17. If an Applicant makes an averment regarding his qualification, experience or other particulars and it turns out to be false, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Letter of Empanelment, he shall be debarred for any future assignment of the Planning Commission for a period of five years.
18. The Technical Proposal shall not include any financial information relating to the Financial Proposal.
19. The Planning Commission reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Failure of the Planning Commission to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Planning Commission thereunder.
20. In case it is found during the evaluation or at any time before issue of Letter of Empanelment (LOE) that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Legal Advisers. If the Applicant has already been issued the LOA the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Planning Commission without the Planning Commission being liable in any manner whatsoever to the Applicant.
21. The Proposal shall be submitted by the Applicant with each page of the submission signed in blue ink. In case the proposal is submitted on the document down loaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by the Planning Commission and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the

RFP and the original RFP issued by the Planning Commission, the latter shall prevail.

22. The Proposal will be sealed in an outer envelope which will bear the address of the Planning Commission, RFP Notice no., Consultancy name and the name and address of the Applicant. It shall bear on top, the following:

“Do not open, except in presence of the Authorised Person”

If the envelope is not sealed and marked as instructed above, the Planning Commission assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted.

- (i) The aforesaid outer envelope will contain two separate sealed envelopes, one clearly marked **‘Technical Proposal’** and the other clearly marked **‘Financial Proposal’**. The envelope marked “Technical Proposal” shall contain the Application in the prescribed Forms at Annex -I.
 - (ii) The envelope marked “Financial Proposal” shall contain the financial proposal in the prescribed format at Annex- II.
23. The completed Proposal must be delivered on or before the specified time on the due date as per Clause 28. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.
24. The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents.
25. The rates quoted shall be firm throughout the period of performance of the assignment and discharge of all obligations of the Legal Adviser under the Agreement.

Financial Proposal:

26. Applicants shall submit the financial proposal in the Forms at Annex-II clearly indicating the total cost of the assignment in both figures and words, in Indian Rupees, and signed by the Applicant. In the event of any difference between figures and words, the amount indicated in words shall be taken into account. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall be taken into account.
27. While submitting the Financial Proposal, the Applicant shall ensure the following:

- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel, accommodation, air fare, printing of documents, taxes etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- (ii) The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per applicable laws.
- (iii) Costs (including break down of costs) shall be expressed in INR.

Submission of Proposal:

28. Interested firms may send their applications in the enclosed formats provided in the Annexes to reach on or before 1100 hours on *September 19, 2011* at the following address.

Shri C. K. Sharma,
Section Officer (Infra),
Room No. 224, Yojana Bhavan,
Sansad Marg, New Delhi-110001
Telefax No. 23313791

Late Proposals:

29. Proposals received by the Planning Commission after the specified time on the due date shall not be eligible for consideration and shall be summarily rejected.
30. Any alteration / modification in the Proposal or additional information or material supplied subsequent to the due date, unless the same has been expressly sought for by the Planning Commission, shall be disregarded.

Evaluation Process:

31. The Planning Commission shall open the Proposals at 1130 hours on the due date, at the place specified in Clause 28 and in the presence of the Applicants who choose to attend. The envelopes marked "Technical Proposal" shall be opened first. The envelopes marked "Financial Proposal" shall be kept sealed for opening at a later date.

32. Prior to evaluation of Proposals, the Planning Commission will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:
- (a) it is received in the specified format;
 - (b) it is received by the due date including any extension thereof;
 - (c) it is signed, sealed and marked as stipulated;
 - (d) it contains all the information (complete in all respects) as requested in the RFP;
 - (e) it does not contain any condition or qualification; and
 - (f) it is not non-responsive in terms hereof.
33. The Planning Commission reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Planning Commission in respect of such Proposals.
34. The Planning Commission would subsequently examine and evaluate Proposals in accordance with Clause 9 in this RFP.
35. After the technical evaluation, the Planning Commission would prepare a list of pre-qualified Applicants for opening of their Financial Proposals and evaluating them in accordance with Clause 10 of this RFP. The opening of Financial Proposals shall be done in presence of Applicants who choose to be present. The Planning Commission will not entertain any query or clarification from Applicants who fail to qualify at any stage of Selection Process.

Clarifications:

36. To facilitate evaluation of Proposals, the Planning Commission may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Planning Commission for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing. If an Applicant does not provide clarifications sought above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Planning Commission may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding.

Empanelment and Award of Consultancy:

37. After selection, a Letter of Empanelment shall be issued, in duplicate, by the Planning Commission to the Selected Applicants and the Selected Applicants shall,

within 7 (seven) days of the receipt of the LOE, sign and return the duplicate copy of the LOE in acknowledgement thereof. The LOE shall constitute the Agreement for the purpose of this consultancy assignment.

Proprietary data:

38. All documents and other information provided by the Planning Commission or submitted by an Applicant to the Planning Commission shall remain or become the property of the Planning Commission. Applicants are to treat all information as strictly confidential. The Planning Commission will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Law Firm to the Planning Commission in relation to the assignment shall be the property of the Planning Commission.

Fees:

39. The legal scrutiny required to be carried out by empanelled firms to fall into four categories:
- (i) Category A: Draft Concession Agreement based on a Model Concession Agreement.
 - (ii) Category B: For repeat proposal of Category A.
 - (iii) Category C: For draft Concession agreement not based on any sector specific Model Concession Agreement.
 - (iv) Category D: For a draft Concession Agreement in a new sector or on a new model

The Applicants will be required to bid for Category A projects only. The fee for Category B projects shall be one-half of the fees finalized for Category A projects. The fees for Category C projects shall be twice the fee payable for Category A projects. The fee for Category D projects shall be four times the fee payable for Category A projects. By way of illustration, if the fee is Rs. 10,000 for a Category A project, then for cases of Categories B, C & D, it shall be Rs. 5,000, Rs. 20,000 and Rs. 40,000 respectively.

Payments:

40. The Planning Commission shall cause the payment due to the Law Firm to be made within 30 (thirty) days after the receipt by the Planning Commission of duly completed bills with necessary particulars.
41. All payments under this Agreement shall be made to the account of the Law Firm as may be notified to the Planning Commission by the Law Firm.
42. No advance payment shall be admissible.

Penalty for error/variation:

43. In case any error or variation is detected in the reports submitted by the Law Firm and such error or variation is the result of negligence or lack of due diligence on the part of the Law Firm, the consequential damages thereof shall be quantified by the Planning Commission in a reasonable manner and recovered from the Law Firm from payments due to him by way of penalty, subject to a maximum of 50% (fifty percent) of the fee for the respective project.

Liquidated Damages for delay:

44. In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 2.5% (two point five percent) of the assignment value per day and shall be recovered from the payment due to the Legal Adviser for that assignment. However, in case of delay due to reasons beyond the control of the Law Firm, suitable extension of time shall be granted.

Miscellaneous:

45. The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.

Schedule – I

Terms of Reference for Engagement of Law Firm

1. The Firm would undertake a detailed desk review of the contractual/concession agreements, received for from various ministries, 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/ 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 firm 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 be deemed to have given an undertaking to the Planning Commission declaring that it shall have no conflict of interests in advising on each assignment. Three months after completing an assignment, the firm shall be free to advise any client on matters unrelated to the assignment concerning which the documents are reviewed by it for the Planning Commission.
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 ten working days.
9. The Legal Adviser shall make a brief presentation and discuss the draft comments within 7 working days of receiving the assignment. This may take about two hours for category A assignments and one, four and eight hours for Categories B, C and D respectively.

ANNEX-I

TECHNICAL PROPOSAL

(Form-1)

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

Dear Sir,

Subject: **Preparation of a Panel of Law Firms for Legal Scrutiny of Concession Agreements for Infrastructure Division**

I, _____ (Applicant's name) herewith enclose the Technical Proposal for above.

I agree that this offer shall remain valid for a period of 90 (ninety) days from the due date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the Applicant)

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

ANNEX-1

TECHNICAL PROPOSAL

(Form-2)

Abstract of Eligible Assignments of the Firm and areas of experience[#]

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. lakh) [£]
(1)*	(2)	(3)	(4)	(5)
1				
2				
3				
4				
	Areas of Experience:			

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. 45 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 other Projects.

* The names and chronology of Eligible Assignments included here should conform to the project-wise details submitted in Form-2 of Appendix-I.

ANNEX -I

(Form-3)

Eligible Assignments of Firm^{\$}

Name of Firm:	
Name of the Project:	
Length in km or other particulars	
Nature of Assignment (PPP Project regulatory Project/ Other Project)	
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. lakh or US\$ million):	
Payment received by the Firm as professional fees (in Rs. lakh) [£] :	
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. 45 per US \$ for converting to Rupees.

\$ See clause 5 of the RFP

£ 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 other Projects.

ANNEX-I

(Form-4)

Financial Capacity of the Firm

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

Note:

1. Please do not attach any printed Annual Financial Statement.
2. This form should be signed by the auditor of the Law Firm

ANNEX-II
FINANCIAL PROPOSAL

(Form-1)

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

Dear Sir,

Subject: **Preparation of a Panel of Law Firms for Legal Scrutiny of Concession Agreements for Infrastructure Division**

I, _____ (Applicant's name) herewith enclose the Financial Proposal for above.

I agree that this offer shall remain valid for a period of 90 (ninety) days from the due date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the Applicant)

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

ANNEX-II

(Form-2)

Financial Proposal

Item No.	Description	Amount (Rs.)
A.	PERSONNEL AND MISCELLANEOUS COSTS	
I	Remuneration for Category A assignment [£] (inclusive of all personal allowances, traveling costs, taxes and other miscellaneous expenses)	
	TOTAL (including taxes) (in Rs.) In Indian Rupees in figures in words _____	

Note:

1. The financial evaluation shall be based on the above Financial Proposal.
 2. All travel outside Delhi shall be borne by the Planning Commission and all expenses on his account reimbursed as per entitlements of a Joint Secretary level officer of Government of India.
 3. The reimbursement of cost and expenses shall be limited to the amounts indicated above.
 4. No escalation on any account will be payable on the above amounts.
 5. All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws, withholding taxes if any.
- £ For categories of assignment, refer to paragraph 39 of the RFP.