



4/26)2017-DIPAM-I
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF INVESTMENT & PUBLIC ASSET MANAGEMENT

Engagement of Legal Advisor for Strategic sale of the Government of India's existing 51.11% of total paid up equity shareholding in Hindustan Petroleum Corporation Limited (HPCL) to Oil and Natural Gas Corporation Limited (ONGC) along with management control - Request for Proposal

1. INTRODUCTION

1.1 HPCL and ONGC both are Central Public Sector Enterprises (CPSEs) under the administrative control of the Ministry of Petroleum & Natural Gas (MoP&NG), in which the Government of India holds 51.11% and 68.07% paid up equity share capital, respectively. ONGC is primarily an upstream oil and gas company, having dominant market share in terms of upstream investments, reserves and production.

1.2 HPCL is mainly a downstream company engaged in marketing of petroleum products. HPCL owns 73 depots, 37 terminals, 46 LPG bottling plants, 4365 LPG distributors, 5.59 crore registered domestic LPG consumers and 13,803 retail outlets as on 31.3.2016. It has two refineries, one each in Mumbai and Visakhapatnam and a Lube refinery at Mumbai. HPCL also holds 16.95% paid up

equity shares in Mangalore Refineries and Petrochemical Ltd. (MRPL)– a subsidiary of ONGC.

1.3 CCEA in the meeting held on 19.7.2017 has granted “in-principle” approval for strategic sale of the Government of India’s existing 51.11% of total paid up equity shareholding in HPCL to ONGC along with transfer of management control, which will result in HPCL becoming a subsidiary company of ONGC.

1.4 The details about HPCL may be seen at www.hindustanpetroleum.com.

2. PROPOSAL

2.1 The Government of India (GoI) has ‘in-principle’ decided to disinvest its existing 51.11% of total equity shareholding in Hindustan Petroleum Corporation Limited (HPCL) to Oil and Natural Gas Corporation Limited (ONGC) along with transfer of management control through strategic sale with transfer of management control. The Department of Investment and Public Asset Management (DIPAM), on behalf of Government of India, requires the services of reputed Law Firms with experience and expertise in Mergers & Acquisitions or takeovers or strategic disinvestment, to act as Legal Adviser and assist the Government in the process of divestment of HPCL.

2.2 The eligible domestic Law Firm, as per eligibility conditions prescribed in the ‘Eligibility Criteria’ may submit proposals as per the guidelines mentioned hereunder:

3. Scope of Work

3.1 The scope of work of the legal adviser shall, inter-alia, include the following but not restricted to:

- (i) Reviewing and advising on all legal contracts, titles of properties/ assets/real estate, intellectual property rights and contracts with employees, etc.;
- (ii) Reviewing Information Memorandum specifically with respect to disclosures relating to titles, land and property, intellectual property rights, litigations and any other disclosures in the Information Memorandum, which may need to be vetted legally;
- (iii) Drafting of transaction related documents including:
 - Agreement to sale, Share Purchase agreement, Confidentiality Agreement/, Non-compete Agreement, etc.
 - Any other ancillary agreement as may be required to assist in the closure of the transaction.
- (iv) Advising on the structure of the transaction including, as may be required, compliance with SEBI guidelines, Stock Exchange Listing guidelines, Companies Act, 2013, Income Tax Act, 1961, Competition Act, 2002 and any other applicable laws;
- (v) Reviewing necessary corporate resolution including, if required, for formation of subsidiary/transfer of business to subsidiary etc.;
- (vi) Assistance as may be required, in negotiations with ONGC;
- (vii) Facilitating closure of the transaction; and
- (viii) Assistance and advice for any issues that may arise in connection with the transaction.

3.2 The ToR mentioned above are indicative and non-restrictive in nature. Other relevant services relating to the transaction, not expressly captured in the aforesaid Scope of Work, which upon being brought to the notice of the Advisors by Gol, will also form an integral and mandatory part of the ToR.

3.3 The Legal Adviser will work in close coordination with the Transaction Advisor and other intermediaries appointed for the transaction by DIPAM/Administrative Ministry/ Administrative Department.

3.4 Sub-contracting of the assignment will not be allowed. The appointed legal Advisor shall be solely responsible for all the required final deliverables.

4. **Eligibility Criteria:**

4.1 The domestic law firm should be a reputed professional firm having experience of at least 5 years in providing advisory services for strategic disinvestment or strategic sale or Merger and Acquisition activities or private equity investment transaction.

4.2 The Bidders should have advised, handled and successfully completed at least one transaction of strategic disinvestment or strategic sale or Merger and Acquisition activities or private equity investment transaction of the size of Rs. 4,000 crore or more from 01.04.2014 to 30.06.2017. Consortium bids will not be allowed.

5. **Proposal Format & Technical Evaluation Criteria**

5.1 Interested Law Firm will submit their Proposals in the following format:

5.1.1 **Experience and capability in handling Mergers & Acquisitions or takeovers or strategic disinvestment:** (Weightage for evaluation 25/100)

- (i) Profile of the organization.
- (ii) Capability, capacity and previous experience of the Firm and expertise in handling such assignment including open offers required to be made in case of listed companies posting closure of the transaction.
- (iii) Demonstrate ability to work with Government and in coordination with Transaction Advisors and other intermediaries as a part of team.

5.1.2 **Infrastructure like branch offices and Manpower:** (Weightage for evaluation 20/100)

- (i) Details of infrastructural facilities like office, manpower etc. in India.
- (ii) Detailed profile of the core and support teams (with CVs of each team member detailing qualification and relevant experience) that will be deployed on each assignment in the event of selection.

5.1.3 **Understanding of the Regulatory framework:** (Weightage for evaluation 20/100)

- (i) Demonstrate understanding of the relevant legal, policy and regulatory issues in the sphere of Mergers & Acquisitions/takeovers/strategic

disinvestment including SEBI Act, Companies Act, 2013, Income Tax Act, 1961, Competition Act, 2002 and any other applicable laws, etc.

(ii) Indicate the expertise in handling the regulatory requirements and securing the required approvals from the concerned authorities.

(iii) Understanding of Oil and gas sector regulations.

5.1.4 Indicative Timeline: (Weightage for evaluation 10/100)

(i) Demonstrate ability to deliver in accordance with the timetable requirement and the ability to commit key personnel for the entire duration of the transaction.

5.1.5 Strategy for the Strategic Disinvestment: (Weightage for evaluation 25/100)

(i) Indicate intended approach to the proposed transactions including the sequencing of the activities involved in the transaction.

(ii) Demonstrate capability of preparing quality document to be filed with Stock Exchanges and other regulatory authorities or the agreements that are required to be entered into in the course of the transaction.

6. PRE-BID MEETING:

The interested parties are required to send in their queries by e-mail to the Officer authorized to receive the Bid as given in paragraph 11.4 below. A pre-bid meeting will be held at **3:00 PM on 3rd August, 2017** in the Conference Hall of DIPAM (Room No. 515, Block 14, CGO Complex, New Delhi). The interested parties may attend the pre-bid meeting, if they so desire.

7. Submission of Proposal

7.1 The proposals are required to be submitted in **two envelopes** in the following manner:

(i) **Envelope 1**

Envelop 1 shall contain the following:

(a) the technical bid as per format in paragraph 5;

(b) Authority letter relating to the authorized signatory;

- (c) An Affidavit-cum-Undertaking as per **Annexure-1** relating to 'no conviction' and 'no conflict', duly signed by the authorized signatory;
- (d) A Confidentiality Undertaking in the Format at **Annexure-II**;
- (e) A Certificate of unconditional bid in the format at **Annexure-III**.

(Bids with conditionality shall be summarily rejected.)

- (f) A Certificate to the effect that in case of selection and appointment, a Performance guarantee equivalent to 5% of the fee quoted would be given in the form of a bank guarantee, valid till the completion of the transaction, and;
- (g) The bank pay order/digital payment **(to be credited to Govt. Account No. 34663044146; IFSC: SBIN0000625, SBI, Central Secretariat Branch, New Delhi by using Inter Bank RTGS Code R-42)** of Rs. 50,000 (Rupees Fifty Thousand only) payable at New Delhi in favor of Pay & Accounts Officers, DIPAM, as non-refundable fee. In case of digital payment, a proof of the same may be attached.

(ii) **Envelope 2 (Sealed)** –

Envelope 2 shall contain the Financial Bid in the format as per **Annexure-IV**.

7.2 The proposal (both envelopes) can be submitted latest by **1500 hrs. on 10th August, 2017** to Mr. Aseem K Jha Under Secretary, DIPAM, Room No. 205, 2nd Floor, Block No. 11, CGO Complex, Lodhi Road, New Delhi- 110003, in hard copies in original, duly signed by the authorized officer of the Legal Adviser. No proposal will be entertained after the appointed time and date. The Government will not be responsible for any postal/ courier delay. The proposals received after the appointed time and date will be rejected.

7.3 The EoI/bids will be opened by the Tender Opening Committee in the presence of the bidders on **10th August, 2017** at **1530** Hrs (IST) in the Committee Room of the Department of Investment and Public Asset Management (DIPAM) (Room No. 515, 5th Floor, Block 14, CGO Complex, Lodhi Road, New Delhi-110003). Bidders or their representatives may remain present at the time of opening of bids, if they so desire.

7.4 The Government reserves the sole right to accept or reject any or all Proposals thus received without assigning any reasons thereof.

7.5 Threshold for short - listing the Bidders for technical evaluation will be pre-determined and the Financial Bid of only those parties, who qualify in the technical evaluation will be opened.

8. **Procedure for selection:**

8.1 The qualified bidders would be required to demonstrate their credentials before a Selection Committee through a presentation in respect of their proposals, covering the areas/ criteria listed above. They are required to bring along 15 hard copies of the presentation, at the time of presentation.

8.2 The date, time and venue for the presentation will be intimated in due course. The schedule of presentation will be posted on the website of DIPAM (www.dipam.gov.in) in due course.

8.3 The Selection Committee would evaluate the Bidders on the criteria mentioned in paragraph 5 above based on their presentation and the proposals and shortlist them for the purpose of opening of their Financial Bids. Only the parties scoring pre-determined marks/score out of 100, which will be announced before presentation, will be technically short-listed. The Selection Committee will open the Financial Bids of only short - listed applicants.

8.4 The short-listed bidders, if they so desire, may remain present at the time of opening of the financial bids. The marks scored by the short-listed bidders will be announced before opening of the financial bids.

8.5 The marks scored by the short-listed bidders in the technical evaluation will then be given a weightage of 70. Similarly, the financial bids of the short-listed bidders will be given a weightage of 30. The combined score of technical and financial bids will determine the H1, H2, H3 and so on.

8.6 The bidder scoring the highest points/marks (H1) based on the above principles would be selected for the transaction.

8.7 In case of a tie in the financial bid, the bidder who has a higher technical score, will be selected.

9. **Requirements for Financial Bids**

- a. The Bidder is required to quote a Fixed Lump-sum Fee for aforesaid scope of work in Indian Rupees inclusive of all applicable taxes.
- b. In case of mismatch between the fee quoted, the number in words will be taken as correct for all purposes, including evaluation of financial bids.
- c. The Fee quoted by the bidder shall remain Fixed till successful completion of transaction.
- d. The fee quoted by bidder shall be unconditional. All other expenses would be borne by the bidder.

10. **Terms of Payment:**

10.1 The fee to the selected Bidder shall be paid in Indian Rupees on successful completion of the transaction

10.2 The Selected Bidder will be liable to pay taxes on the fee applicable as per law.

11. **MODE OF PAYMENT**

11.1 The applicant is required to quote a lump-sum fee inclusive of applicable taxes payable as per law by the applicant.

11.2 The fee quoted will be unconditional and inclusive of all expenditures. The financial bid shall be valid for 6 months from the submission of bid.

11.3 The selected Legal Adviser will raise the invoices for payment of fee in triplicate to DIPAM for arranging payment, indicating separately thereon, different taxes payable. However, the gross amount shall be the figure quoted in financial bid on the basis of which the bidder was selected.

12. For any further clarification, please contact Shri Aseem K. Jha, Under Secretary, Ministry of Finance, DIPAM, Room No. 205, 2nd Floor, Block No. 14, CGO Complex, Lodhi Road, New Delhi - 110 003, Tel. 011 - 2436 8531 Fax 011 2436 0382

e-mail:- aseemk.jha@nic.in

AFFIDAVIT CUM UNDERTAKING

We, the undersigned (“**Bidder**”) are submitting our bid in respect of the Request for Proposal No [●], Dated [●](“**Bid**”) issued by the Department of Investment and Public Asset Management, Ministry of Finance, Government of India, (“**Government**”) in relation to [●] and in this connection, we hereby solemnly affirm, declare and undertake as follows:

- (1) Details of the Bidder as disclosed in **Appendix-A** enclosed herewith are true and correct as on date.
- (2) There has been no conviction by any court of law or indictment or adverse order by any statutory or regulatory authority for a Grave Offence against us or any of our Indian Sister Concern(s) or any of our promoters or directors or that of our Indian Sister Concern(s) during the last ten financial years.
- (3) No enquiry or investigations for any Grave Offence is pending against us or any of our Indian Sister Concern(s) or any of our or our Indian Sister Concern’s directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency.
- (4) The details of enquiry/investigations for non-Grave Offenses pending against us/our Indian Sister Concern(s)/ our or our Indian Sister Concern’s directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency are disclosed in **Appendix-B** enclosed herewith.
- (5) There are no Conflict of Interest with respect to the Proposed Transaction as on date.
- (6) During the tenure of our engagement for the Proposed Transaction, we shall keep the Government/Company informed, without delay, of any situations,

circumstances, relationships, possible source or potential areas of Conflict of Interest in the format enclosed as **Appendix-C** herewith and we shall not take up work in relation to any such assignment without obtaining prior approval of the Government/Company and granting of such approval shall be the sole discretion of Government/Company and shall be binding on us.

- (7) We ourselves and/or for/with or in association with or on behalf of or through any other Entity, shall not take up any advisory or consulting assignment or render any services on a similar transaction or any other transaction which could have a direct Conflict of Interest, in any manner or capacity to a Competitor of the Company during the term of our engagement in respect of the Proposed Transaction without prior written approval of the Government/Company and granting of such approval shall be the sole discretion of Government/Company and shall be binding on us.
- (8) We have put in place a robust mechanism to resolve any Conflict of Interest situations and circumstances that may arise or result while conducting our business or rendering of services and where-so-ever any Conflict of Interest or potential for Conflict of Interest may arise, we shall take reasonable steps to resolve the same forthwith in a fair and equitable manner. During the term of our engagement we shall ensure to and continue to exercise adequate due diligence for identifying and removing any areas, source, situations and circumstances of conflict and mitigating the effects of such conflicts to the satisfaction of the Government/Company, in case any such Conflict of interest (or apparent conflict of interest) arises or results in relation to the Proposed Transaction.
- (9) We have laid down an internal code of conduct for governing our internal procedures and operations and have prescribed the standards of appropriate conduct for our employees and officers for carrying out their duties and responsibilities with a view to appropriately ensuring proper maintenance of professional excellence and standards with integrity, confidentiality, objectivity and have made provisions for identification, avoidance and

resolution of conflict of interests and for disclosure of shareholdings and interests, etc., in terms of applicable laws.

(10) We understand that:

- (i) in cases where existing Conflict of Interest (or apparent conflict of interest) is disclosed by us, the Government/Company would be entitled to initiate appropriate actions to eliminate or address or mitigate or neutralize the conflict through or by restricting or modifying the work to be performed by us in respect of the Proposed Transaction. Government/Company may also terminate our engagement for the Proposed Transaction, in whole or in part, if such termination is absolutely necessary in view of the Government/Company to avoid the appearance of a Conflict of Interest.
- (ii) The Government/Company would be entitled to terminate our appointment if any of the affirmation/declaration/undertaking given by us is found to be false or misleading in any manner or not adhered or fulfilled or complied by us.
- (iii) if at any time after our appointment as an Advisor, either we or any of our Indian Sister Concern or the respective promoters/directors is convicted by a court of law in India or any indictment/adverse order is passed by a regulatory authority in India for a Grave Offence, we shall stand disqualified from continuing as Advisor to the Government/Company and shall be bound to inform them without any delay and shall voluntarily withdraw from the Proposed Transaction failing which the Government/Company may terminate our appointment after giving an opportunity of being heard.

Definitions

Unless otherwise defined in this Affidavit, the following capitalized terms used herein shall have the meanings set out below:

1. **Advisor** means the Bidder and includes bidder(s) who have been selected for the Proposed Transaction by the Government of India/Company in terms of the Bid.
2. **Conflict of Interest:** Conflict of interest in relation to the Proposed Transaction shall without limitation is deemed to exist or have arisen if:
 - (i) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in any activity or business which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Government/Company or any such activity/association would or may impair his ability to render fair, impartial, technically sound and objective assistance or advice, or unbiased services or may result in it being given an unfair competitive advantage to any other person.
 - (ii) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in advising and/or have taken up engagement for advising/consulting any other Entity whether under a formal engagement or otherwise in relation to any transaction/matter ("**Third Party Transaction**") which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Government/Company.
 - (iii) The Advisor has any business or financial interests in any other Entity that would impair, or give the appearance of impairing, impartial decisions in relation to Proposed Transaction, in offering any advice recommendations or in providing technical assistance or other services to the Government/Company as part of Advisor's engagement obligations/duties.

- (iv) In relation to a strategic sale by the Government of India/Company, the Advisor has taken up engagement with buyer/ONGC.
- (v) Any other situation, possible source or potential areas of interests which may impair Advisor's ability to render fair, impartial, technically sound, and objective assistance or advice, or unbiased services on in conflict of their professional duties towards Government/Company in respect of the Proposed Transaction or result in it being given an unfair competitive advantage to any other person.

3. **Company** means a Company referred to in Para 1 above.
4. **Entity** shall mean and include an individual, proprietorship, HUF, an association of person/body of Individuals, a partnership firm, limited liability partnership, company or any other persons.
5. **Grave Offence** means offences of such nature that it materially affects the reputation, business or operations adversely or outrages the moral sense of the community and such other offences which may be considered by the Government/Company as grave on case to case basis after considering the facts and relevant legal principles.
6. **Proposed Transaction** means the transaction to be undertaken by the Government/Company as described in bid no [●], issued by the Government.
7. **Senior Managerial Personnel's** means managing director, company secretary, chief executive officer, chief financial officer or persons having equivalent positions and all such other employees of the Entity, who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors and include the functional heads.

8. **Sister Concern** in relation to the Advisor, means any Entity in which the Advisor has a significant influence or which has “significant influence” over the Advisor.

9. **Significant influence** means holding of at least twenty percent or more of total voting rights or the power to participate in and influence the management, financial or operating policy decisions of that Entity, or of business decisions under an agreement or has twenty percent profit sharing in such Entity.

Appendix A, B and C hereto shall constitute and shall be deemed to form an integral part of this document.

Appendix-A

BIDDER DETAILS

Name of the Bidder	
Address: Registered Office: Corporate Office Tel: Email:	
Constitution	Company/Partnership/LLP/Others (If others, please provide the nature of constitution)
Details of registration with other professional statutory bodies	

Appendix-B

DETAILS OF PENDING ENQUIRY/INVESTIGATIONS

S. No	Name of the Sister Concern(s)/concerned person(s) against whom the enquiry/investigation has	Relationship with the bidder	Name of the investigating agency	Nature of pending enquiry/investigation and law under which the enquiry has been initiated	Brief facts/interim orders /other relevant information in respect of the pending enquiry/investigation

	been initiated				

Appendix-C

**DETAILS OF PRESENT/POTENTIAL CONFLICTS/FACTS OR INTERESTS THAT
MAY BE DEEMED AS POTENTIAL CONFLICT OF INTEREST**

S. No	Name of the Entity, in which interests Conflicts exists/may arise	Relations hip of the Bidder with the Entity	Nature/reason of conflict/potential conflict	Duration of the subsistence of conflict, if any	Such other information as may be relevant and material in deciding whether there is a conflict/potential conflict of interest

Annexure-II

Confidentiality Undertaking

It is certified that the documents/ data/ information pertaining to (name of the company), which will be provided to [Name of the bidder] for transaction shall be treated as strictly confidential and will not be disclosed or handed over by [Name of the bidder] to any outside agency/ person without prior written permission of the Company.

It is further certified that the reports and other relevant documents, which are to be submitted by [Name of the bidder] to the Government will not be disclosed to any other agency/ person without prior permission of the Company and will be treated as strictly confidential.

Seal with Signature of the authorized signatory of the bidder

Annexure- III

FORMAT OF UNCONDITIONAL BID ON THE LETTERHEAD OF THE BIDDER

This is to certify that the fee quoted by us for engagement as Legal advisor for strategic disinvestment of Hindustan Petroleum Corporation Limite (HPCL) is in accordance with the terms and conditions laid down in the RFP displayed on the website of the DIPAM and is unconditional.

Seal with signatures of authorized signatory of the Bidder

Format of Financial Bid on the Letterhead of the Bidder

Sl. No.	Description of work	Fee (all inclusive) in INR
1.	Fixed Lump-Sum Fee in Indian Rupees inclusive of all applicable taxes.	(In Numbers)
2.	All other expenses will be borne by _____ (Name of the bidder)	(In Words)

Note:

- 1) In case of mismatch in number and the figures quoted the fee in words will be taken as correct for all purposes.
- 2) Since the bid is inclusive of all taxes, any additional liability of tax that may arise either on account of change in tax rate or additional taxes by the Central or State Governments, shall be the responsibility of the bidder.

Seal with signatures of authorized signatory of the Bidder