

CLARIFICATION TO THE RFP

RFP No.: 27(100)/2014-IPHW)

Subject : RFP for Selection of Verification agency for verification of claim applications received under MSIPS (Modified Special Incentive Package Scheme) and EMC (Electronic Manufacturing Cluster) Scheme floated on 01-06-2017

Date of issue: 01-06-2017

Issuing agency: Ministry of Electronics and IT

Pre-bid conference: 12-06-2017

Following clarifications are provided to the above RFP:

RFP ref. para no.	Description of the RFP para/ Issue	Quarries from participants	Clarifications provided from MeitY
5.2&7.1	Duration of contract	Whether duration of contract is 2 years or 3 years. Para 5.2 and 7.1 are contradicting	Duration of contract will be 3 years from the date of award of contract and extendable for a further period of 3 years. It is defined at 7.1 of the RFP.
4.1.4	The selected agency(ies) will process the incentive claim for the Applicant within 15 working days of receiving complete information/documents required for processing of incentive claim.	It may be noted that quantum of work would depend on many parameters including project size, technology involved, project location, information availability with the applicant etc. Further, the verification process is iterative in nature and will depend on complete and accurate information to be provided by applicants. Hence, it would be difficult to envisage the timelines required for completion of appraisal.	The timelines of 15 days will start only after receiving complete information/documents required. It may be seen that all projects under the schemes are commercial and time delay may effect the investors in several ways including their project viability. It is therefore desired that the selected agency should deliver the service in a time-bound manner.
4.2.5	EMC(Scope of work)	Since disbursement of funds under EMC scheme would happen in tranches, we understand that pay-out under a single application would happen	The agency fee is a percentage of the disbursed amount to the applicant as per para 6.3 of the RFP. It is further clarified that fee will only be applicable for the disbursement claims on

	<p>Verification agency shall verify (including Physical and financial progress) the Quarterly progress reports submitted by the applicant (Chief Promoter/SPV as the case be). Verification agency shall also verify the work done and the funds utilized are as per the EMC scheme, Guidelines, appraisal done by the appraising agency and are in compliance with the final approval, agreements and other instructions issued by MeitY.</p>	<p>in pro-rata basis for works carried out towards that tranche. Clarification in this regards is requested on what would happen in case majority of works is completed during disbursement of second tranche.</p>	<p>which the selected agency has carried out the verification. Any other disbursement made to the applicant would not qualify any fee to the selected agency.</p> <p>As per the scheme, the GIA will be released in 4 installments. If applicant completes the infrastructure work before the second installment, then verification agency will verify the status of the work done with specific recommendation for release of subsequent installments of GIA altogether. For which the reimbursement process will be followed. Accordingly, the verification agency will be paid on reimbursement basis.</p>
4.2.5	<p>Inspection of the Site / premises to ensure</p> <p>Deviations / modifications from the approved work/ layout/ land area / BOQ etc</p>	<p>BOQ assessment of the works done in accordance with DPR submitted at time of final approval would be a time consuming exercise. Need to check on need for this level of verification and align timelines for the assignment accordingly.</p>	<p>The verification agency has to examine and verify the progress of the work as per the project components enshrined in final approval letter. The verification agency does not require to assess the BOQs in line with the DPR submitted by the applicant.</p>
6.1	<p>The payment due to the selected agency (ies) will be paid as per the following:</p> <p>50% on approval of verification report related to release of incentive / GIA submitted by selected agency.</p> <p>50% on disbursement of incentive / GIA to the applicant.</p>	<p>As a verification agency, our report may entail rejection of a claim on grounds of not meeting the requisite conditions under the scheme for disbursement of grant / financial assistance. In such cases, linking the fees of verification agency with disbursement of incentive would not be reflective of the work done by verification agency and may represent conflict of interest as well. It is requested to modify the said clause to pay the fees to verification agency as per under:</p> <p>50% on approval of draft verification report related to release of incentive / GIA submitted by selected agency.</p> <p>50% on approval of final verification report related to release of incentive / GIA submitted by</p>	<p>Payment terms remain unchanged</p>

		selected agency.	
6.3	It should also be noted that in case any inconsistency with M-SIPS or EMC Policy and/ or Guidelines is found in the disbursement made to any of the applicant(s), the agency will have to refund to MeitY, twice the amount of the fee that has been paid for processing the respective claim(s).	Verification agency would be submitting its report based on information provided by applicant. The report would be reviewed by MeitY for further processing of applicant's claim. In view of this, the stated clause may be removed.	<i>By 'inconsistency' we mean any misrepresentation and/or gross negligence with respect to M-SIPS or EMC Policy and / or Guidelines and/or Approval letter issued by MeitY thereof</i>
10.14	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.	There is no Annexure I in the RFP Document. Further draft contract agreement provided in the RFP can be further elaborated to include other terms as per our standard offer letter.	The draft contract is provided in Annexure 4
11.9	No Claim Certificate The selected bidder 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 selected bidder after it shall have signed a No claim certificate in favor of MeitY in such forms as shall be required by MeitY after the works are finally accepted.	Request - To be Deleted Clarification – The clause is requested to be removed as it isn't in standard practice being followed by SBI Capital Markets Ltd. The successful completion of work under milestones and payment of all fees and other expenses by DeitY shall conclude the services rendered by verification agency under the transaction.	No change

11.13	<p>Firm Prices</p> <p>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.</p>	<p>Request - To be Deleted</p> <p>Clarification – The clause is redundant and is thus requested to be removed.</p>	No change
11.15 iv	<p>The selected bidder 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 selected bidder in relation to a dispute arising out of breach of obligation by selected bidder under this Clause.</p>	<p>Request - To be Deleted</p> <p>Clarification – Verification agency will sign the non-disclosure agreement in accordance with RFP document. Hence, we request to delete this clause.</p>	No change
11.15 v	<p>The requirements of use and confidentiality set forth herein shall survive the expiration, termination or cancellation of this tender.</p>	<p>Request - To be Modified</p> <p>Clarification – The requirements of use and confidentiality set forth herein shall survive the expiration, termination or cancellation of this tender upto the maximum period of 12 months from completion of works under the agreement / cancellation of the agreement.</p>	No change
11.19 and 11.20	<p>11.19 - “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.”</p>	<p>Request - To be Deleted</p> <p>Clarification – SBI Capital Markets Ltd, through its various teams caters to many corporate in India along with their subsidiaries. The works performed under the transaction would be in accordance with prevailing guidelines and approved by MeitY. In view of this, it is</p>	No change

	<p>11.20 - “It is expected that bidder will not take up any task at any stage with the applicant with respect of MSIPs/ EMC application or any other task which create such conflict of interest.”</p> <p>“Any such disclosure shall be made as per the Standard forms of technical proposal provided herewith.”</p>	<p>requested to delete the said lines from clause 11.19 and 11.20</p>	
11.23	<p>(i) The selected bidder’s liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof</p> <p>(iv) The limitation of liability specified in this provision clause shall not affect the selected bidder’s liability, if any, for damage to Third Parties caused by the sole action of the selected bidder to the extent of the selected bidder’s or any person or firm acting on behalf of the selected bidder in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.</p>	<p>Request - To be Deleted</p> <p>Clarification – The Arbitration clause is requested to be amended</p> <p>Request - To be Deleted</p> <p>Clarification – The liability equivalent to 3 (three) times the Agreement value is not in accordance with standard practises followed by SBI Capital Markets Limited.</p>	No change
11.25	<p>Arbitration</p>	<p>Request - To be Modified</p> <p>Clarification – The revised clause is here:</p> <p>1. In the event of any dispute or difference or controversies or claims relating to, arising from or connected with the Contract, such</p>	No change

		<p>dispute or difference shall at the first instance be endeavoured to be resolved through amicable reconciliation by mutual discussion in good faith</p> <ol style="list-style-type: none">2. In the event a dispute arises out of or in relation to or in connection with the existence, validity, interpretation, implementation, termination, alleged breach or breach of this RFP or the Agreement (the “Dispute”), the Parties (the “Disputing Parties”) shall, by notice in writing to each other, refer the Dispute to binding arbitration to be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (the “Arbitration Act”).3. Any reference of the Dispute to arbitration under this Agreement shall not affect the performance of terms, other than the terms related to the matter under arbitration, by the Parties under this Agreement.4. The arbitration shall be conducted as follows:<ol style="list-style-type: none">i. all proceedings in any such arbitration shall be conducted, and the arbitral award shall be rendered, in the English language;ii. all Disputes between the Parties arising out of or in connection with this Agreement shall be referred to or submitted to arbitration in New Delhi, India;iii. each disputing Party shall appoint one arbitrator and the two arbitrators shall appoint the third or the presiding arbitrator. In the event that there are more than two disputing Parties, then such arbitrator(s) shall be appointed in	
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		<p>accordance with the Arbitration Act; and each of the arbitrators so appointed shall have at least five years of relevant experience in the area of securities and/or commercial laws;</p> <p>iv. the arbitrators shall have the power to award interest on any sums awarded;</p> <p>v. the arbitration award shall state the reasons on which it was based;</p> <p>vi. the arbitration award shall be final, conclusive and binding on the Parties and shall be subject to enforcement in any court of competent jurisdiction;</p> <p>vii. each of the Disputing Parties shall bear its own costs in relation to such arbitration proceedings unless otherwise awarded or fixed by the arbitrators;</p> <p>viii. the arbitrators may award to a Disputing Party its costs and actual expenses (including actual fees and expenses of its counsel);</p> <p>ix. the Disputing Parties shall co-operate in good faith to expedite the conduct of any arbitral proceedings commenced pursuant to this Agreement; and</p> <p>x. subject to the foregoing provisions, the courts in New Delhi shall have jurisdiction in relation to proceedings, including with respect to grant of interim relief, brought under the Arbitration Act.</p>	
Annexure 4	<p>Indemnity</p> <p>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</p>	Request - To be Deleted	No change

	<p>time, from and against any and all losses , claims, damages, liabilities, costs (including reasonable attorney’s 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.</p>		
Annexure 5	9. The authorised representatives from [agency name] side shall be –	Names of authorized representatives not to be shared considering long duration of contract and engagement of sub-consultants.	No change
4.2.5	Page 7 (EMC Scope of Work) –	From our previous experience and the scheme	Verification agency as of now will be required for examining

	Business & Legal / Tax Review	<p>guidelines, we understand that the scheme requires the applicant (SPV) to furnish various documentation related to land allotment, project clearances including Consent to Establish, Factory License, Fire Clearance, etc before the final sanctioning of the project. With respect to the above, kindly clarify:</p> <p>If the extension of the EMC Scheme now does not require these approvals and clearances during the pre-approval stage and all or some of these approvals have been pushed to the post-sanction stage</p> <p>If the above-mentioned changes have not been done, then kindly clarify how the Verification Agencies would be required to assess these if the scope of services begin after the release of 1st Installment of Grant to the applicants / SPVs</p>	the GIA claims for the projects approved under current EMC scheme.
	General – Number of Agencies and their Evaluation	<p>Through this RfP, is MeitY intending to empanel / employ more than one agencies as Verification Agency. Kindly clarify</p> <p>If Yes to the above question, kindly clarify if the roles and the fees paid for all the empaneled/employed agencies would be the same irrespective of the technical & financial scores</p>	Yes. MeitY may empanel more than one agency. The roles and the fees paid for all the empaneled/employed agencies would be the same irrespective of the technical & financial scores
Page 10: Eligibility Criteria – Financial Turnover	The bidder in its name must have achieved a minimum average annual financial turnover of Rs. 100 crore in the last 3 (three) years ending 31 st March 2016.	Request MeitY to kindly relax the turnover criteria from the current minimum Rs 100 crores to minimum Rs 50 Crores or Rs 75 Crores	MeitY is receiving the wide range of projects under MSIPS starting from one crore to thousands of crore. Keeping in view of large size of projects, the turnover criteria of Rs 100 crore has been kept.

<p>Page 10: Eligibility Criteria – Previous Experience</p>	<p>Entities in the area of financing of projects having extensive experience in evaluating projects for funding. The bidder must have successfully completed financial appraisal of minimum one project with at least Rs. 500 crore capital investment OR two projects each with at least Rs. 250 crore capital investment OR three projects each with at least Rs. 100 crore capital investment, during last three (3) years ending 31st March 2016.</p>	<p>The scope of work as mentioned in the RfP by MeitY for Verification Agencies is similar to the work of PMA / PMC services required by Government Authorities / Agencies / Ministries / Departments. We assume that the projects wherein the firms have worked as PMA / PMC for Government Bodies would be considered eligible for evaluation. Kindly confirm</p>	<p>Please refer amendment to para 8.1 (i) which is being issued.</p>
<p>Page 12: Financial Bid Template</p>	<p>Fee which will be paid to the selected bidder against verification and disbursement for a disbursement claim = P x Y</p> <p>Where,</p> <p>P= Value in percentage which is required to be quoted in above table.</p> <p>Y= incentives disbursed to the applicant (Y) for the subject disbursement claim in INR</p>	<p>It is difficult at this stage and without knowing the number of applications to be scrutinized to estimate the exact fees in numeric terms. In view of the same, we request you to kindly either consider fees in percentage (%) basis or on lump sum basis instead of both</p> <p>Also, kindly clarify of the financial quote should be separately given for the MSIPS Scheme and EMC Scheme or an all-inclusive fee has to be quoted. This is required to be clarified as the size, quantity, scope of work, and efforts required for both the schemes are different. Request MeitY to kindly clarify</p>	<p>So far, MeitY has approved 97 proposal with proposed investment of Rs.20,809 crore and incentive commitment of Rs 1900 crore. Of which, the claims pertaining to approx Rs. 250 crores incentives have been received, rest of incentive claims are expected to come in next 2-3 years.</p> <p>Further MeitY is also in the process of approving the other applications. At present applications with proposed incentives of Rs 1,22,762 crore Are under approval.</p> <p>No, Financial quotations are not required to given superlatively for M-SIPS and EMC schemes. There will be one combined financial quotation for both the schemes. The selected agency will have to undertake the assignment for both the scheme.</p>