

**BHEL's response against queries sought by Prospective bidders on RFE
Proposal Ref No. AA/M&A/RFE/2009**

S No.	Query	Response
1	(a) Is the opportunity for empanelment as M&A legal advisors available to local Law Firm/Advocates in India?	Yes
	(b) Is it necessary for the local Law Firm/Advocates to be in a tie up with Foreign Law Firms and act as their associates?	No, a foreign tie-up is not necessary at the empanelment stage. However, at the time of issuing RFP, foreign tie-up may be a pre-condition depending on the target.
	(c) Will both the Foreign Law Firm as well as the local Law Firm/Advocates require to be empanelled with BHEL?	Only the Indian Law Firm requires to be empanelled.
2	<p>1. Section II, Article 10, clause 3(b) reads: The Indian arm of the firm should have successfully completed at least three cross border M&A deals of at least USD 50 million in the preceding three financial years as legal advisor. (Page 8 of the RFE)</p> <p>Query: My query is whether this threshold of USD 50 million is for the total value of the three transactions completed in the last three years or each transaction should be of at least USD 50 million?</p>	<p>The firm should have successfully completed at least three cross border M&A deals of at least USD 50 Mn each in the preceding three financial years as legal advisor. Refer the Corrigendum issued separately on BHEL website.</p>
	<p>2. Format: C pertaining to List of successful cross border M&A transactions by Indian arm of the bidder in last 3 Financial Years (Page 21 of the RFE)</p> <p>Query: This format has a column for the "Date of completion of successful transaction." Is this the date of signing of the relevant agreements, date of remittance of money, date of filing the last e-form with respect to the transaction or any other specific date? Usually completion itself is a process and it takes a few days to complete formalities such as filing e-forms, reporting to the RBI etc. In light of this, what "date of completion" is expected to be put in this column?</p>	<p>For this purpose, signing of relevant agreements such as Share Holder Agreement (SHA)/ Share Purchase Agreement (SPA) can be taken in to account as date of completion.</p>

S No.	Query	Response
3	<p>Firstly, the wording of the first part thereof i.e. “the Indian arm of the firm...” - suggests that the RFE contemplates foreign law firms with a presence/ practice in India. This may according to us militate against the present law governing legal practice in India that does not permit foreign law firms to, directly or indirectly, practice in India.</p>	Refer the Corrigendum2 issued separately on BHEL website.
	<p>The second aspect is with regard to “cross border” M&A deals which would restrict firms such as ours that have dealt with M & A transactions of similar values but not necessarily cross border, from submitting a bid.</p>	The condition remains unchanged.
4	<p>As per the Qualification Criteria as set out in the RFE, the firm is required to have a minimum experience of advising corporates for the preceding three financial years; and is also required to have successfully completed at least three cross-border M&A deals of at least USD 50 Million.</p> <p>- Our query in this regard is whether, in the case of a newly set-up firm, the relevant experience of the Partners of the firm in their previous positions, may be considered as being sufficient for the purpose of meeting the aforementioned requirements? Furthermore, is it essential for the aforementioned transactions to have been successfully completed, given that the economic slowdown last year resulted in a number of transactions failing to achieve a successful closing.</p>	The conditions remain unchanged.
	<p>As per the Qualification Criteria, the firm would have to submit documentary evidence to substantiate the experience as specified therein.</p> <p>- Our query in this regard is, what is the nature of documentary evidence that would be required to substantiate the said experience, apart from an engagement letter from the client.</p>	Documentary evidence may include Share Holder Agreement (SHA)/ Share Purchase Agreement (SPA) and/or other relevant documents to the satisfaction of BHEL.

S No.	Query	Response
5	1. Section II (ITB), clause 10 of the RFE dealing with the qualification criteria of the advisors provides that each bidder is required to furnish documentary evidence to substantiate their experience in the relevant sectors. Could you please provide details on the nature of documentary evidence required and format if any.	Documentary evidence may include Share Holder Agreement (SHA)/ Share Purchase Agreement (SPA) and/or other relevant documents to the satisfaction of BHEL.
	2. Section III (T&C), clause 10.2.4 of the RFE provides that the advisor will indemnify BHEL against all claims, suits, actions, damages and costs suffered by BHEL as a result of the actions of the advisor. However, there is no cap on the liability. Would it possible to provide for a cap on the liability.	The condition remains unchanged.
	3. Section IV (SOW), clause 1 of the RFE provides that the response time for a particular RFP may be as less as one day. Given the nature of the work and time involved in preparing a response to an RFP, it may be extremely difficult to do so within 24 hours. Hence, we would request you to reconsider the above and if possible extend the minimum timeframe of a day to a more reasonable time frame.	Response time "as less a one day" is an indicative one and shall depend on timelines specified by target company.
	4. The RFE only provides a format for listing all cross border M&A transactions completed by the bidder. There is no separate format for experience in EPC. Could you please clarify if a separate experience statement for construction related experience is required. If so, please confirm whether the same format as in the case of M&A transactions can be used.	Separate statement for EPC/Construction related experience is not required.
	5. Section III (T&C), clause 9 of the RFE states that all 'legal' disputes between the parties shall be subject to the exclusive jurisdiction of the courts in New Delhi. The world 'legal' may be ambiguous, and we request you to consider deleting the word 'legal' so as to subject all disputes to the exclusive jurisdiction of the courts in New Delhi.	The condition remains unchanged.
	With respect to clarification 2 (in relation to the indemnity to be provided by an advisor), we request you to also consider the below:	The condition remains unchanged.

S No.	Query	Response
	<p>Given that a client's right to sue for negligence is well established in law and exists even without an express indemnity, we suggest that rather than having a clause on indemnity in the contract, an advisor may be required to obtain professional indemnity insurance. Accordingly, we request you to also consider deleting the indemnity clause and replacing the same with the requirement that the advisor obtain a professional indemnity insurance.</p>	
6	<p>As you will be aware, international law firms are not permitted to currently have offices in India. In response to the EOI, we propose to submit a proposal for empanelment as legal advisors in conjunction with an Indian law firm.</p>	<p>Refer the Corrigendum 2 issued separately on BHEL website.</p>
	<p>Accordingly, whilst we will be able to satisfy condition 3(a) of the EOI ourselves, for conditions 3(b) and 3(c) and formats C, D and E, we envisage that the Indian law firm would provide the requisite information. Would you please clarify if this will be in compliance with your requirements?</p>	<p>Bidding in conjunction /consortium is not allowed.</p>
7	<p>For Technical Qualification whether Joint Bidding/consortium Bidding is allowed or not?</p> <p>In case the Joint Bidding/Consortium Bidding is allowed then for clearing Technical Qualification whether</p> <p>only Lead Arranger has to clear the technical criteria and/or</p> <p>Both the bidders have to individually clear the technical criteria and/or</p> <p>The bidders have to Jointly clear the technical criteria(i.e. certain criteria's cleared by 1 bidder and certain other criteria's cleared by other joint bidder)</p>	<p>Joint Bidding/Consortium Bidding is not allowed</p> <p>Not Applicable</p>
8	<p>We are interested in getting empanelled as Financial Advisors. We would like to know if we can bid as a consortium for the same.</p>	<p>Bidding in Consortium is not allowed.</p>

S No.	Query	Response
9	1) the Terms & Conditions of Contract set out in Section III of the BHEL Request for Empanelment for M&A Opportunities are not generally applicable to a Financial Advisor who is offered and accepts empanelment during the two year period of such empanelment, solely by virtue of being an empanelled advisor, and	Clause 1, 2, 4, 6, 7, 8, 9, 11 & 12 of Section III will apply to all Advisors by virtue of empanelment.
	2) those Terms & Conditions and the Scope of Work in Section IV of the RFE are intended only to form part of the contract for a specific project on which BHEL subsequently engages a Financial Advisor and are subject to mutual agreement as part of a RFP, with the advisor's Engagement Letter, at such time.	Scope of Work in Section IV of the RFE and Terms and Conditions are mainly intended to form part of RFP for a specific project.
10	Please elaborate on the evaluation process and criteria of marking, if any, involved in the evaluation process.	No marking criteria is involved in the evaluation process. The evaluation will be as per Qualification Criteria laid out in the RFE document.
	We may fall short of the requisite period of experience of 3 years of operation in India by a miniscule margin. In such a case, we would request BHEL to consider Mazars to qualify for the empanelment.	The condition remains unchanged.
	Under present business scenario, what is the anticipated average number of M&A assignments for an advisor to undertake in a year?	It will depend on number of opportunities pursued by BHEL at any given time.
	Does BHEL anticipate situation where one advisor may be required to handle 2 assignments simultaneously?	It will depend on number of opportunities pursued by BHEL at any given time.
	Is an advisor allowed to outsource a portion of the work in an assignment to a third party?	Refer Clause 11 of Section III of RFE.
	Is an advisor allowed to take help of an external consultant?	

S No.	Query	Response
	<p>Please explain the distribution of authority among the three categories of advisors- Financial Advisors, Accounting & Tax Due Diligence Advisors and Legal Due Diligence Advisors.</p> <p>Will the Financial Advisor be playing a lead role in handling the assignment or will there be equal responsibility on each category of advisors for their corresponding areas of work?</p>	<p>Each advisor will be independently responsible for its Scope of Work. The Financial Advisor will also act as the Lead Advisor and will coordinate with other advisors.</p>
11	<p>1. Point 10: Documentary Evidence of Deals done: The invitation seeks documentary evidence of the cross border and other deals that we have advised on. Could you please let us know the nature of this documentation that you are seeking? We could provide printout of public databases such as Bloomberg. Would this be fine or are you seeking some other sort of evidence?</p>	<p>Documentary evidence may include Share Holder Agreement (SHA)/ Share Purchase Agreement (SPA) and/or other relevant documents to the satisfaction of BHEL.</p>
	<p>2. Conflict of Interest and other Terms and Conditions</p> <p>It is our understanding that submission of a proposal for empanelment and subsequent empanelment would not bind us legally to the terms and conditions (including conflict of interest) until we are chosen as your advisor for a particular target (which would lead to an execution of a contract letter). Can you please confirm our understanding? You will appreciate that few of the terms such as conflict of interest cannot be undertaken from our side today and will be dependent on each individual target.</p>	<p>Clause 1,2,4,6,7,8,9,11 & 12 of Section III will apply to all Advisors by virtue of empanelment..</p>
	<p>3. Section IV: Scope of Work</p> <p>As your Financial Advisors, we would be happy to provide all those services which are customary in such international acquisitions. Though we are broadly in agreement with the scope provided, suggested wordings in some areas do not correctly capture the essence of these services. Could you please let us know if you are willing to entertain requests for minor modifications in the wordings of the scope of services, in which case we would be happy to discuss the areas of concern with you in greater detail.</p>	<p>The Scope of Work is indicative in nature. Detailed scope of work shall be part of Request for Proposal (RFP) for specific target opportunities.</p>
	<p>4. Format E: Revenue Details (audited)</p>	<p>The condition remains</p>

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	Our India is a Private Company and we do not disclose our financials. Our parent is listed on the international bourses and we could submit the consolidated financials of our group as the indication of our financial strength, size and seriousness. Could you please let us know if you are fine with us submitting the detailed financials of our parent?	unchanged.
12	Section III: Terms & Conditions of Contract	
	Clause 8 (Resolution of Disputes) : The sole arbitrator should be appointed either jointly by the parties, or a neutral appointing authority such as SCOPE or the Indian Council of Arbitration?	The condition remains unchanged.
	Clause 10.1 (General) : We would like to clarify that while the financial advisor is always the lead advisor and coordinates the work of all advisors, the financial advisor cannot take the onus of completing DD in time as Financial Advisor. That responsibility would be of due diligence team.	Each advisor will be independently responsible for its Scope of Work. The Financial Advisor will act as the Lead Advisor and will coordinate with other advisors.
	Clause 10.2.2 (Conflict of Interest) : Could you please clarify if the Clause requires this undertaking from Indian company or International Parent company?	The company/firm applying for empanelment shall have to furnish this undertaking at the RFP stage.
	Clause 10.2.3 (Confidentiality) : We would like to review the draft of standard confidentiality agreement that BHEL intends to use	It will depend on case to case basis as per the requirements of specific target opportunity.
	Clause 10.2.4 (Indemnity) : In the sixth line, would it possible to remove the words "or any breach of terms and conditions of contract, etc" ?	The condition remains unchanged.
	Section IV: Scope of Work	
	While responsibility of overall coordination and rendering a comprehensive service/solution for a target acquisition will be with the Financial Advisor, we would like to clarify that while the financial advisor can take responsibility for the coordination of inputs from legal/ tax experts, it is not possible for the financial advisor to own responsibility on the quality or timeliness of the advice or any liability thereof.	Each advisor will be independently responsible for the quality of its deliverables and timelines.
	Additional clauses on the Contract:	

S No.	Query	Response
	<p>Limitation of Liability : The RFE from BHEL does not limit the advisors liability. Considering the stakes involved in the deal where an advisor is earning a small percentage of transaction value as success fee, it is impractical for advisors to take an unlimited risk. The internal regulations of most of the good advisory firms limit the potential liability which any member can take on a transaction. As such an unlimited liability makes it difficult to get internal approvals to submit the proposal</p>	<p>The condition remains unchanged.</p>
13	<p>In this regard, we need clarity on one of the qualifications criterion i.e. “the company should have an independent presence in India, Europe and North America”. Does it mean that the operations in Europe and North America should be under the control of Indian Company?</p> <p>We shall appreciate if you apprise us your thought process with respect to this qualification. It will help us to assess the strengths of our firm in terms of meeting the qualification criterion.</p>	<p>No. It doesn't necessarily mean that the operations in Europe and North America should be under the control of Indian Company. The companies in Asia, Europe and North America may be part of the same global group/network sharing the same brand name or under the same holding company.</p>
14	<p>Section II - Instructions to Bidders</p> <p>Para 10, 2 (a) (b) Please confirm that "preceding years" refers to the years ended 31 March 2007, 2008 and 2009</p> <p>Para 10 , 2 (b) This requirement does not seem to be relevant for Accounting & Tax Due Diligence Advisor. This is only relevant in the case of Financial Advisor</p> <p>Para 10 , 2(c) Please elaborate what is meant by "the company should have an independent presence in India, Europe and North America. " For instance India is part of our global network which has offices/ practices in over a 100 countries across the globe including in Europe and North America, but the Indian firm which will be empanelled with BHEL will not have its own independent offices outside of India. However, we will work with our network firms across the globe as necessary.</p> <p>Para 10</p>	<p>As per Company's accounting policy, it has to be preceding three accounting years.</p> <p>The requirement is applicable to Accounting & Tax Due Diligence Advisor also.</p> <p>The companies in Asia, Europe and North America should be part of the same global group/network sharing the same brand name or under the same holding company.</p> <p>The condition remains</p>

S No.	Query	Response
	It is stated that "documentary evidence is to be submitted by all above bidders to substantiate the experience as specified above". Please reconsider this requirement. What evidence is required We are bound by very strict confidentiality clauses and hence it may not be possible to share our contracts/ engagement letters / other correspondence.	unchanged.
	Section III - Terms & Conditions of Contract	
	Para 10.1 The requirement of the advisor to "advise comprehensively on valuation, bidding strategy etc" appears to be applicable to the Financial Advisor and not to Accounting & Tax Due Diligence advisors	The Scope of Work mentioned is indicative and detailed scope of work shall be part of Request for Proposal (RFP) for specific target opportunities.
	Para 10.2.2	
	This is not normal business practice for Accounting & Tax Due diligence Advisors. We represent mutiple bidders on many occassions. More so, in international transactions, we will be unable to provide you this confirmation in respect of our overseas member network. I believe this clause needs further discussion and I am happy to do so with you at your convenience	This condition may be considered at the time of issuing RFP for specific target opportunities.
	Para 10.2.3 We are willing to sign a "deed of confidentiality Undertaking" , however cannot do so unless we have read the terms and conditions thererof. An allowance shoud be made for this	This requirement of signing "deed of Confidentiality Undertaking" shall arise at the time of issuing RFP for specific target opportunities.
	Para 10.2.4 Our liability to you should be restricted to one times the engagement fees which is the usual business practice.	The condition remains unchanged.
	Section IV - Scope of Work	
	Para 2	The Scope of Work is

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	<p>We suggest that you use the expression " Analyse" instead of "Review", "Identify". "Examine", "Review" etc which have specific meanings attached to it. That is normal business practice with reference to Accounting and Tax Due Diligence.</p>	<p>indicative in nature. Detailed scope of work shall be part of Request for Proposal (RFP) for specific target opportunities.</p>
	<p>Section V</p>	
	<p>Format C Please reconsider the requirement of providing date of completion of successful transaction which may be cumbersome to secure. The year of completion may suffice for your purposes Time taken for completing the transaction - relevant for Financial Advisor only</p>	<p>The condition remains unchanged</p>
	<p>Format D What is the difference between Format C and D - the former seems to pertain to cross border transactions and the latter to any transaction. Please confirm</p>	<p>Your understanding is confirmed.</p>
	<p>Format E</p>	
	<p>We may not able to submit audited accounts, as a matter of policy Also various firms are organised differently and total revenues are split amongst various entities. This therefore may not be a relevant requirement.</p>	<p>The condition remains unchanged.</p>
<p>15</p>	<p>Page 7/24 Confidentiality Point 2: Acct & Tax due diligence advisor For due diligence credentials, as per the RFE the advisor should have "successfully completed" 3 cross border M&A deals. Generally the due diligence credentials are not linked to successful completion of the deal which is the case for M&A credentials. Please clarify whether "successfully completed" relates to successful completion of the engagement or the deal.</p>	<p>Successful completion refers to successful closure of deal.</p>
	<p>Page 10/24</p>	<p>The condition remains</p>

S No.	Query	Response
	As per the RFE Advisors are to be bound by confidentiality clause for a period of 5 years from date of termination of this contract. Generally the tenure for confidentiality clause is 1-3 years depending upon the nature of data/information disclosed. Also, we understand that on a transaction to transaction basis the advisor (alongwith BHEL) will have to enter in to a separate Non Disclosure Agreement in favour of Seller(s). Hence we suggest that the period of confidentiality clause of the RFE be reduced to 3 years.	unchanged.
	Page12/24 Point 7: Termination of association with BHEL Sub-point (a) and (b) are subjective in nature and would request you to include more quantifiable milestone for termination of association.	Quantifiable milestones may be included at RFP stage for specific opportunity.
	Page13/24 Point 10.2.2: Advisor and subsidiaries not to be otherwise interested	
	As per the RFE:”Advisor and their subsidiaries shall not render the same or related services to other interested third party(ies) or the Seller or the Target & their Representatives.” We may mention that the term representatives is too broad and may be construed to include various entities/individuals related to the Seller/Target across the globe making it difficult for the advisor BHEL to provide a check on providing any services to “Representatives”. Also, it will be difficult for the Target/Seller to provide a list of their Representatives to BHEL (and its advisors) for potential conflict check. We suggest that the term “representatives” to be deleted from this clause or defined in the RFE.	The condition remains unchanged.
	Page13/24 Point 10.2.4: Advisor and subsidiaries not to be otherwise interested	The condition remains unchanged.

S No.	Query	Response
	<p>As per the RFE the “Advisor shall indemnify and hold harmless BHELas a result of any infringement or alleged infringement of any Intellectual Property Rights or any breach of terms & conditions of contract , etc arising out of the actions of the advisor, its employees and officers at any time during the term of this Contract”.</p> <p>May we request to delete the word “etc.” to make the clause complete close statement.</p>	
16	<p>This is with reference to the Request for Empanelment of Advisors for M&A Opportunities, in view of clause 10.2.2 of the RFE, we understand that for any specific project, if we are not selected as an Advisor, the empanelment does not prohibit us (incl our subsidiaries) from advising any other Buyer with respect to the proposed transaction with the Target.</p>	<p>Your understanding is confirmed.</p>